

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

Complaint no. :	6873 of 2022
First date of hearing:	24.01.2023
Date of Order:	23.01.2025

Aditi Garg

Complainant

R/o: House no.-20, Housing Board
Colony, Kalka-133202

Versus

JMD Limited

Respondent

Regd. Office at: 6, Devika tower, Nehru
Place, New Delhi-110019

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Mayank Sharma (Advocate)

Complainant

Sh. Venkat Rao and Gunjan Kumar (Advocates)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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.

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A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	JMD SUBURBIO II Sector 67, Sohna Road, Revenue Estate of Badshahpur, Gurugram
2.	Nature of project	Commercial
3.	Licensed area	2.17 acres
4.	DTPC License no.	107 of 2011 dated 11.12.2011 up to 10.12.2017
5.	HARERA Registration no.	Registered 312 of 2017 valid up to 31.12.2019
6.	Unit no.	A-127 and 1 st floor (As per page no. 31 of the complaint)
7.	Unit admeasuring	640 sq. ft. (super area) (As per page no. 32 of the complaint)
8.	Date of buyer's agreement	14.05.2014 (As per page no. 30 of the complaint)
9.	Date of environment clearance	17.06.2013 (As per page no. 55 of the reply)
10.	Date of building plan	06.06.2013 (As per information provided by the planning branch)
11.	Possession Clause	Clause 15 <i>That the possession of the said premises is proposed to be delivered by the company to the unit allottee(s) within forty-two months from the date of sanction of building plan /revised building plan or environmental clearance or any such sanctions & approvals required for the commencement of construction of building/complex, whichever is later or further extended period of six (6) months after the expiry of 42 months as agreed above except the force</i>

		<i>majeure circumstances.</i> <i>(Emphasis supplied)</i> (As per page no. 36 of the complaint)
12.	Due date of possession	17.06.2017 (Note: Due date to be calculated 42 months from the date of environment clearance i.e., 17.06.2013 being later plus grace period of 6 months)
13.	Basic Sale Consideration	Rs.44,60,000/- (As per SOA on page no. 98 of the complaint)
14.	Total sale consideration	Rs.70,29,473/- (including other charges, taxes and interest on delayed payment) (As per SOA dated 20.06.2023 on page no. 60 of the reply)
15.	Amount paid by the complainant	Rs.33,55,554/- (As per SOA dated 20.06.2023 on page no. 60 of the reply)
16.	Occupation certificate	28.06.2022 (As per page no. 54 of the reply)
17.	Offer of possession	04.07.2022 (As per page no. 57 of the reply)
18.	Possession reminder	22.09.2022 (As per page no. 59 of the reply)
19.	Final demand notice	03.08.2024 (As per page no. 14 of the reply to the application filed by the complainant u/s. 11(5) of the Act of 2016)
20.	Cancellation notice	21.08.2024 (As per page no. 30 of the application dated 30.08.2024 filed by the complainant)

B. Facts of the complaint:

3. That the complainant has made following submissions:

- I. The present complaint is filed by Smt. Aditi Garg R/o H. no. 20, Housing Board Colony, Kalka, District Panchkula through her Authorised Representative/GPA Holder Sh. Ashok Kumar Garg S/o Sh.

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Mukandi Lal, R/o H.No. 20, Housing Board Colony, Kalka, District Panchkula, Haryana-133302.

- II. That the respondent is a real estate developer who developed the project JMD Suburbio-II, Sector-67, Gurugram, Haryana for sale to the prospective buyers and the complainant booked a unit in the said project and is thus an allottee in the project developed by the respondent.
- III. That in pursuance of the booking made by the complainant with the respondent in the abovementioned project the complainant and respondent entered into a commercial premises buyer's agreement dated 14.05.2014 vide which the respondent agreed to sell to the complainant unit no. A-127, first floor having super area of approximately 640 sq. ft. in which the percentage of covered area was approximately 60% of the super area. The total basic sale price of the said unit was defined therein as Rs.44,60,000/-.
- IV. That at the time of booking the abovementioned unit the allottee/complainant paid an amount of Rs.17,85,293/-, the receipt of which was duly acknowledged in the commercial premises buyer's agreement dated 14.05.2014.
- V. That as per the abovesaid agreement dated 14.05.2014, the possession of the allotted unit were supposed to be delivered to the complainant by the respondent within a period of 42 months from the date of sanctions necessary for commencement of the construction work for the said project. The said agreement provided for another 6 months after the expiry of the above-mentioned period of 42 months as a grace period. The project received the approval of their building plans from the Department of Town and Country Planning on 06.06.2013 as per the disclosures made to the Authority and publicly

