

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

**Complaint no.** : 483 of 2023  
**Date of complaint** : 03.02.2023  
**Date of decision** : 09.10.2024

Saurabh Kumar,  
Through SPA holder Raghuvinder Singh,  
**R/o:** V-2/4, JayPee Golf Course,  
Greater Noida, Uttar Pradesh.

**Complainant**

**Versus**

1. Native Buildcon Private Limited  
**Having Regd. Office at:** Park Centra,  
Basement-1, Opposite 32 Milestone, Sector-30,  
Gurugram-122001.
2. BPTP Ltd.
3. Countrywide Promoters Private Limited  
**Both Having Regd. Office at:** OT-14, 3<sup>rd</sup> Floor,  
Next Door Parklands, Sector-76, Faridabad.

**Respondents**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Avneet Singh Sikka (Advocate)  
Harshit Batra (Advocate)

**Complainant  
Respondents**

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



under the provision of the Act or the Rules and regulations made 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Pedestal @70-A", Sector-70 & 70-A
2.	Nature of project	Residential
3.	RERA registered/not registered	Not registered
4.	DTPC License no.	15 of 2011 dated: 07.03.2011
5.	Allotment letter	12.11.2013 (As on page no. 36 of complaint)
6.	Date of floors buyer's agreement	21.11.2013 (As on page no. 47 of complaint)
7.	Unit no.	D-48-SF (As on page no. 55 of complaint)
8.	Unit area admeasuring	1400 sq.ft. [Super-Built up area] (As on page no. 55 of complaint)
9.	Possession clause	<b>Clause-5 POSSESSION AND HOLDING CHARGES</b> <b>5.1</b> The Seller/Confirming Party proposes to offer possession of the Unit to the Purchaser(s) within the Commitment Period. The Seller/Confirming Party shall be additionally entitled to a Grace Period of 180 days after the expiry of the said Commitment Period for making offer of possession to Purchaser(S) <b>Clause 1.4</b> "Commitment Period" shall mean, subject to Force majeure circumstances intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities and/or documents as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under part of this Agreement, including but not limited to the timely payment of all



		<i>installments of the consideration as per the payment plan opted, the Seller/Confirming Party shall offer the possession of the unit to the Purchaser(s) within a period of 36 months from the date of execution of Floor Buyer's Agreement"</i> <i>[Emphasis supplied]</i>
10.	Due date of possession	21.05.2017 [Calculated 36 months from the date of execution of floor buyer's agreement plus grace period of 180 days]
11.	Tri-Partite Agreement executed between [Complainant + HDFC Bank + Native Buildcon and Countrywide Promoters Pvt Ltd)	19.11.2013 (As on page no. 40 of complaint)
12.	Loan sanctioned	Rs.87,43,666/- (As on page no. 41 of complaint)
13.	Loan disbursed by bank	Rs.28,09,555/- (As on page 84 of reply)
14.	Bank NOC/loan closure	24.02.2022 (As on page 84 of reply)
15.	Liability of builder to pay to HDFC	<i>Clause 3</i> <i>The Borrower has informed HDFC of the scheme of arrangement between the Borrower and the Builder in terms whereof the Builder hereby assumes the liability of payments under loan agreement as payable by the Borrower to HDFC from <b>date of first and each subsequent disbursement till 30.11.2015</b> (the period be referred to as the "Liability Period" and the liability be referred to as "Assumed liability")</i> (As on page no. 43 of complaint)
16.	E-mail of respondent extending the liability of payment of EMIs till offer of possession	04.11.2015 (As on page no. 79 of complaint) 01.12.2016 (As on page no. 80 of complaint)



