

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

Complaint no. : 5469 of 2023
Complaint filed on : 06.12.2023
Date of decision : 14.02.2025

Madhumeet Kaur

R/o- Flat No.-301, Tower-13, Heritage City, M. G.
Road, Gurugram

Complainant

Versus

M/s T. S. Realtech Private Limited

Registered Office at E-26, Panchshila Park, New
Delhi-110017

Respondent

CORAM

Shri Arun Kumar

Member

APPEARANCE:

Shri Sandeep Yadav, (Advocate)

Shri Ishaan Dang, (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 06.12.2023 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the 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	IRIS Broadway, Sector-86, Gurugram-Manesar, Urban Complex, Gurugram
2.	Nature of the project	Commercial Colony
3.	Area of Project	2.8 acres
4.	RERA Registered/ not registered	Registered vide registration no. 168 of 2017 dated 29.08.2017, valid upto 31.12.2021 [as per RC at page 119 of reply]
5.	License no. and validity	40 of 2012 dated 22.04.2012, valid upto 21.04.2016
6.	Unit no.	407, 4 th floor, block-A [as per space buyer's agreement at page 59 of complaint]
7.	Unit area admeasuring	804 sq. ft. [as per space buyer's agreement at page 59 of complaint]
8.	Date of booking	11.01.2013 [as per receipt at pg. 51 of complaint] 11.06.2013 [as mentioned in provisional allotment letter at page 52 of complaint]
9.	Date of provisional allotment	12.07.2013 [page 52 of complaint]
10.	Date of buyer's agreement	17.09.2013 [as alleged by complainant and admitted by respondent in reply]
11.	Payment Plan	Construction Linked Plan

		[page 65 & 76 of complaint]
12.	Date of approval of building Plan	22.04.2013 [page 58 of complaint]
13.	Possession clause	<i>[IV] The company intends to commence the development of the said Commercial Colony consisting of commercial spaces, office space and such other amenities, facilities as may be permissible under law in accordance with the Building Plans and utmost endeavor will be made to complete the same by the end of 42 (Forty-two) Months from the date of receipt of all permissions and commencement of constructions.</i> [page 58 of complaint]
14.	Due date of possession	22.10.2016
15.	Basic Sale Consideration	Rs.53,97,252/- [as per Statement of account dated 18.04.2024 at page 97 of reply]
	Total sale consideration	Rs.63,64,822/- [as per Statement of account dated 18.04.2024 at page 97 of reply]
16.	Amount paid by the complainant	Rs.38,00,628/- [as per Statement of account dated 18.04.2024 at page 97 of reply]
17.	Occupation certificate /Completion certificate	29.03.2019 [page 98 of reply]
18.	Letter of possession	18.04.2019 [page 92 of complaint]
19.	Final reminder	20.01.2020
20.	Legal Notice by the respondent	21.03.2023
21.	Cancellation Email by respondent along with details of amount refunded to the complainant	29.07.2023 [Page 118 of reply] Rs.31,44,406/- [page 22 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- i. That in the year 2013, complainant aged 59 years was searching for suitable retail/commercial office space in Gurugram. That the complainant on a visit to Gurugram decided to take a tour to new developing Gurugram area and visited the site/location, where several stalls were erected for sales promotions of the project by the representatives of the project developer. That the respondent issued an advertisement in media inviting application for registration for upcoming project located at Sector-85-86, Gurugram and the complainant submitted her application form for allotment of retail/office space in Sector-85-86, Gurugram along with booking amount of Rs.5,00,000/- on 11-01-2013 on basic sale price of Rs.6713/- per sq. ft. and booking amount was acknowledged by the respondent and issued payment receipt dated 11-01-2013.
 - ii. The respondent issued provisional allotment letter of retail/office space bearing no.-407, super area 804 sq. ft. located on 4th floor in the block-A in building known as IRIS Broadway situated in Sector-85-86, Gurugram-Manaser, Urban Complex, Gurugram.
 - iii. The respondent demanded payment in lieu of subject unit and the complainant made the payment of Rs.6,79,214/- by cheque on dated 12.09.2013.
 - iv. Respondent signed the space buyer agreement and sent it to the complainant on dated 17.09.2013. Respondent demanded an instalment of Rs.5,59,739/- on dated 20.09.2013 and the complainant made the payment of Rs.5,59,739/- through cheque dated 06.12.2013.
 - v. Respondent issued a letter dated 01.03.2014 to their investors to waive off interest liability of their investors and also demanded an

