

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

Complaint no. :	2168 of 2024
Order reserved on :	23.01.2025
Order pronounced on:	06.03.2025

**Parvesh Kumar**

R/o: 681, Sector-32, Bhiwani, Haryana-127021

**Complainant**

**Versus**

**Godrej Highview LLP**

Regd. office: 3<sup>rd</sup> Floor, UM House, Tower-A, Plot No. 35,  
Gate No.1, Sector -44, Gurugram-122002

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Akash Godhwani (Advocate)

Shri Rohan Malik (Advocate)

**Complainant  
Respondent**

**ORDER**

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

**A. Unit and Project-related details:**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, the due date of proposed handing over of the possession,

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and the delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"Godrej Nature Plus", Phase- 1, Sector-33, Sohna, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	18.744 acres
4.	DTCP License	01 of 2014 dated 03.01.2014
5.	RERA Registered/ not registered	265 of 2018 dated 30.01.2018 valid up to 30.01.2028 18 of 2018 dated 15.06.2021
6.	Unit No.	1204, on 12 <sup>th</sup> Floor, Tower-G (Page no. 37 of complaint)
7.	Date of booking application form	30.06.2022 (Page no. 35 of complaint)
8.	Date of allotment	14.07.2022 (Page no. 22 of complaint)
9.	Date of builder buyer agreement	14.09.2022 (Page 32 of complaint)
10.	Possession clause	<b>7.1 Possession of the Apartment</b> <i>The Promoter assures to hand over possession of the Apartment for Residential along with parking (if applicable) to the Allottee on or before 30th June 2023 (or as may be mentioned in customer BBA) unless there is delay or failure due to "force majeure", war, flood, drought, fire, cyclone, earthquake, epidemic, pandemic or any other calamity caused by nature, reasons beyond the control of the Promoter, Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project (Force Majeure). If, the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment for Residential.</i> (Page 40 of complaint)
11.	Due date of possession	30.06.2023

		(As per possession clause of BBA at page 40 of the complaint)
12.	Sale consideration	Rs. 1,04,17,959/- (Page no. 37 of complaint)
13.	Total amount paid by the complainants	Rs. 20,83,592/- (As per receipts at page no. 66-66 of complaint)
14.	Demand letters/ reminders dated	Date is not provided. However, annexed at page 94-95 of reply
15.	Cancellation Letter	01.06.2023 (Page no. 96 of reply)
16.	Occupation certificate	03.04.2023 (Page 91 of reply)

**B. Facts of the complaint:**

3. The complainants have made the following submissions in the complaint:
- In 2018, the respondent company issued an advertisement announcing a residential group housing project called 'Godrej Nature Plus' in village Sohna, Sector 33, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of allotments in the said project. Respondent confirmed that the project had got building plan approval from the authority.
  - The complainant was caught in the web of false promises of the agents of the respondent company, paid an initial amount of Rs. 10,41,796/- to respondent. The payment was acknowledged by the respondent and complainant was allotted one unit being in the above said project.
  - The complainant received an allotment letter for the unit bearing No. GODNPSG-1204 and duly executed the builder buyer agreement on the 14<sup>th</sup> of September 2022.
  - The total cost for the apartment along with parking based on carpet area is

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1,044,17,959/-. That in furtherance of the said purchase respondent made further payment of Rs. 10,41,796/-. Thereby the complainant has paid total of 20% of the payment to the respondent till date.

- e. The complainant till now had made a payment to the tune of Rs. 20,83,592/- which amounts to 20% of the total consideration. Payment made by the complainant were duly acknowledged by the respondent via issuance of receipts.
- f. The complainant contacted the respondent on several occasions and were regularly in touch with the respondent individually chasing the respondent for construction on very regular basis. That complainant visited the construction site and was shocked to see no progress in the construction activity at site. The Respondent was never able to give any satisfactory response to the complainants for delay in construction of the unit and was never definite about the delivery of the possession. The complainants kept pursuing the matter with the representatives of the respondent as to know why the project is being delayed and why construction is going on at such a slow pace, but to no avail.
- g. The respondent without completing the desired construction of the project sought further payment from the complainant. The complainant chooses not to make any further payment to the respondent on account of delay in the project and choose to withdraw from the project and also sought its transfer.
- h. The respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The complainants have suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016)

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and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.