17.	Total sale consideration	Rs.1,16,58,221/- (As per payment schedule on page no. 37 of complaint)
18.	Amount paid by the complainant	Rs.24,52,458/- (as on per page no. 31,33,78,82, 83-93 of complaint and page no. 38-41 of rejoinder dated 14.05.2024)
19.	Pre-EMIs paid by respondents	Rs.15,31,550/- (as alleged by the respondent on page 9 of reply) Rs.9,89,666/- (as admitted by complainant at page 2 of written submissions dated 10.09.2024)
20.	Legal notice seeking refund	05.07.2022 (As on page no. 109 of complaint)
21.	Payment request/Reminder notice	01.03.2018, 09.04.2018, 04.07.2018, 20.08.2018, 26.09.2018 (As on page no. 70-80 of reply)
22.	Final Demand Notice	19.11.2018 (As on page no. 81 of reply)
23.	Cancellation letter	16.12.2021 (As on page no. 83 of reply)
24.	Occupation certificate	18.06.2021 (As on page no. 85 of reply)
25.	Offer of possession	Not offered

### **B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint, rejoinder and written submission:

- I. That on 26.08.2013, the complainant made an application for provisional allotment of a floor measuring 1400 sq. ft. in the project of the respondents named Pedestal @70A at Sector 70 & 70A, Gurugram. The application was made with a request to allot second floor in a building comprising of stilt and 3 floors to be constructed on a plot measuring 260 sq. yd. Along with the application the complainant paid



Rs.9,00,000/- as booking amount for the proposed floor in the project. The respondent no. 2 acknowledged receipt of the same vide receipt no. 2013/1400013715 dated 27.08.2013.

- II. The respondents agreed to sell to the complainant a floor measuring 1400 sq. ft. in a building in their project at a total cost of property of Rs.1,12,38,221/-.
- III. That on occurrence of stage 2 i.e. "within 45 days of booking", a payment request for Rs.8,49,808.15/- was made by the respondent no.2 on 26.09.2013 and the same was duly paid by the complainant through cheque on 07.10.2013 itself. The respondent no. 2 also issued a receipt no. 2013/1400018770 dated 09.10.2013 against it. Thereafter, an allotment letter dated 12.11.2013 was issued in favour of the complainant by respondent no. 1 vide which it was informed that second floor of building no. 48 in Block D in the project has been allotted to him and very shortly a floor buyer's agreement would be executed.
- IV. That after seeking permission from the respondents to mortgage unit no. D-48, Second Floor in the said project with HDFC Bank Ltd. on 13.11.2013, a tripartite agreement dated 19.11.2013 was executed between the complainant, respondent no. 1 & 3 and HDFC Bank Ltd.
- V. That post completion of all necessary formalities, on 21.11.2013, the floor buyer's agreement was executed amongst the complainant and respondent no. 1 and 3. Amongst various covenants in the agreement one such covenant is clause 1.4 that defines "commitment period". Commitment period is defined as a period of 36 months from the date of execution of the floor buyer's agreement within which the respondents were liable to offer possession of the floor to the complainant. The commitment period however could be extended by a



further period of 180 days being defined as "grace period". As a result, the due date of possession was 20.07.2017.

- VI. That on the request of the respondents, the complainant had directed HDFC bank to disburse a sum of Rs.22,67,671/- in favour of the respondents out of the loan amount sanctioned. Accordingly, HDFC bank issued a demand draft dated 27.11.2013 bearing no. 435272 for a sum of Rs.22,67,671/-. After due receipt of payment, the respondent no. 1 issued a receipt bearing no. 2013/1400000218 on 27.11.2013.
- VII. That since the sale of the floor was under a subvention scheme, the respondents were obligated to pay pre-EMI on the said loan till the time an offer for possession is made for the residential floor. Even though the tripartite agreement stipulates that the respondent no.1 and 3 were liable to pay pre-EMI up till 30.11.2015 however, the respondents have assured by way of e-mails dated 04.11.2015 and 21.11.2016 addressed to the complainant that the respondents were liable for payment of pre-EMI till the time offer for possession is made. However, the respondents did not abide by the promise they had made. The pre-EMI was liability of the respondents but on their failure to pay them the complainant had to bear the burden of pre-EMIs. Thereafter, the respondents promised to reimburse the pre-EMI which were being paid by the complainant to the bank. Though the respondents had reimbursed few instalments but those were also paid as per their whims. The complainant received last refund of the instalment in August 2019 for the pre-EMI for the month of July 2019. After that he paid pre-EMIs from August 2019 to December 2021 when the respondents abruptly cancelled the allotment made in favour of the complainant. The complainant paid a total sum of