- instalment of Rs.8,20,969/- along with 50% EDC and IDC. However, no construction was started by the respondent by that point of time.
- vi. Respondent again demanded the above said instalment without starting the construction. However, the respondent did not start the construction and was just collecting the money from the innocent purchasers.
 - vii. Respondent just to pressurise the complainant issued a unit cancellation notice dated 25.11.2014 to the complainant. Complainant again received a cancellation notice on 15.12.2014 with the same demands.
 - viii. Complainant received a service notice along with demand of instalment of Rs.7,80,838/- and respondent again sent a demand of Rs.8,49,604/- to the complaint and the same was to be paid on or before 10.09.2015. However, under the threat of cancellation, the complaint was forced to pay a sum of Rs.7,80,838/- on 15.02.2014 and a sum of Rs.7,80,838/- on 11.02.2015 as per the account statement. By this way the complainant had paid 75% payment of the booked unit to the respondent. It is stated that the respondent under the shadow of the buyer's agreement threatened the complainant for the cancellation of the unit, however the respondent had failed to do the construction as per the opted plan i.e., construction link plan.
 - ix. Respondent sent a notice for cancellation of the booked unit, however the complaint had already paid 75% payment of the booked unit and the respondent had failed to construct the project as per the buyers agreement and also failed to deliver the possession as per agreed terms and conditions. Complainant received a letter of possession of the booked unit.

- x. Complainant received letter dated 20.05.2019 for final demand along with the account statement of the complainant's booked unit and by this letter, the respondent demanded a sum of Rs.52,06,081/- with the compounding rate of interest. However, the complainant has already paid 75% of the booked unit payment as per the Buyers agreement and only some amount was to be paid by the complainant. The complainant has received final demand letter on 20.01.2020 along with account statement dated 18-01-2020. Then again, the respondent sent another account statement on dated 18.03.2020 with the demand of Rs.75,67,681/- on charging of higher rate of interest.
- xi. The complainant received a legal notice dated 21.03.2023 through the counsel of the respondent with the illegal demand of Rs.75,67,681/- on charging of higher rate of interest with compoundable rate of interest. It is also stated that the respondent did not consider their delay in handing over the possession and also not gave any benefit as per the space buyer agreement, which are mentioned in the space buyer agreement. Thereafter numerous emails have been exchanged between the complainant and respondent and the respondent forced the complainant either to give the space on lease to them or they will cancel the unit of the complainant. Meaning thereby the respondent forced the complainant to give the space to them on lease.
- xii. That the respondent has sent the legal notice towards their illegal demand of money as mentioned in the legal notice 21.03.2023 and the final demand on dated 20.01.2020 and also sent several termination notices on various dates. However, in the year 2023, no cancellation notice was issued by the respondent to the complainant except the legal notice dated 21.03.2023. The complainant came to know about

the cancellation of the booked unit when the amount of Rs.31,44,406/- was credited in her account after cancellation of the unit.

- xiii. That the complainant paid her hard-earned money which was deposited by the complainant in her Fix Deposit, Post office, accounts and also withdraws from various accounts, for a suitable space /office in Gurugram. That the respondent received 75% payment of the booked space from 11-01-2013 to 11-02-2015, and as per the best knowledge of the complainants that no separate account for realization of payment of buyers is maintained by the respondent. It is also submitted that the respondent and their officials did not reply to any phone calls of the complainant.
- xiv. Dishonest intent of the respondent is amply evident from their entire conduct and from the various acts and omissions on part of the respondent set out hereinafter: -
- a. Deliberately committing absolute breach of the agreement and demanded and collected 75% payment of the total sale consideration and not completed the construction on agreed time.
 - b. The respondent violated the Clause No.-11.1 of the Space Buyer Agreement and not deliver the possession of the booked shop/office within time as 24-12-2016.
 - c. Cornering the complainant into entering into a one-sided agreement with the sole intention to extract monies from the complainant.
 - d. Failed to render satisfactory services to the complainant, thus liable for deficiency of service and unfair trade practice under the law.
- xv. The complainant several times visited the respondent's office and apprised about the situation and to restore the allotment. That initially the respondent assured the complainant that the unit will be restored subject to additional minor charges of interest including the other

