HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1756 of 2023**
Date of filing:	**16.08.2023**
Date of first hearing:	**14.09.2023**
Date of decision:	**04.03.2025**

Vikas Kumar and Usha Rani,
221, Deed Plaza Complex, Opp. Civil; Court,
Gurugram
....COMPLAINANT

VERSUS

M/s MG Housing Private Limited.
2nd Floor 19 Community Centre
East of kailash New Delhi-110065
....RESPONDENT

CORAM: Dr. Geeta Rathee Singh **Member**
Chander Shekhar **Member**

Present: - Sanjeev Sharma, Counsel for the complainants through VC.
Rohan Mittal, Counsel for the respondent through VC.

ORDER

1. Present complaint has been filed on 16.08.2023 by the complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana

Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

Sr.no.	Particulars	Details of complaint
1.	Name of the project	Mulberry County, Village Mujeri, Sector 70, Faridabad.
2.	Unit no	B-308, 3rd floor, Tower-B
4.	Unit area	1525 sq. ft. (Carpet area)
5.	Date of booking	07.11.2012
	Date of allotment	09.03.2013
6.	Date of execution of builder buyer agreement	26.08.2013(Unsigned copy annexed by complainants)
7.	Due date of offer of possession	09.03.2016
8.	Possession clause in BBA (Clause 6.1) of unsigned builder buyer agreement	*The developer, subject to force majeure, undertakes to complete the construction work of the said building thereof by 30th June 2016 and shall thereafter apply to obtain the*

		occupancy certificate on receipt of the same will offer the possession of the apartment along with proportionate rights in the common areas and facilities to the buyer.
9.	Total sale price	₹ 58,99,500/-
10.	Amount paid by complainants	₹25,45,311/-
11.	Occupation Certificate	22.09.2017
12.	Offer of possession	09.10.2017

B. BRIEF FACTS OF COMPLAINT

3. Facts of the present complaint are that respondent advertised to construct and develop residential group housing colony namely "Mulberry County" on piece and parcel of land admeasuring 10.10 acres located/situated in the revenue estate Village Mujeri, Sector - 70, Faridabad, Haryana for which the respondent has obtained licence dated 01.08.2012 bearing licence no. 78 of 2012 having memo no. ZP-834/JD(DK)/2012/23747 dated 26.11.2012 from DGTCP. The same licence has been transferred in favour of M/s. M.G. Housing Pvt. Ltd.

4. That the complainants showed the interest in purchasing a residential unit/apartment vide application form dated 07.11.2012 and paid booking amount of Rs. 1,00,000/- to the respondent/builder.

5. That the allotment letter was issued on 09.03.2013 to the complainants thereby allotting unit no. B - 308, 3rd floor of Tower B @ Rs. 2865/- per sq. ft. on basic sale price, admeasuring carpet area of 1525 sq. ft in Project "Mulberry County', Sector 70, Faridabad Haryana.

6. That the builder Buyer Agreement was executed between the parties on 26.08.2013 wherein the total sale consideration was mentioned as Rs. 58,99,500/- along with one covered car parking space. Complainants have made a total payment of Rs. 25,45,311/- from 07.11.2012 to 17.01.2015 to the respondent in respect of the said unit.

7. That as per Clause 6.1 of the builder buyers agreement the possession of the said unit was to be handed over latest by 30.06 2016, however at that time the construction of the project was far from completion.

8. That the respondent had sent a letter to complainants on 22.11.2018 regarding "Intimation of Cancellation" of the said unit and forfeited the amount of Rs. 25,45,311/-. Complainants have approached the Authority seeking refund of their monies along with interest as all the requests made by the complainants have gone to the deaf ears of the respondent.

C. RELIEF SOUGHT

9. Complainants in their complaint has sought following relief:

(a) Respondent be directed to refund the entire amount paid by the complainants amounting to Rs. 25,45,311/-.

(b) Promoter be ordered to pay interest upon the amount paid by the complainants from the date of the payments made by the complainants to the respondent. The interest Amount is Rs.25,91,269/- till 31.07.2023. As per section 2 (za) and 18 of the RERA.