- Rs.5,95,094/- in pre-EMIs to bank which was the liability of the respondents under the terms of the agreement (as amended).
- VIII. That no offer of possession has been made to the complainant and in this regard the complainant has written numerous e-mails highlighting his concerns that he is paying rent on one side and also paying EMIs which were supposed to be reimbursed by the respondents.
- IX. That instead of completing the construction, the respondents cancelled the allotment made in favour of the complainant by sending an email dated 16.12.2021.
- X. That though the bank loan has been discharged. However, a substantial payment is lying with the respondents which they are liable to refund along with interest.
- XI. That the complainant has addressed his grievances to the respondents for innumerable times by phone calls, letters and e-mails but despite all his pleadings the respondents did not refund his money which is indeed regrettable. Finally, the respondents were called upon to refund a sum of Rs.42,02,266/- along with interest at the rate of 18% per annum by sending a demand notice dated 05.09.2022, but they failed to respond to the demand notice.
- XII. That the complainant was obliged to make payments for the first 2 stages of construction and from the 3rd stage the liability was assumed by the bank under the subvention scheme with the respondents. Undeniably, the complainant made payment of Rs.9,00,000/- against the demand made for the 1st stage on 27.08.2013. The respondent no. 2 made a demand on 26.09.2013 on reaching the 2nd stage and the complainant duly paid a sum of Rs.8,49,809/- against the said demand. On 09.11.2013, the respondents made a demand of Rs.29,16,351.25/-



on achieving the milestone "start of construction". Payment for the 3rd stage was the liability of the bank and the same was discharged by it. Thereafter, for four years the respondents failed to make any demand on account of their own faults. On 01.03.2018, the respondents demanded Rs.12,58,680.74/- against the 4th stage of construction i.e. "on casting of first floor roof slab". It is important to emphasize that in the demand letter dated 01.03.2018, it is observed by the respondents themselves that there was no previous amount due to the respondents up till 01.03.2018. Since the 4th demand was made by the respondent on 01.03.2018 after expiry of 9 months from the due date of possession i.e. 21.05.2017, the bank refused to sanction further payments.

- XIII. That the total loan amount disbursed by the bank is Rs.28,09,555/-. However, the complainant paid a total sum of Rs.24,52,458/- from his own pocket as evident from the receipts annexed with the complaint.
- XIV. That the only dispute between the parties is with respect to the amount of Rs.5,95,094/- which is the total sum of pre-EMIs paid by the complainant to the bank after the respondents failed to pay the same. In support of the aforesaid fact the complainant has already annexed copy of loan account statements which are annexed with the complaint as Annexure C-12. Pre-EMIs were the liability of respondents and they stopped paying pre-EMIs after July 2019. From August 2019 to December 2021, all pre-EMIs were paid by the complainant as evident from the complainant's bank account statements annexed with the rejoinder dated 14.05.2024.
- XV. That the respondents have wrongly quoted a sum of Rs.15,31,550/- as pre-EMI paid by them. The first entry of Rs.5,41,884/- at page 9 of reply is not payment of pre-EMI but, in fact, is a part of principal loan amount





disbursed by the bank. The respondents have further agreed in para 7 of reply that they have received a total sum of Rs.28,09,555/- from the bank. The respondents admitted that they received Rs.22,67,671/- on 27.11.2013. On adding Rs.22,67,671 with Rs.5,41,884/-, a sum of Rs.28,09,555/- arrives which is loan amount paid by bank directly to the respondents. As such the figure of Rs.15,31,550/- on page 11 of reply is incorrect and the respondent has wrongly added Rs.5,41,884/- in the pre-EMI amount. Therefore, the pre-EMI paid by the respondent is equal to Rs.9,89,666/-.