- i. The present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their floors and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent point of view may be unique and innovative but from the consumers point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the consumers, be it either through not implementing the services/utilities as promised in the brochure. The respondent not only failed to adhere to the terms and conditions of buyer's agreement dated 14.09.2022 but has also illegally extracted money from the complainants by stating false promises and statements.
- j. As per clause 7.1 of the builder buyer's agreements, which was signed on 14<sup>th</sup> September 2022, details of which are attached, the possession of the said unit was supposed to be delivered on or before 30.06.2023 but the respondent has delayed the project hence as per clause 7.6 respondent is liable to return amount received by them in respect of the unit, with interest including compensation within 90 days of becoming due.
- k. There is no parity in the remedies available to the complainant and the respondent showing biased and unfair trade practices. That even as per Clause 9.2 of the builder buyer agreement, in case of default by respondent, complainant is entitled to terminate the agreement by not paying any further demand and respondent shall liable to refund the entire money paid by the complainant along with interest.
- l. The complainant is well covered by section 18(1) of the Act which states that if the allottee wishes to withdraw from the project and demands return of

the amount received by the promoter in respect of the unit with interest, on failure of the promoter to complete or inability to give possession of the unit, the allottee has unqualified right to seek refund of the amount along with interest. The case of the appellant/allottees is also very well covered by the judgment of the Hon'ble Apex Court in Newtech Promoters and Developers' case (Supra).

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

4. The complainants have sought the following relief(s):

- i. Direct the respondent to provide full refund of the amount paid till date together with interest at the rate prescribed from date of booking till the date of actual payment for not delivering the possession of the allotted property within due time to the complainant.
  - ii. Direct the respondent to pay a compensation amount of Rs.10,00,000/- for causing huge financial loss, mental agony, and harassment to the complainant by providing false promises with fraudulent and malicious intention.
  - iii. Any other relief which this Hon'ble Authority deems fit and just.
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) of the Act to plead guilty or not to plead guilty.

**D. Reply by the Respondent:**

6. The respondent had made the following submissions in the reply:
- a. The present complaint is not maintainable in view of the settled principle of law "*commodum ex injuria sua nemo habere debet*", i.e., that the complainant cannot be allowed to take advantage of his own wrongs. Further, the complainant is guilty of concealing material facts from this Hon'ble Authority and the same is also highlighted in the succeeding paragraphs of the present reply.

- b. The complainant has failed to discharge his obligations under the Agreement to Sub-Lease ("ATL"), wherein he was required to make the payment as per the opted payment plan selected by him. After making part payment of total sale consideration, the complainant failed to make further payments in terms of the opted payment plan which eventually led to termination of the allotment in question on 01.06.2023 itself. As on date, the allotment in question is terminated for non-payment of agreed sale consideration by the complainant. That after having failed to comply with the opted payment plan, now as an afterthought, the complainant has filed the present complaint in order to abuse the process and mislead this Hon'ble Forum into granting refund.
- c. The main allegation in the complaint is that the Respondent has delayed the progress of the project and failed to provide the possession to the complainant. The allegation is not only baseless and immaterial but also false and incorrect. It is submitted that the complainant did not place any iota of proof to substantiate his claim. Not only this, the complainant has also deliberately concealed the fact that the allotment of the unit in question has been lawfully terminated by the respondent for non-payment of agreed consideration. Further, till date the complainant has not challenged the termination letter dated 01.06.2023. The complainant is thus guilty of concealment and same is to be seen as an attempt to mislead this Hon'ble Authority.
- d. The respondent seeks to state the following brief facts before raising the objections to the present complaint. The complainant approached the respondent for an allotment of a unit in the project and the complainant being educated persons after fully satisfying himself, vide application form dated 30.06.2022 applied for allotment of a residential unit bearing no. G-1204 in the project for a total sale consideration of Rs. 1,05,04,250/-. As per

the opted payment plan, the complainant herein paid an amount of Rs. 10,41,769/- being the booking amount.