(c) That this Hon'ble Authority may direct the Respondent to pay litigation cost Rs. 1,00,000/- to the Complainant.

As per section 18 of the RERA for misusing the money paid by the complainants and keeping the said amount in its custody from November 2012 to till date.

(d) Any other reliefs) as the authority deemed fit and proper.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 20.09.2023 pleading therein:

10. That there is an arbitration clause in the agreement, the complainants without invoking arbitration proceedings should not be allowed to

proceed with the present complaint. It is further submitted that the relationship of the complainants and the respondent is defined and decided by the builder buyer agreement executed between the parties. It is submitted that a specific clause for referring disputes to Arbitration, is included in the said Agreement vide Clause 13.9 of the Agreement.

11. That the captioned complaint is not only not maintainable but also hopelessly time barred at the very least as the complainants by way of present complaint are challenging the cancellation of unit done by respondent.

12. That the complainants have concealed many material facts and documents from this Hon'ble Authority with a malafide intention to mislead the Authority for favourable orders. In this context, the respondent relies upon the judgment of the Hon'ble Supreme Court of India in **K.D Sharma Vs. Steel Authority of India Ltd & Ors (2008) 12 SCC 481,** wherein the Hon'ble Supreme Court has held that if a party conceals the material facts, the Courts should have to refuse to proceed further with the examination of his case on merits.

13. That the complainants out of their own free will and after thorough due diligence, had approached the respondent expressing their desire to purchase a unit in the said project after being satisfied with the

construction and facilities, the complainants had booked unit bearing no. B-308, admeasuring super area of 1525 sq. ft.

14. That allotment letter dated 09.03.2013 was issued to the complainants by the respondent and thereafter the complainants were called upon to execute builder buyer's agreement and the same was executed on 26.08.2013. In the said builder buyer agreement it was agreed that the complainants shall pay a total sale consideration of Rs. 58,99,500/- excluding additional charges as applicable against purchase of said unit. The complainants, after signing any executing the builder buyer agreement, has till date not returned the said builder buyer agreement to the Respondent despite repeated follow ups and requests of the Respondent.

15. That the parties agreed that timely payment of demands raised by the Respondent qua the unit shall be the essence of the agreement and in case the complainants fails to make timely payment of the remaining amount upon receipt of demand from the respondent, the respondent shall not only be entitled to cancellation the allotment but also to forfeit the earnest money paid to the respondent.

16. That the respondent sent various demand letters dated 05.02.2013, 09.04.2013, 25.04.2013 and 28.05.2013 to the complainants demanding payment of the outstanding due as and when the respondent reached the relevant milestone. However, the

complainants paid no heed to the demand letters issued by the respondent whereby the complainants were requested to clear the admitted outstanding dues. Copies of letter calling to clear the outstanding dues dated 05.02.2013, 09.04.2013, 25.04.2013 and 28.05.2013 are annexed as annexure- R/5 (colly).)

17. That the respondent after fulfilling its obligations under the builder buyer agreement and after duly completing the project and development work at the project site as per the approved plans, applied for grant of occupancy certificate and the same was granted by the Department of Town and Country Planning, Haryana on 22.09.2017. Copy of occupation certificate dated 22.09.2017 is annexed as annexure R/6. Subsequent to the receipt of occupation certificate, the respondent vide its letter dated 09.10.2017 proceeded to offer possession of the unit to the complainants and once again requested the complainants to clear the outstanding dues in respect of the unit even while offering possession. Copy of letter dated 09.10.2017 issued by the respondent offering possession of the apartment is annexed as annexure R/7.

18. That despite receipt of letter of possession dated 09.10.2017, the complainants did not come forward to take possession of the apartment nor the complainants offered to clear the pending outstanding dues in respect of the unit. In such compelling

circumstances, the respondent on 08.06.2018 issued another letter to the complainants whereby the complainants were once again requested to clear the outstanding dues forthwith to avoid any unpleasant action by the respondent. However, the complainants kept on ignoring all such letter and requests of the respondent as they failed to clear their outstanding liability. The respondent, being left with no other option, sent a final demand letter and statement of accounts dated 03.03.2018 calling upon the complainants to clear all the balance amount of Rs.40,65,065/- including the interest calculated as on 03.03.2018, in lieu of the non-payment of dues.