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

4. The complainant has sought following relief(s).
  - I. Direct the respondent to refund the paid-up amount alongwith interest.
  - II. Direct the respondent to pay compensation of Rs.5,00,000/- to the complainant.
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 respondents**

6. The respondents have contested the complaint on the following grounds.
  - i. That the complainant being interested in the real estate project of the respondent named "Pedestal @70A" tentatively applied for the provisional allotment of the unit vide application form and was consequently allotted unit no. D-48-SF, tentatively admeasuring 1400 sq. ft. vide the provisional allotment letter dated 12.11.2013. Thereafter, a floor buyer's agreement dated 21.11.2013 was executed



between the respondent no.1 and complainants and the respondent no.3 was a confirming party to the same.

- ii. That the respondent no. 2 and 3's names should be deleted from the array of parties as the respondent no. 3 is a mere confirming party to the FBA and there is no relationship of the respondent no. 2 in respect to the unit in question. Moreover, no reliefs have been sought from the respondents no. 2 and 3 and both of these respondents are neither a necessary nor a proper party and hence, the name of the same should be deleted.
- iii. That after the allotment of the unit, the complainant had taken a loan from HDFC for disbursement of payments against the unit and consequently, a tripartite agreement dated 19.11.2013 was executed amongst the complainant, HDFC and respondent no. 1.
- iv. That at the outset, it needs to be categorically noted that the complainant was bound to make the due and timely payment against the unit as per clause 2.1.
- v. That the complainant failed in making the due payment as per the agreed terms and conditions of the FBA, despite several reminders having been issued. The last payment was made by the complainant against the milestone "on start of construction". Till date, the complainant has made the payment of Rs.47,13,580 (self-payment of Rs. 19,04,025 and through bank Rs. 28,09,555) out of the total net cost of Rs. 1,16,58,221.
- vi. That it was categorically agreed between the parties that time is of the essence of the contract and in case of non-payment by the complainant, the respondents had a right to terminate the allotment of the



- complainant and forfeit the earnest money and non-refundable amounts as per clause 7.1 of the FBA.
- vii. That the respondents have raised demands as per the payment plan, but the complainant had miserably failed in making the complete payment, upon which, the respondents had issued three reminders, and upon the continuous non-compliance on part of the complainant, a last and final opportunity letter was issued by the respondent on 19.11.2018 which categorically noted that upon the non-payment by the complainant, the complainant will have noted to have waived his allotment. Upon the continuous act of non-payment, the unit was terminated on 16.12.2021.
- viii. That upon the termination of the unit, the respondent rightly forfeited the earnest money and other non-refundable amounts and refunded the balance Rs.28,09,555/- to HDFC Bank, who thereupon, closed the loan account of the complainant, as evident from the Bank NOC/Loan closure dated 24.02.2022.
- ix. That in accordance with the terms of the TPA, the respondent no. 1 was only obligated to pay the pre-EMI till 30.11.2015. However, it was in utmost bonafide, and the sole discretion of the respondent to pay till over and above. That despite innumerable hardships being faced by the respondents, the respondents had also complied with the obligation of making the payment of Pre-Emi and has paid a total of Rs. 15,31,550/-.
- x. That the respondent, despite grave defaults on part of the complainant, earnestly fulfilled its obligation under the FBA and completed the project as expeditiously as possible in the facts and circumstances of the case. The defaults committed by the complainant and due to various factors beyond the control of the respondent affected the constriction

of the project. However, despite the same, the occupancy certificate was attained by the respondent on 18.06.2021.