charges, which the complainant had even agreed to pay. That the complainant was assured that the matter will be resolved and the complainant might only need to pay restoration charges (which will be confirmed later) along with balance payment as per actual BSP mentioned in the builder buyer agreement in order to restore the allotment of the property, to which the complainant agreed even though there was no fault on her part.

- xvi. That upon the assurance that the matter will be resolved amicably the complainant again visited numerous times to the office of respondent and took follow up with respondent on their numerous phone calls and discussion, however, no action was taken. However, rather than restoring the unit the respondent suddenly decided to stick to the termination and it was informed that the respondent cannot restore the unit. That such an act clearly amounts to cheating and the respondent had no intention from the beginning to hand over the possession rather in order to make more money, the respondent decided to sell the unit to some other person on higher price, despite agreeing upon the restoration of the unit to the complainant. That by doing so the respondent has caused wrongful loss to the complainant and have wrongfully gained from the said transaction, which could not have been done in term of the agreement entered between the parties.
- xvii. That the respondent cheated and fraudulently induced the complainant to part with about Rs.55,97,383/- in the name of giving her a grand office in their building, which was supposed to be handed to the complainant. Despite the complainant fulfilled its obligation of makings the payments and further willing to pay the additional charges as levied upon by the respondent to restore the unit, cancellation of allotment forfeiture of the amount clearly shows the

mala fide intention of the respondent. That the refunded amount as transferred by the respondent is lying in the bank account of complainant and the same has not used by the complainant and the complainant never intended or abandoned the unit, however, in order to make more money out of the space actually allotted to the complainant, the respondent might have sold the same to some other person.

- xviii. That the amount returned to the complainant was even unreasonable and unprecedented. That the law with respect to the directions of earnest money upon cancellation for non-payment is well settled as already held by the Hon'ble National commission in case titled DLF limited versus Bhatgwat Narula. Revision Petition No. 3860 of 2014 decided on 06.01.2015 and the relevant exact of the said judgment is reproduced herein below "it would thus be seen that only a reasonable amount can be forfeited as earnest money in the event of default on the part of the purchaser and it is not permissible in law to forfeit any amount beyond a reasonable amount, unless it is shown that the person forfeiting the amount had actually." An agreement for forfeiting more than 10% of the sale price would be invalid since it would be contrary to the establish legal principle that only a reasonable amount can be forfeited in the event of default on the part of buyer.
- xix. That the complainant is entitled to get restored the unit in her name after receiving the balance payment with nominal rate of interest. That the cancellation of the unit of the complainant is illegal, invalid and not as per the terms and conditions of builder buyer agreement.
- xx. That the act of omission and commission on the part of the respondent has caused tremendous harassment to the complainant. That the present complainant is being filed bona fide and in the interest of