available on the website of the Authority. Therefore, the possession of the allotted unit should have been handed over to the complainant no later than 42 months from the date of the agreement, since the agreement was signed subsequent to the project having received approval qua the building plans. Therefore, the expected date of possession was 14.11.2017 i.e., 42 months from the execution of agreement dated 14.05.2014.

- VI. That the complainant is a law-abiding citizen and has infused huge sums of money amounting to Rs. 33,55,563/- with the respondent company which has been on one hand, being used and utilized by the respondent, by avoiding to handover the actual physical possession of the unit even after delay of almost five years after the due date i.e., 14.11.2017 and on the other hand have neither rectified the same nor returned the amount with interest and penalty as the same is being illegally retained without any valid authority to retain the same.
- VII. That even up to January, 2022, the occupation certificate of the project was not received from the Department of Town and Country Planning and yet while the delay was purely attributable to the respondent, they kept demanding for improper and illegal interest and other charges from the complainant.
- VIII. That the complainant wrote several letters to the respondent questioning the levy of interest on delayed payments despite the undue delay in delivery of possession by the respondent to the complainant much beyond the expected date of delivery as per the commercial premises buyer's agreement dated 14.05.2014 and the respondent kept adopting intransigent posture with respect to the complainant and his account and refused to hand over the possession unless the demanded amounts were paid to the respondent by the

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complainant. The respondent did not seem to have any regret regarding the delay in delivery of possession which was entirely attributable to them. The respondent kept issuing several letters to the complainant asking her to pay several amounts inclusive of interest vide several letters dated 18.10.2018, 15.11.2018, 31.10.2019, 07.02.2019, 22.01.2020 and vide letter dated 31.01.2020, the respondent informed the complainant that they had applied for the occupation certificate and would soon give the premises to the complainant for interiors/fitting if they so desired. Thereafter vide letter dated 19.06.2020, the respondent informed that they had completed the construction work of the project but neither did they inform whether the project had received occupancy certificate nor had they offered possession.

- IX. That in response to the above letter dated 19.06.2020 of the respondent, the complainant wrote a letter dated 12.07.2020 to the General Manager of the respondent asking them to make good on their assurance to get the management to waive off the interest charged.
- X. That the complainant had not received the occupation certificate qua the project even up to 17.01.2022 as is evident from the email of the respondent of the same date.
- XI. That in this way the respondent has not offered possession despite more than 8 years having passed since the execution of the commercial premises buyer's agreement dated 14.05.2014. Therefore, the complainant would pray for grant of refund as per the provisions of the Real Estate Act, 2016 along with interest.

C. Relief sought by the complainant:

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4. The complainant has sought following relief(s):
- i. Direct the respondent to refund the paid-up amount along with interest at the prescribed rate of interest.
 - ii. Direct the respondent to pay litigation expenses to the tune of Rs.2,20,000/- to the complainant.
 - iii. To impose penalty upon the respondent as per the provisions of Section 60 of the Act of 2016 for the wilful default committed.
 - iv. To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.
 - v. To initiate necessary inquiry under section 35 of the Act of 2016.

D. Reply by the respondent:

5. The respondent contested the complaint on the following grounds:
- I. That the complainant, intending to invest in a real estate project, approached the respondent for project specifics. After being content with the information provided, the complainant decided to invest in the commercial project "JMD SUBURBIO" in Gurugram by applying through an application form. Subsequently, the complainant was provisionally allotted a unit no. A-127 in the above said project by the respondent.
 - II. Thereafter, on 14.05.2014, a "commercial premises buyer's agreement" was executed between the parties for the unit no. A-127, 1st floor, admeasuring 640 sq. ft. super area at the rate of Rs.6,969/-sq. ft. for a basic sale price of Rs.44,60,000/-. The complainant till the execution of the above said agreement made a payment of Rs.17,85,295/- to the respondent.