- e. Pursuant to the aforesaid payment of booking amount, the complainant was allotted the unit vide allotment letter dated 14.07.2022. Thereafter, on 14.09.2022, the ATL was also executed between the complainant and the respondent. The complainant signed the ATL after fully satisfying himself.
- f. At this stage, the respondent also seeks to highlight the following relevant clauses of the ATL, which are germane for effective adjudication of the present dispute:

- Clause 1.10 of the ATL; the Complainant agreed that the 10% of the total sales price i.e., 10,41,179/- shall be construed as "Booking Amount", to ensure the performance, compliance, and fulfilment of his obligations.
- Clause 2 of the ATL, the complainant agreed and undertook to pay all the amounts due to the respondent in accordance with the opted payment plan provided in the ATL.
- Clause 7.1 of the ATL; The complainant agreed that the respondent assures to handover possession of the apartment for residential along with parking (if applicable) to the complainant on or before 30.06.2023 unless there is a delay or failure due to "Force Majeure", war, flood, drought, fire, cyclone, earthquake, epidemic, pandemic or any other calamity caused by nature, reasons beyond the control of the respondent, court orders, government policies/guidelines, decisions affecting the regular development of the project (force majeure). If the completion of the project is delayed due to the above conditions, then the complainant agrees that the promoter shall be entitled to the extension of time for delivery of possession of the unit.
- Clauses 9.3(i) of the ATL; the complainant agreed that if he fails or neglects to make the payment of (2) two consecutive demands for

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instalments as per the payment plan, the complainant shall be liable to pay the interest to the respondent on the unpaid amount at the rates prescribed in the Rules.

- Clauses 9.3(ii) of the ATL; the complainant agreed that under the condition listed in the clause 9.3(i) continues for a period of ninety days after the notice from the Respondent in this regard and or/if the complainant fails or neglects to comply with any of his obligations under the ATL, the respondent may cancel the allotment of the unit and forfeit the booking amount paid for the allotment and Interest component on delayed payment.
- g. Upon execution of ATL, the respondent in terms of the opted payment plan i.e., the 3<sup>rd</sup> milestone "within 60 days from booking", raised an invoice dated 14.09.2022 for an amount of Rs. 10,41,769/-. The said invoice was paid by the complainant on 15.09.2022.
- h. At this stage, it will not be out of place to mention that despite facing odds of force majeure events (covid -19), the respondent kept the construction activity at full swing (in permissible limits) and after obtaining necessary NOC's/approvals from the competent authorities, the respondent duly applied for a grant of occupation certificate on 11.01.2023. The said application has been allowed and the OC has been granted to the respondent on 03.04.2023.
- i. In terms of the opted payment plan, the respondent raised an invoice for an amount of Rs. 72,92,571.43/- dated 10.02.2023. However, the complainant ignored the aforesaid demand raised by the respondent and failed to come forward and fulfil his contractual obligation to make timely payment.
- j. Since no payment was forthcoming from the complainant, the respondent issued the demand letter-1 dated 11.02.2023 requesting the complainant to pay the aforesaid due amount. The complainant ignored the



invoice/demand letter raised by the respondent in terms of the opted payment plan leaving the aforesaid amount of Rs. 72,92,571.43/- due and payable. Thereafter, the respondent was constraint to issue another demand letter - 2 requesting the complainant to pay the aforesaid amount, however, to no avail.

- k. In view of the aforesaid non-payment by the complainant, the respondent was constrained to issue a pre-termination letter dated 25.04.2023 informing the complainant that in case of failure to make the payment in terms of the opted payment plan, the respondent will proceed to terminate the allotment and forfeit the booking amount.
- l. All the aforesaid notices and reminders fell on the deaf ears of the complainant. That since no payment was forthcoming from the complainant, the respondent lawfully terminated allotment of the unit vide termination letter dated 01.06.2023 as per the agreed terms of the ATL as well as the procedure established under the RERA Act.
- m. The complainant vide email dated 07.06.2023 for the first came forward and informed the respondent that he is incapable to pay the total sales consideration as his loan application has been rejected and he is financially constraints. Further, the complainant vide email dated 27.10.2023 again informed the respondent about his incapability to fulfil the contractual obligations. Thus, it can be inferred that the present complaint filed by the complainant is an afterthought to arm-twist the respondent and fulfil his unlawful demands.
- n. In light of the above, the present complaint is liable to be dismissed as misconceived.
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 those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the Authority:**

8. The authority observes that it has territorial as well as 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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes 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**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.*

11. Hence, given 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 complainants at a later stage.

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

**F.I Direct the respondent to provide full refund of the amount paid till date together with interest at prescribed rate from date of booking till actual payment.**

12. The complainant was allotted a unit in the project of respondent "Godrej Nature Plus" at sector 33, Sohna vide allotment letter dated 14.07.2022 for a total sum of Rs.1,04,17,592/- and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs. 20,83,592/-. The complainant intends to withdraw from the project and is seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec. 18(1) proviso reads as under:

**Section 18: - Return of amount and compensation**

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

**he shall be liable on demand of the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:**

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

13. The occupation certificate for the building/tower in which the complainant's allotted unit is situated was obtained by the respondent on 03.04.2023, prior to the due date for possession. However, the complainant, by way of an email dated 27.10.2023, has expressed to withdraw from the project due to financial distress. The complainant is seeking a refund of the amount paid, subsequent to the respondent obtaining the occupation certificate in relation to the unit, despite the complainant being in default for failing to pay the outstanding dues as per the terms of the buyer's agreement. The complainant's request for

withdrawal is based on the fact that the complainant's unit has already been terminated, as evidenced by the termination letter dated 01.06.2023.

14. Furthermore, the respondent, in its reply, has stated that the cancellation/termination of the complainant's unit was carried out due to the complainant's non-compliance, despite multiple reminders and demand letters being issued in accordance with the terms of the buyer's agreement executed on 17.09.2022. The respondent has also indicated that a deduction may be made as earnest money in accordance with clause 9.3 (iii) of the BBA.
15. Now when the complainant approached the Authority to seek refund, it is observed that under clause 9.3 (ii) of BBA, the respondent-builder is entitled to forfeit the earnest money of the total sale consideration. The relevant portion of the clause is reproduced herein below:

*In case of Default by Allottee under the condition listed above continues for a period beyond ninety days after notice from the Promoter in this regard and/or if the Allottee fails or neglects to comply with any of his/her/its obligations under this Agreement, the Promoter may cancel the allotment of the Apartment for Residential along with parking (if applicable) in favor of the Allottee and refund the money paid to him by the Allottee by forfeiting the Booking Amount paid for the allotment and Interest component on delayed payment (payable by the customer for breach of agreement and non-payment of any due payable to the promoter). The rate of Interest payable by the Allottee to the Promoter shall be the State Bank of India highest marginal cost of lending rate plus two percent or as may be amended by the Rule or Act, from time to time. The balance amount of money paid by the Allottee shall be returned by the Promoter to the Allottee within ninety days of such cancellation. On such default, the Agreement and any liability of the Promoter arising out of the same shall thereupon, stand terminated. Provided that, the Promoter shall intimate the allottee about such termination at least thirty days prior to such termination.*

16. The above-mentioned clause provides that the promoter is entitled to forfeit the booking amount/earnest money paid for the allotment and interest component on delayed payment (payable by the allottee for breach of this agreement and non-payment). The Authority is of the view that the drafting of the aforesaid

clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee. As per the aforesaid clause the builder is entitled to forfeit entire amount paid by the complainant and empowers to promoter to recover interest on delayed payments along with other amount of non-refundable nature. It is unjust condition that exploits the allottee and can be termed as one sided. The clause on the face of it does not give equal bargaining power to the allottee. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

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. **Admissibility of refund at prescribed rate of interest:** The complainant is seeking refund amount at the prescribed rate of interest on the amount already paid by them. However, allottees intends to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced 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.

19. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
20. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 06.03.2025 is

9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

21. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

*"(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—*

*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.*

*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;"*

22. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has obtained the occupation certificate of the project before due date of possession in accordance with the terms of agreement for sale. However, the promoter is still liable to the allottee, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.
23. 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 cancellation but that was not done. So, the respondent/builder is liable to refund the amount received from the

complainant i.e., Rs. 20,83,592/- after deducting 10% of the sale consideration and return the remaining amount 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%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of termination i.e., 01.06.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**F.II Direct the respondent to pay a compensation amount of Rs. 10,00,000/- for causing huge financial loss, mental agony, and harassment to the complainant by providing false promises with fraudulent and malicious intention.**

24. The complainants are seeking above mentioned relief w.r.t. compensation. 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.

**G. Directions issued by the Authority:**

25. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

I. The respondent is directed to refund the paid-up amount of Rs. 20,83,592/- after deducting the earnest money which shall not exceed the 10% of the sale consideration of Rs. 1,04,17,959/- along with prescribed rate of interest @ 11.10% p.a. on such balance amount from the date of termination till the actual date of realization.

II. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

26. Complaint stands disposed of.

27. File be consigned to the Registry.

**Dated: 06.03.2025**

  
**(Vijay Kumar Goyal)**

Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram



**HARERA**  
GURUGRAM