19. That the complainants again acted oblivious to the above letter as the complainants neither came forward nor cleared the outstanding dues nor had approached the respondent providing any explanation for non-payment of dues. The respondent vide cancellation letter dated 22.11.2018 was constrained and forced to cancel the unit allotted to the complainants and also forfeited the earnest money as per the terms and conditions of the allotment letter and builder buyer agreement. The same was duly intimated to the complainants vide cancellation letter dated 22.11.2018. Despite receipt of the cancellation letter dated 22.11.2018, the complainants neither responded to the same nor came forward to clear the outstanding amount. It is quite appalling that after expiry of more than four 4

years, the complainants have now filed the captioned complaint thereby calling upon the respondent to refund a sum of Rs.25,45,311/-.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

20. Ld. counsel for the complainants submitted that complainants showed interest in purchasing a residential apartment in the respondent's project" Mulberry County" Sector 70, Faridabad, Haryana vide application dated 07.11.2012 and paid booking amount of Rs. 1,00,000./-. Complainants were allotted unit no. B-308, 3rd floor, Tower B admeasuring carpet area of 1525 sq. ft. @ 2865/- per sq. ft. vide allotment letter dated 09.03.2013. Builder buyer agreement was executed between the parties on 26.08.2013 and as per clause 6.1 of the builder buyer agreement possession of the unit was to be handed over by 30.06.2016. Complainants have paid an amount of Rs. 25,45,311/- against the total sales consideration of Rs. 58,99,500/-. Respondent has failed to offer possession as per the terms of builder buyer agreement.

21. Further, on 22.11.2018, respondent sent a letter regarding "Intimation of cancellation" to the complainants and forfeited the amount of Rs. 25,45,311/- paid by the complainants. By filing the present

complaint, complainants are seeking refund of their paid amount along with interest.

22. Ld. Counsel for the respondent argued that present complaint filed by the complainants on 16.08.2023 is time barred as complainants were offered possession on 09.10.2017 after receiving occupation certificate on 22.09.2017 and it is the complainants who have chosen not to make any correspondence after receiving offer of possession dated 09.10.2017. Complainants have neither challenged the action of the respondent to cancel the allotment nor the forfeiture of the earnest money at the relevant time. Respondent was regularly informing the complainants about the status of the project. Respondent issued another letter dated 08.06.2018 whereby the complainants were once again requested to clear the outstanding dues but complainants again did not respond to the said letter. Thereafter, respondent sent final demand letter and statement of accounts dated 03.03.2018 calling upon the complainants to clear all the balance amount of Rs. 40,65,065/-. Complainant once again did not come forward to pay its dues. Since the complainants were not coming forward to take possession and pay their outstanding dues, the respondent was constrained to send cancellation letter dated 22.11.2018 and forfeit the earnest money as per the terms and

conditions of the builder buyer agreement. Ld. Counsel for the respondent also submitted that it is the complainants who must pay holding charges for not turning up to take possession and non-clearance of dues against the unit.

23. In rebuttal, ld. Counsel for the complainants submitted that complainants is not time barred as limitation Act, 1963 is not applicable while deciding complaints under RERA Act, 2016. Further, even if it is accepted that the unit was cancelled way back in 2018, still the respondent has failed to refund the amount paid by the complainants after deducting earnest money. He again insisted for the relief of refund along with interest.