justice. That the respondent has committed breach of trust and have cheated the complainant. The complainant would not have made the payment of the said amount but for the reorientations and promises made by the respondent and their directors and officers.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. To pass an order declaring the termination of booked unit i.e., retail/office space bearing no.407, super area 804 sq. ft. to be illegal, ab-initio and liable to be set aside.
 - ii. Direct the respondent to handover physical possession of the booked unit complete in all respect as per the terms and conditions of the buyer agreement and direct the respondent to accept the refunded amount Rs.31,44,406/- along with balance unpaid payment as per builder buyer agreement which comes out.
 - iii. Direct the respondent to waive off/set aside the interest amount charged @24% compounding monthly and direct the respondent to accept the remaining amount of Rs.17,96,760/- from the complainant and handover the possession of the booked unit to the complainant.
 - iv. Initiate legal proceedings against respondent for not registering the project and accepting money from the customer.
 - v. Direct the respondent to pay compensation of Rs.1,00,000/- for harassment.
 - vi. Direct the respondent to pay Rs.1,00,000/- for litigation expenses.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds:
- i. That the present complaint is not maintainable in law or on facts and is liable to be dismissed at the very threshold. It is submitted that the present complaint is not maintainable before this Authority under the Act, 2016 & Rules, 2017. The present complaint is liable to be dismissed on this ground alone. Even otherwise, the complaint is not maintainable in law and merits outright dismissal.
 - ii. That all averments, claims, allegations and contentions raised in the complaint of the complainant are denied as false and incorrect unless specifically admitted to be true by the Respondent. The contents of the complaint that are not being specifically admitted may be deemed to have been denied and traversed.
 - iii. That the complainant has got no *locus standi* or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the Buyer's Agreement dated 17.09.2013, as shall be evident from the submissions made in the following paras of the present reply.
 - iv. That the respondent is a renowned and respected real estate developer that has developed several real estate projects including the commercial project known as "IRIS BROADWAY" located in Sector 85-86, Gurgaon Manesar Urban Complex, Gurugram, Haryana.
 - v. That sometime in January 2013, the complainant had independently approached the respondent through her property dealer/broker, M/s Estate Redefine, and had expressed her interest in booking a commercial unit in the aforesaid commercial complex known as "**Iris Broadway**" being developed by the respondent.

- vi. That all the queries pertaining to the project and all issues and concerns concerning the project and further all clarifications as sought for/ by the complainant were duly answered /clarified /provided by the representatives of the respondent and the documents pertaining to the project were made available to the complainant for inspection. After being fully satisfied with all aspects of the project the complainant took a well informed and conscious decision to book the unit in question.
- vii. That the complainant opted for payment plan, with the first two installments being time bound and the remaining installments were construction linked. The complainant duly accepted the terms and conditions forming part of the application form. Provisional allotment letter dated 12.07.2013 was issued in favour of the complainant whereby the complainant was allotted retail/office unit no 407, having approximate super area of 804 sq. ft., located on the 3rd floor in block A of the aforesaid project.
- viii. That the buyer's agreement was executed between the complainant and the respondent on 17.09.2013. It is pertinent to mention herein that the buyer's agreement was willingly and consciously executed by the complainant after duly accepting all the terms and conditions thereof.
- ix. That in terms of clause 11 of the buyer's agreement, subject to timely payment of sale consideration and other amounts payable by the allottee and subject to the time taken by statutory/competent authorities in according approvals, per missions, sanctions etc. and subject to delays caused due to reasons beyond the power and control of the respondent, possession of the unit was proposed to be offered within 42 months from the date of application. In case of defaults by

the allottee or delays due to reasons beyond the power and control of the respondent, the due date of possession was to be extended.

- x. That the complainant has agreed and undertaken to make payment in accordance with the applicable payment plan. However, the complainant defaulted in making timely payment of installments right from the very beginning. The respondent was constrained to issue notices and reminders to the complainant, bringing to the notice of the complainant that delay in payment was resulting in imposition of interest as per the buyer's agreement dated 17.09.2013 and that continued defaults on the part of the complainant might result in cancellation of allotment and forfeiture of earnest money and other amounts of a non-refundable nature as set out in the buyer's agreement.
- xi. That despite various adversities and delays caused due to reasons beyond the power and control of the respondent, including delays caused due to defaulting allottees such as the complainant, the respondent managed to complete construction of the unit/tower and made an application to the competent authority for issuance of the occupation certificate on 28.12.2018. The occupation certificate in respect of the unit/tower was issued by the competent authority on 29.03.2019.
- xii. That upon receipt of the occupation certificate, the respondent offered possession of the unit to the complainant vide offer of possession letter dated 18.04.2019. The complainant was called upon to make payment of balance amounts in accordance with the buyer's agreement dated 17.09.2013 and complete the requisite documentation/formalities so as to enable the respondent to hand over possession to the complainant.