- III. That the respondent after obtaining the necessary approvals pertaining to the project and occupation certificate dated 28.06.2022, issued an offer of possession to the complainant vide letter dated 04.07.2022. The offer of possession was subject to clearing all dues outstanding. However, the complainant failed to approach the respondent to take the possession despite various reminder letters dated 09.08.2016, 24.09.2016, 17.02.2017, 11.09.2017, 22.01.2018, 06.06.2018, 07.02.2019, 31.05.2019, 29.06.2019, 13.09.2019, 31.10.2019, 12.12.2019, 27.11.2020, 08.01.2021, etc. issued to the complainant for taking the possession of the unit and to remit the outstanding dues.
- IV. That the complainant under clause 16 of the agreement was under obligation to clear the due amount and take the possession of the unit within 30 days of dispatching of the final letter to the complainant by the respondent. Therefore, the complainant having completely failed to abide its obligations under the said agreement as he neither paid the due instalments nor has come forward to take the possession of the allotted unit.
- V. That the complainant consistently failed to adhere to the payment schedule, prompting the respondent to repeatedly request and remind the complainant to settle outstanding dues for the unit. Despite being fully informed of the agreement's terms and conditions, the complainant intentionally defaulted on timely payments, crucial for receiving possession of the unit. The respondent diligently pursued the complainant for instalment payments, in line with the agreed payment plan, but the complainant neglected these obligations. Despite ample time given for payment, the complainant chose not to fulfil their financial responsibilities, breaching the

buyer's agreement terms and failing to meet agreed timelines. Consequently, the complainant's failure to clear even the basic sale price of the unit, let alone other charges like taxes and interest as stipulated in the agreement, reflects their non-compliance and renders them unable to raise allegations against the respondent.

- VI. That the complainant after being aware of the terms and conditions of the Agreement, defaulted in making timely payments to the Respondent, which was the pre-condition for handing over of the possession to the complainant. As per clause 7 of the agreement, where an allotment of the unit is cancelled by the complainant himself due to various reasons, it is the obligation of the respondent to forfeit the entire amount of the earnest money and further upon the cancellation of the unit allotted, the entire documents executed between the parties shall stand cancelled and the complainant shall have no lien/charge upon the said unit.
- VII. That the said agreement was executed prior to Act, 2016 coming into picture, the complainant voluntarily without any force and duress agreed that 15% of the total sale price of the unit would collectively will constitute earnest money and non-compliance of any of the terms and conditions of the agreement by the complainant would render the respondent to forfeit the above said earnest money.
- VIII. That under clause 15 of the commercial premises buyer's agreement dated 14.05.2014, it is clearly stated that the respondent shall not incur any liability if the reason for delay was beyond the control of the respondent or due to the non-payment of timely instalments by the unit allottee. Due to the deliberate and persistent default of present complainant and certain other allottees of the project, who failed to make the timely payments as per the payment schedule, the

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construction work was hampered. This default was also accompanied by some unforeseeable and unavoidable circumstances which were beyond the control of the respondent. Moreover, delay in handing over of the possession was due to the delay of competent Authority to grant the application of the respondent filed before it for the grant of occupation certificate. The real estate sector is highly dependent on cash flow, especially with respect to the payments made to the labourers and contractors. The advent of demonetisation led to systemic operational hindrances in the real estate sector, whereby the respondent could not effectively undertake construction of the project for a period of 6-8 months. Unfortunately, the real estate sector is still reeling from the after effects of demonetisation, which caused a delay in completion of the project. The said delay would be well within the definition of "force majeure", thereby extending the time period for completion of the project.

6. All other averments made in the complaint were denied in toto.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

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E.I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

9. 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 objections raised by the respondent:

F.I Objection regarding the complainant being investor.