F. ISSUES FOR ADJUDICATION

24. Whether the complainants are entitled to refund of amount deposited by her along with interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

25. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

(i) Respondent has taken objection that since the unit of the complainants was terminated on 22.11.2018 on account of default on part of complainants the present complaint filed in the year

2023 i.e, after almost 4-5 years that too without any justification of the delay in filing complaint same is grossly barred by limitation. In this regard reference is made to the judgement of Hon'ble Apex Court **Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise** wherein it was held that Limitation Act does not apply to quasi-judicial bodies. Relevant part is being reproduced below:

> *"This Court emphatically stated that Article 137 only contemplates applications to courts in the following terms: "3. In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963 all the other applications mentioned in the various articles are 21 Page 22 applications filed in a court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the court is closed." Again under Section 5 it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963.'"*

Thus, provisions of the limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

(ii)Respondent has also taken an objection that as per clause 13.9 of the builder buyer agreement complainants without invoking arbitration proceedings should not be allowed to proceed with the case. In this regard, Authority on perusal of the builder buyer agreement attached with the complaint at annexure V of the paperbook by complainants and relied upon by both the parties, observes that the agreement is undated and not signed by any of the parties. Therefore, such agreement cannot be concluded to be a valid contract and thus its contents shall not be binding upon any of the parties. In absence of any agreement respondent cannot be allowed to refer to clauses of the builder buyer agreement Therefore, this objection of the respondent is outrightly rejected.

(iii) Admittedly, complainants in this case had purchased the unit in the project of the respondent in the year 2012 against which an amount of Rs 25,45,311/- was paid by the complainants. Complainants were allotted unit no. B-308, 3rd floor, Tower B in the real estate project "Mulberry County" Sector-70, Faridabad vide letter dated 09.03.2013. The main grouse of the complainants is that respondent failed to offer possession of his booked unit as per clause 6.1 of the builder buyer agreement i.e, by 30.06.2016. On the other hand, respondent has submitted that possession was offered to the complainants on 09.10.2017 after receipt of

occupation certificate dated 22.09.2017 and it is the complainants who has not come forward to take possession and defaulted in clearing the remaining dues, due to which allotment of the complainants was cancelled on 22.11.2018.

(iv)Complainant's version is that possession of the unit has not been offered to them within the time frame specified in the agreement i.e, by 30.06.2016. Respondent's stand is that the builder buyer agreement has not been executed between the parties as complainants have not returned the builder buyer agreement after signing the same till date despite repeated follow-ups and requests of the respondent. In the preceeding para 25(ii) Authority has already observed that the builder buyer agreement as referred to by both the parties is unsigned and cannot be relied upon for any purpose. In absence of valid builder buyer agreement, reference can be made to **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr 2018 STPL 4215 SC** wherein Hon'ble Apex Court has observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, the unit was booked by the complainants in the year 2012 and complainants were allotted unit bearing no. B-308, 3rd floor, Tower B on 09.03.2013. Accordingly, taking a period of 3 years from the date of allotment, i.e,

09.03.2013, the deemed date of possession works out to 09.03.2016.

(v)It is a matter of record that complainants have not made any payment to the respondent after 17.01.2015. Stand of the respondent is that legally valid offer of possession was made on 09.10.2017 after receipt of occupation certificate dated 22.09.2017. Complainants have not come forward to clear their dues even after issuing various letters with respect to the same dated 03.03.2018 and 08.06.2018 and thereafter respondent was constrained to cancel the unit of the complainants vide letter dated 22.11.2018 thereby forfeiting an amount of Rs. 19,93,799/-.Cancellation letter is annexed as Annexure V with complaint and the same is not denied by complainants. On perusal of said cancellation letter, it is revealed that respondent had written that amount received from the complainants is 25,45,311 excluding service tax, amount liable to be forfeited is Rs. 19,93,799/- and the amount refundable is Rs. 5,51,512/-. Vide said letter, respondent advised the complainants to return all the original documents in order to initiate the process of refund. Respondent has further submitted that after offering the possession dated 09.10.2017, complainants have not stated anything with respect to letter dated 03.03.2018 and 08.06.2018 in their complaint, they have only mentioned that cancellation letter

dated 22.11.2018 was sent to them. Complaint also does not find any mention with respect to reply, if any of the cancellation letter dated 22.11.2018 by the complainants.