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.

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

**F.I Objection regarding maintainability of complaint against respondent no. 2 & 3.**

12. The respondent no.1 has submitted that the respondent no. 2 and respondent no. 3 are not a necessary or proper party in the present complaint as the respondent no. 3 is a mere confirming party to the FBA and there is no relationship of the respondent no. 2 in respect to the unit in question. Moreover, no reliefs have been sought from the respondents no. 2 and 3. However, the complainant has submitted that the respondent no.3 is a signatory to the floor buyer's agreement dated 21.11.2013 and tri-partite agreement dated 19.11.2013 and licence of the project in question was also issued in favour of respondent no.3. Moreover, as far as objection w.r.t respondent no.2 is concerned, the entire project has been marketed and sold under the leadership of BPTP Ltd. The complainant was approached none other than by the representatives of respondent no.2. Even the allotment letter and receipts of payments have been issued by respondent no.2. After considering the above, the Authority is of considered view that the respondent no.3 cannot escape from its responsibility and obligations to the allottees of the project being licensee of the project and is covered under the definition of promoter within the meaning of Section 2(zk)(i),(v) of the Act, 2016 whereas, as per record, the respondent no.2 has issued all the payment receipts to the complainant

and all communications on behalf of respondents have been made by it and thus falls under the definition of promoter under Section 2(zk)(v) of the Act, 2016. Consequently, both the respondents are jointly and severally liable to bear the responsibility for the consequences arising from the present complaint.

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

**G.1 Direct the respondent to refund the paid-up amount along with interest at prescribed rate.**

13. The complainant was allotted a unit bearing no. D-48-SF admeasuring area 1400 sq.ft. in the project of the respondents named "Pedestal @70A at Sector-70 & 70A, Gurugram for a total sale consideration of Rs.1,16,58,221/- vide allotment letter dated 12.11.2013. A tr-partite agreement was also executed between the complainant, respondent no.1, 3 and Housing Development Finance Corporation Limited on 19.11.2013 for financing the purchase of said unit. Thereafter, a floor buyer's agreement was executed between the complainant, respondent no.1 and 3 on 21.11.2013 under subvention scheme. The complainant has submitted that as per payment plan agreed between the parties vide buyer's agreement dated 21.11.2013, the complainant was obliged to make payments for the first 2 stages of construction and the same were duly paid by him. On 09.11.2013, the respondents made a demand of Rs.29,16,351.25/- on achieving the milestone "start of construction". Payment for the 3rd stage was the liability of the bank and the same was discharged by it. Thereafter, for four years the respondents failed to make any demand on account of their own faults. On 01.03.2018, the respondents demanded Rs.12,58,680.74/- against the 4th stage of construction i.e. "on casting of first floor roof slab". Since the 4th demand was made by the respondent on 01.03.2018 after expiry of 9 months from

the due date of possession i.e. 21.05.2017, the bank refused to sanction further payments. The respondents have submitted that they have raised demands as per the payment plan, but the complainant had miserably failed in making the complete payment, upon which, the respondents had issued three reminders, and upon the continuous non-compliance on part of the complainant, a last and final opportunity letter was issued by the respondent on 19.11.2018 which categorically noted that upon the non-payment by the complainant, the complainant will have noted to have waived his allotment. Upon the continuous act of non-payment, the unit was terminated on 16.12.2021. Further, upon the termination of the unit, the respondent rightly forfeited the earnest money and other non-refundable amounts and refunded the balance Rs.28,09,555/- to HDFC Bank, who thereupon, closed the loan account of the complainant, as evident from the Bank NOC/Loan closure dated 24.02.2022. Now the question before the Authority is whether the cancellation made by the respondent vide email dated 16.12.2021 is valid or not.

14. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that as per the payment plan agreed between the parties, the complainant was obliged to make payments for the first 2 stages of construction and the same were duly paid by him. On 09.11.2013, the respondents made a demand of Rs.29,16,351.25/- on achieving the milestone "start of construction". Payment for the 3rd stage was the liability of the bank and the same was discharged by it. On 01.03.2018, the respondents demanded Rs.12,58,680.74/- against the 4th stage of construction i.e. "on casting of first floor roof slab", but the same was not paid to the respondents. The complainant has submitted that the bank has refused to sanction further

payments to the respondents as 9 months have expired from the due date of possession. However, the said claim of the complainant cannot be relied upon as no substantial document in support of his claim has been placed on record by him. Even otherwise, as per clause 3.12 of the buyer's agreement dated 21.11.2013, the complainant was solely liable to make payment of the outstanding due installments in the event of any dispute arising out of the agreement. It is notable that the respondents have sent several reminders as per the payment plan agreed between the parties, before issuing a final demand notice dated 19.11.2018 giving last and final opportunity to the complainant to comply with its obligation to make payment of the amount due, but the same having no positive results and ultimately leading to cancellation of unit vide email dated 16.12.2021. Further, Section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 21.11.2013 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. However, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the 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., (2015) 4 SCC 136***, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any*





*actual damage.* National Consumer Disputes Redressal Commissions in **CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited** (decided on 29.06.2020) and **Mr. Saurav Sanyal VS. M/s IREO Private Limited** (decided on 12.04.2022) and followed in **CC/2766/2017** in case titled as **Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022**, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

**"5. AMOUNT OF EARNEST MONEY**

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

15. Keeping in view the aforesaid factual and legal provisions, the respondents/promoter is directed to refund the paid-up amount of Rs.24,52,458/- after deducting 10% of the sale consideration of Rs.1,16,58,221/- being earnest money along with an interest @11.10% p.a. (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 on the refundable amount, from the date of cancellation i.e., 16.12.2021 till actual refund of

the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

16. The respondents/promoter is further directed to deduct/adjust the amount paid by it towards pre-EMI, if any from the above refundable amount after submitting proof of the same to the complainant.

**GII: Compensation**

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

**H. Directions of the authority**

18. 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 respondents/promoter is directed to refund the paid-up amount of Rs.24,52,458/- after deducting 10% of the sale consideration of Rs.1,16,58,221/- being earnest money along with an interest @11.10% p.a. (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 on the refundable amount, from the date of cancellation i.e., 16.12.2021 till its realization.

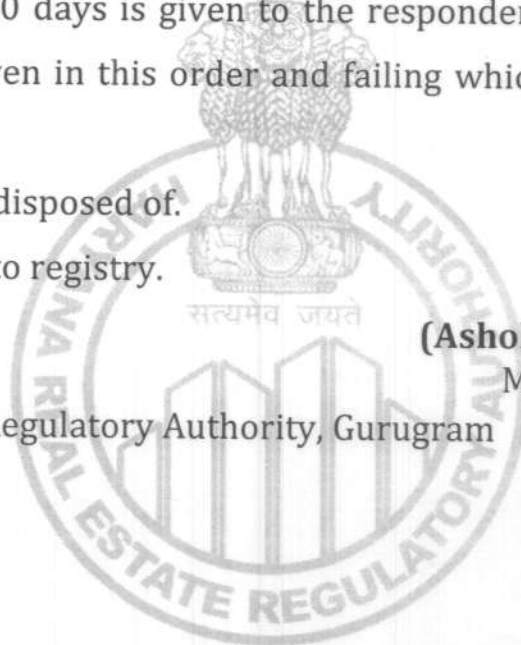
- ii. The respondents/promoter is further directed to deduct/adjust the amount paid by it towards pre-EMI, if any from the above refundable amount after submitting proof of the same to the complainant.
- iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

19. Complaint stands disposed of.

20. File be consigned to registry.

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.10.2024



**(Ashok Sangwan)**

Member

**HARERA**  
**GURUGRAM**