10. The respondent has taken a stand that the complainant is an investor and not a consumer. Therefore, she is not entitled to the protection of the Act and is not entitled to file the complaint under section 31 of the Act. The

respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the documents placed on record, it is revealed that the complainant is buyer and paid a price of Rs.33,55,554/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference.

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

11. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainant is allottee as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The concept of investor is not defined or

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referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

F.II Objection regarding force majeure conditions:

12. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain environment restrictions, demonetisation, shortage of labour, increase in cost of construction material and non-payment of instalments by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and the promoter is required to take the same into consideration while launching the project. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on relief sought by the complainant:

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

13. The complainant was allotted a unit in the project of respondent "JMD Suburbio II" in Sector-67, Sohna Road, Gurgram for a basic sale consideration of Rs.44,60,000/-. The buyer's agreement was executed on 14.05.2014 itself and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.33,55,554/-.
14. As per clause 15 of the buyer's agreement dated 14.05.2014, due date of possession is to be calculated 42 months from the date of sanction of

building plan/building plan or environmental clearance, whichever is later with a grace period of six months after the expiry of 42 months. The possession clause is reproduced below for the ready reference:

Clause 15

That the possession of the said premises is proposed to be delivered by the company to the unit allottee(s) within forty-two months from the date of sanction of building plan /revised building plan or environmental clearance or any such sanctions & approvals required for the commencement of construction of building/complex, whichever is later or further extended period of six (6) months after the expiry of 42 months as agreed above except the force majeure circumstances.

(Emphasis supplied)

15. Therefore, the due date for possession is to be calculated 42 months from the date of environmental clearance i.e., 17.06.2013, being later with a grace period of 6 months. Thus, the due date for possession of the unit comes to 17.06.2017.
16. The respondent in its reply mentioned that the occupation certificate of the project was obtained on 28.06.2022 and the offer of possession was made on 04.07.2022. Thereafter, a reminder for taking over of possession on payment of outstanding dues was issued on 22.09.2022. But the complainant neither come forward to take the possession nor informed the respondent that she does not want to continue with the project. The complainant has filed the present complaint on 31.10.2022 i.e., after offer of possession seeking refund of the paid up amount.
17. The complainant has placed on record a draft of settlement agreement dated 08.06.2024 sent by the respondent but failed to comply with the terms and conditions of the said settlement, thus the matter could not be amicably settled. And the copy of settlement agreement placed on record is not signed by any of the party and hence, the unsigned/unexecuted copy of settlement agreement is not of much relevance and cannot be relied upon.

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18. The counsel for the complainant vide an application under section 11(5) of the Act of 2016 filed on 30.08.2024. It is mentioned in the facts of the application under section 11(5) of the Act of 2016 and the same has been confirmed by the counsel for the complainant vide proceedings of the day dated 23.01.2025 stated that the complainant has paid an amount of Rs.2,31,000/- towards stamp duty charges and after payment of the stamp duty and registration charges but the unit is cancelled on 21.08.2024. The counsel for the complainants in its application requested the Authority to set-aside the cancellation notice dated 21.08.2024 restore the unit of the complainant and sought the relief of delayed possession charges along with execution of conveyance deed but the main relief sought in the complaint is of refund of the paid-up amount and no application for amendment of relief already sought in the complaint is filed.
19. The counsel for the respondent vide proceedings of the day dated 09.01.2025 brought to the notice of the Authority that the main relief sought in the complaint is of refund and objected the interim relief sought by the complainant regarding setting aside the cancellation letter dated 21.08.2024, restoration of the unit, delayed possession charges and execution of conveyance deed vide an application under section 11(5) of the Act of 2016 filed by the complainant on 30.08.2024 and hence only the claim of refund of the amount as sought in the complaint can be adjudicated by the Authority and cannot go beyond the relief sought in the complaint. Now, the question arises before the Authority is that whether the cancellation of the unit of the complainant is valid or not?
20. The respondent has cancelled the unit vide cancellation letter dated 21.08.2024 after obtaining occupation certificate from the competent Authority on 28.06.2022 and offer of possession on 04.07.2022 on

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account of outstanding dues after issuing various reminders and thereafter issuing final demand notice dated 03.08.2024. The complainant has paid an amount of Rs.33,55,554/- i.e., 47.73% of the total sale consideration of Rs.70,29,473/- which includes other charges, taxes and interest on delayed payment. As the respondent has cancelled the unit after giving ample opportunities to the complainant to pay the outstanding dues by way of demand letters and reminders to the same, thus, the cancellation of the unit stands valid.