(vi)The first issue which needs to be dealt in the present case was whether respondent was justified in cancelling the unit of the complainants. The Authority observes that the respondent sent letters dated 03.03.2018,08.06.2018 and cancellation letter dated 22.11.2018, however there is nothing on record to show that complainants responded to any of the letter or conveyed their intention to respondent of withdrawing from the project. Section 19(6) of the Act talks about the duties of the allottee. Same is reproduced as under for ready reference:

> *"Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any"*

It was the duty of the complainants to make necessary payments till the due date of possession. In the present case, deemed date of possession arrived at 09.03.2016 whereas complainants stopped making payments after January 2015. The

complainants failed to fulfil their obligations. Complainants neither made any payment towards demand letters nor responded to said letters by any mode of communication and after affording sufficient opportunity for payment the respondent cancelled the unit vide termination letter dated 22.11.2018. No document has been relied upon or filed by complainants to show/prove that the complainants ever challenged the cancellation letter dated 22.11.2018. The complainants remained silent on this termination letter and filed present complaint for refund in the year 2023. The complainants cannot take advantage of their own wrong and negligence as they themselves did not come forward to discharge his part of contract which is making of payment towards total sale consideration of the booked unit. Authority observes that respondent was justified in terminating the unit of the complainants as complainants failed to make payments. The only obligation which remained pending on the part of the respondent was to refund the amount paid by the complainants after deducting earnest money therefore, cause of action still survives with the complainants.

(vii)The next issue which needs to be adjudicated is that whether forfeiture of an amount of Rs. 19,93,799/- was justified on the part

of the respondent. In this regard, it is pertinent to refer to judgement dated 24.03.2023 passed in **Appeal no. 292/2019 titled as Experion Developers Pvt Ltd vs Sanjay Jain & Smt. Kokila Jain** wherein Hon'ble Real Estate Appellate Tribunal has observed that 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. Relevant part of the order is reproduced below for reference:-

> *"17. The legal position with regard to the earnest money has been dealt in detail by Hon'ble Supreme Court in citations Maula Bux v. Union of India (1969)(2) SCC 554, and Satish Batra's case (supra) and the same can be condensed as follows:- "Earnest money is part of the purchase price when the transaction goes forward; it is forfeited when the transaction falls through, by reason of the fault of failure of the vendee. Law is, therefore, clear that to justify the forfeiture of advance money being part of earnest money the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the 13 Appeal No.292/2019 & 35/2021 depositor to be forfeited in case of non-performance, by the depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get the double the amount, if it is so stipulated. In other words, earnest money is given to bind the contract, which is*

a part of the purchase price when the transaction is carried out and it will be forfeited when the transaction falls through by reason of the default or failure of the purchaser."

18. The perusal of Article 1 Clause 1(xiii) of the agreement dated 11.11.2014 shows that it has been specifically stipulated that earnest money would be 15% of the basic sale price which was meant to ensure performance, compliance and fulfillment of obligations and responsibilities of the buyer. Though, the allottees have taken the stand that the earnest money in the present case is Rs.11,00,000/- which was deposited by them at the time of booking of the plot, but the same cannot be attached any credence because the booking is only request for allotment and does not constitute a final allotment or agreement.

19. Now, the question to be determined is that whether the earnest money to the tune of 15% of the basic sale price, as stipulated in the Agreement of 11.11.2014 can be termed as reasonable or not? In citation Pioneer Urban Land and 14 Appeal No.292/2019 & 35/2021 Infrastructure Ltd.'s case (supra), the Hon'ble Supreme Court has laid down that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between the parties, who are not equal in bargaining power. A term of a contract will not be final and binding if it is shows that flat purchaser had no option but to sign on the dotted line, on a contract framed by a builder. Further, incorporation of one-sided clauses in an agreement

constitutes an unfair trade practice since it adopts unfair methods or practices for the purpose of selling the flat by the builder.