- xiii. That since the complainant failed to come forward to take possession, reminders were issued to the complainant but the same were also ignored by the complainant.
- xiv. That eventually, the respondent was constrained to issue a legal notice dated 21.03.2023 calling upon the complainant to make payment of outstanding amount of Rs.75,67,681/- in accordance with the buyer's agreement dated 17.09.2013 within 30 days from the receipt of the said notice failing which the allotment in favour of the complainant would stand cancelled in accordance with the buyer's agreement.
- xv. That it was only upon receipt of the notice dated 21.03.2023 that the complainant contacted the respondent. Several rounds of discussions took place between the complainant and the respondent wherein the complainant expressed her intent to withdraw from the project.
- xvi. That the respondent explained to the complainant that in accordance with the terms and conditions of the buyer's agreement, in case the complainant was desirous of withdrawing from the project, the respondent was entitled to forfeit the earnest money, brokerage paid, if any, interest on delayed payments and other amounts of a non-refundable nature. The attention of the complainant was specifically drawn to clauses 3,5, 9.1, 10.4, 12, 14.1 and other clauses of the buyer's agreement. However, the respondent conveyed to the complainant that in view of the law laid down by various authorities including this Authority, the respondent shall be deducting 10% of the total sale consideration.
- xvii. That the complainant neither made payment of the balance amounts demanded by the respondent nor did the complainant confirm her request for cancellation/exit from the project but instead addressed frivolous correspondence with the respondent so as to delay fulfilling

her contractual obligations. Eventually, the respondent was constrained to cancel the allotment in favour of the complainant and refund the balance amount after deductions.

- xviii. That from the foregoing, it is evident that the complainant has miserably failed to fulfil her contractual obligations towards the respondent in terms of the buyer's agreement dated 17.09.2013. The last payment made by the complainant was on 11.04.2015 vide cheque bearing no.312218 dated 10.04.2015 amounting to Rs.15,61,675/- including applicable taxes against the basic sale price of Rs.63,64,822/-
- xix. That the respondent has duly completed construction of the unit/tower and offered possession to the complainant as far back as on 18.04.2019. Thereafter, the respondent has issued numerous reminders calling upon the complainant to make payment of balance amounts and take possession of the unit. However, the complainant has avoided fulfilling her contractual obligations on false and frivolous pretexts.
- xx. That the project has been registered under RERA. The respondent has offered possession of the unit to the complainant within the validity of registration under RERA. There is no default or lapse in so far as the respondent is concerned. The false and frivolous complaint is liable to be dismissed with costs.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
- E. Jurisdiction of the authority**
8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant:

- F.I To pass an order declaring the termination of booked unit i.e., retail/office space bearing no.407, super area 804 sq. ft. to be illegal, ab-initio and liable to be set aside.**
- F.II Direct the respondent to handover physical possession of the booked unit complete in all respect as per the terms and conditions of the buyer agreement and direct the respondent to accept the refunded amount Rs.31,44,406/- along with balance unpaid payment as per builder buyer agreement which comes out.**
- F.III Direct the respondent to waive off/set aside the interest amount charged @24% compounding monthly and direct the respondent to accept the remaining amount of Rs.17,96,760/- from the complainant and handover the possession of the booked unit to the complainant.**
12. The above-mentioned reliefs no. F.I, F.II and F.III as sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.
13. Briefly, the facts of the case are that the unit bearing no. 407, 4th floor, block A was allotted in favour of complainant by the respondent vide provisional allotment letter dated 12.07.2013 and thereafter the buyer's agreement was executed between the complainant and the respondent on 17.09.2013. Subsequently, the offer of possession of the subject unit was offered to the complainant on 18.04.2019 after receipt of occupation certificated by the competent authority on 29.03.2019.
14. That the complainant had defaulted in making payments even after various reminder and demand letters dated 04.08.2014, 12.01.2015, 25.11.2014, 07.07.2016 and final reminder on 20.01.2020 for making payment for outstanding dues as per payment plan. Legal notice was issued by the respondent on 21.03.2023 calling upon the complainant to make payment of outstanding amount in accordance of buyer's agreement

dated 17.09.2013 within 30 days from the receipt of the said notice failing which the allotment in favour of the complainant would stand cancelled in accordance with the buyer's agreement. However, the complainant failed to take possession and clear the outstanding dues. Subsequently, after prolonged delay of over four years from the date of offer of possession 18.04.2019, complainant vide email dated 23.04.2023 expressed her intent to withdraw from the project and considered the option of taking refund of money back even after deducting 10% and asked for the amount to be refunded after deducting but complainant neither confirmed the cancellation nor paid the due amount. In response, the respondent cancelled the unit and intimated same vide email dated 29.07.2023 and refunded the amount of Rs.31,44,406/-.