21. Although there is substantial delay in making offer of possession but the complainant-allottee never opted his right of full refund in terms of section 18 after due date of possession i.e., 17.06.2017 was over but before offer of possession is made on 04.07.2022. As per section 18 of the Act of 2016, the complainant-allottee has right to continue or withdraw from the project but the same has to be expressed in clear terms before offer of possession as held by the Authority in **complaint no. 613 of 2018** titled as "*Mridula Parti and Partha Sarathi De Vs. M/s Microtek Infrastructures Pvt. Ltd.*". In the instant complaint, the complainant never expressed his wish to withdraw from the project before offer of possession i.e., 04.07.2022 which tacitly shows that the complainant intended to continue with the project and the refund has been sought only by way of filing of this complaint on 31.02.2022 i.e., after offer of possession has been made. Thus, the date of filing of complaint for refund of the paid-up amount can be considered as date of surrender of the unit by the complainant. Therefore, the respondent is entitled for deduction of earnest money.
22. Now when the complainant approached the Authority to seek refund, it is observed that under clause 6 of the buyer's agreement, the respondent-

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builder is entitled to forfeit the 15% of the total sale consideration. The relevant portion of the clause is reproduced herein below:

"That the Company and the unit Allottee(s) hereby agree that out of the amounts paid at the time of registration to the extent of 15% of the sale price of the said premises, and/or on allotment or in instalments as the case may be, will collectively constitute the earnest money. Non-fulfillment by the Unit Allottee(s) of any of the terms and conditions of application for allotment, terms and conditions of sale and those of the Agreement as also in the event of failure to sign this Agreement by Unit Allottee(s) within the time allowed, may entail the forfeiture of the earnest money."

23. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of *Maula Bux VS. Union of India, (1970) 1 SCR 928* and *Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136*, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in *CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited (decided on 29.06.2020)* and *Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022)* and followed in *CC/2766/2017* in case titled as *Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022*, held that 10% of basic sale price is a 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

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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 this 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."

24. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent/builder can't retain more than 10% of sale consideration as earnest money on surrender by the complainant-allottee or cancellation by the builder but that was not done. So, the respondent is directed to refund the amount received from the complainant i.e., Rs.33,55,554/- after deducting 10% of the basic sale consideration along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of filing of complaint i.e., 31.10.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.II Direct the respondent to pay litigation expenses to the tune of Rs.2,20,000/- to the complainant.

25. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. The Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer

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as per section 71 and the quantum of compensation & litigation expense 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 & legal expenses.

G.III To impose penalty upon the respondent as per the provisions of Section 60 of the Act of 2016 for the wilful default committed.

G.IV To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.

G.V To initiate necessary inquiry under section 35 of the Act of 2016.

26. The complainant has not clearly identified the violations of the Act, 2016, and its rules by the respondent. Neither it is mentioned in the facts of the complaint nor pressed before the Authority during the proceedings of the day. Without specific details about the alleged violations, there is no basis for the relief sought. Thus, no direction to this effect.

H. Directions of the Authority:

27. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent/promoter is directed to refund the amount i.e., **Rs.33,55,554/-** received by him from the complainant after deduction of 10% of basic sale consideration of Rs.44,60,000/- as earnest money along with interest at the rate of 11.10% p.a. on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of filing of complaint i.e., 31.10.2022 till the actual date of refund of the amount.

- ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
 - iii) The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
28. Complaint stands disposed of.
29. File be consigned to the registry.



(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.01.2025

HARERA
GURUGRAM