20. In citation DLF Ltd.'s case (supra), the Hon'ble National Consumer Disputes Redressal Commission, while discussing the cases of Maula Bux's case (supra), Satish Batra's case (supra) and other cases as mentioned in para No.10 of the said order, has clearly laid down 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 said amount had actually suffered loss to the extent of the amount forfeited by him. Further, it was held that 20% of the sale 15 Appeal No.292/2019 & 35/2021 price cannot be said to be a reasonable amount which the petitioner company could have forfeited on account of default on the part of the complainant unless it can show it had suffered loss to the extent the amount was forfeited by it. In absence of evidence of actual loss, forfeiture of any amount exceeding 10% of the sale price, cannot be said to be a reasonable amount.

21. In his last desperate attempt, learned counsel for the promoter has submitted that since the allottees had specifically agreed to pay 15% of the sale price as earnest money, the forfeiture to the extent of 15% of the sale price cannot be said to be unreasonable as the same is in consonance with the terms agreed between the parties. He has also submitted that so long as the promoter was acting

as per the terms and conditions agreed between the parties, it cannot be said to be deficient in rendering services to the allottees. This aforesaid submission as put forward by the learned counsel for the promoter, was also submitted before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi in DLF's case (supra) and while dealing with the same, it was observed that forfeiture of the amount which cannot be shown to be a reasonable amount, would be contrary to the very concept of forfeiture of the 16 Appeal No.292/2019 & 35/2021 earnest money and if the said contention is accepted, then, an unreasonable person in a given case may insert a clause in Buyer's Agreement whereby say 50% or even 75% of the sale price is to be treated as earnest money and in the event of the default on the part of the buyer, he may seek to forfeit 50% sale price as earnest money. It was further observed and held that an agreement for forfeiting more than 10% of the sale price would be invalid since it would be contrary to the established legal principle that only a reasonable amount can be forfeited in the event of default on the part of the buyer. Here, it is also pertinent to mention that the deduction of 10% of the total sale consideration of the unit, out of the amount deposited by the allottees, is also inconformity with the Regulations 2018, as notified by the Authority, wherein, it has been stipulated that 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."

Accordingly, respondent can be allowed to deduct only 10% of basic sale price as earnest money and return remaining amount to the complainants. Thus, the respondent was not justified in forfeiting an amount of Rs. 19,93,799/-.

(viii)In this case since agreement has not been executed/signed between the parties therefore basic sale price is taken from the statement of accounts sent by the respondent to the complainants on 03.03.2018 which is Rs. 46,20,750/-. Earnest money of 10 % of the basic sales price is liable to be deducted from the amount paid by the complainants which works out to be Rs. 4,62,075/-. In light of aforesaid observations, Authority finds it to be fit case for allowing refund along with interest at prescribed rate in favor of complainants after deducting earnest money to the tune of 10% of basic sale price in terms of RERA Act of 2016 and HRERA Rules of 2017.

(ix)The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

> *2 (za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation.-For the purpose of this clause-*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

(x) Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

> *"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".*

The highest marginal cost of lending rate (in short MCLR) as on date i.e. 04.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10% to be applied on payments from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 11.10% till the

date of this order and total amount works out to Rs. 14,41,277/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till date of cancellation 22.11.2018
1.	1,00,000/-	07.11.2012	67,117/-
2.	2,00,000/-	16.11.2012	1,33,687/-
3.	3,00,000/-	27.02.2013	1,91,133/-
4.	3,50,000/-	01.04.2013	2,19,476/-
5.	7,04,311/-	05.07.2013	4,21,307/-
6.	1,00,000/-	26.04.2014	50,847/-
7.	2,41,000/-	26.04.2014	1,22,542/-
8.	5,50,000/-	17.01.2015	2,35,168/-
	Total=25,45,311/-		Total=14,41,277/-
5.	Total amount of refund + interest =39,86,588/-		
6.	Total amount-Earnest Money=39,86,588-4,62,075		
7.	Total amount to be refunded by respondent to complainants = ₹ 35,24,513/-		

H. DIRECTIONS OF THE AUTHORITY

26. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire amount of ₹35,24,513/- to the complainants.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana

Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

27. **Disposed of**. Files be consigned to the record room after uploading of the order on the website of the Authority.

.....
CHANDER SHEKHAR
[MEMBER]

.....
DR. GEETA RATHEE SINGH
[MEMBER]