15. Further, as per clause 4 of buyer's agreement, the respondent /promoter have right to cancel the unit and forfeit the earnest money where allottee fails to perform its obligations or fulfil all terms and conditions set out in this Agreement. Clause 4 of the buyer's agreement is reproduced as under for ready reference:

4. The Intending Allottee hereby authorizes the Company to forfeit out of the amount paid/payable by it, the earnest money as aforementioned together with any interest paid, due or payable, any other amount of nonrefundable nature in the event of the failure of the Intending Allottee to perform its obligations or fulfill all their terms and conditions set out in this Agreement executed by the Intending Allottee.

The Intending Allottee agrees that the conditions for forfeiture of earnest money shall remain valid and effective till the execution and registration of the conveyance deed for the said Unit and that the Intending Allottee and the Intending Allottee has agreed to this condition to indicate its commitment to faithfully abide by all the terms and conditions contained in its application for allotment and this Agreement.

16. In the light of the facts mentioned above, the termination of the allotted unit of complainant is valid as the due process was followed before terminating the unit as various reminder and demand letters were sent to

the complainant and thereafter an email dated 23.04.2023 by complainant showing her intent to withdraw from the project was received by the respondent, after which the cancellation was done and the same was intimated to the complainant by respondent on 29.07.2023. The authority is of view that the cancellation/ termination is valid. So, keeping in view all the facts, the complainant is not entitled for physical possession as the cancellation/termination is valid. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainant's seeking relief of physical possession against the respondent is not admissible as the termination is valid and therefore, same is hereby ordered to be rejected.

17. 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 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."

18. Also, Hon'ble Apex Court in **Civil Appeal no.3334 of 2023** titled as **Godrej Projects Development Limited Versus Anil Karlekar** decided on 03.02.2025 has held that 10% of BSP is reasonable amount, which is liable to be forfeited as earnest money.
19. 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, and the respondent/builder can't retain more than 10% of basic sale consideration as earnest money on cancellation. So, the respondent is directed to refund the paid-up amount to the complainant after deducting 10% of the basic sale consideration being earnest money along with interest at prescribed rate i.e. 11.10% on the balance amount from the date of cancellation i.e., 29.07.2023 till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*. Out of the amount so assessed, the amount already credited by the respondent shall be deducted from the refundable amount.

F.IV Initiate legal proceedings against respondent for not registering the project and accepting money from the customer.

20. It is also noted by the Authority that the project of the respondent falls under the category of 'ongoing projects' under section 3(i) of the Act of 2016 and the same is already registered under the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017 vide registration no. 168 of 2017 dated 29.08.2017.

F.V Direct the respondent to pay compensation of Rs.1,00,000/- for harassment.

F.VI Direct the respondent to pay Rs.1,00,000/- for litigation expenses.

21. The above-mentioned reliefs no. F.V and F.VI as sought by the complainant is being taken together.

22. The complainant is seeking relief w.r.t compensation and harassment and litigation expenses. 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.* (supra), 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 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.

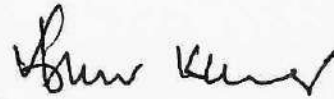
H. Directions of the authority

23. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to refund the paid-up amount to the complainant after deducting 10% of the basic sale consideration being earnest money along with interest at prescribed rate i.e. 11.10% on the balance amount from the date of cancellation i.e., 29.07.2023 till its

realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*. Out of the amount so assessed, the amount already credited by the respondent shall be deducted from the refundable amount.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
24. Complaint stands disposed of.
25. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.02.2025