

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

Complaint no. : 201 of 2023  
First date of hearing: 20.01.2023  
Date of decision : 11.04.2025

Mr. Syed Meraj Ahmad

**Office:** 08.03.03 Shriram Chirping Woods,  
12<sup>th</sup> Main, Shubh Enclave, Harlur Road, Off  
Sarjapur Road, Bengauru, Karnataka - 560102

**Complainant**

**Versus**

1. M/s BPTP Limited
2. M/S Countrywide Promoters Private  
Limited  
Both Office: M-11, Middle Circle, Connaught  
Place, New Delhi-110001
3. HDFC Limited  
Office: The Capital Court, Olof Palme Marg,  
Munirka, New Delhi- 110067

**Respondents**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Sh. Sukhbir Yadav  
Sh. Harshit Batra  
Sh. Mayank Agarwal

**Counsel for Complainant**  
**Counsel for Respondents 1& 2**  
**Counsel for Respondent 3**

**ORDER**

1. The present complaint dated 20.01.2023 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Pedestal", Sector-70 & 70A, Gurugram, Haryana.
2.	Nature of the project	Residential
3.	Project area	102.2 acres
4.	RERA Registered/ not registered	Not Registered
5.	DTCP License No.	15 of 2011 dated 07.03.2011 valid upto 06.03.2024
6.	Name of licensee	Impartial Builders Developers Pvt Ltd. and 22 others
7.	Allotment Letter	11.11.2013 (page no. 48 of complaint)
8.	Floor Buyer Agreement	22.12.2013 (Page no. 53 of complaint)
9.	Tripartite Agreement	23.01.2014 (page no. 81 of complaint)

10.	Unit no.	C-74-SF, 2 <sup>nd</sup> Floor (Page no. 61 of complaint)
11.	Unit admeasuring	1400 sq. ft. (Page no. 61 of complaint)
12.	Possession clause	<p><b>5. Possession</b></p> <p><b>5.1 The Seller/Confirming Party proposes to offer possession of the Unit to the Purchaser(s) within the Commitment Period. The Seller/Confirming Party shall be additionally entitled to a Grace Period of 180 days after the expiry of the said Commitment Period for making offer of possession to the Purchaser(s).</b></p> <p><b>1.4 "Commitment Period" shall mean, subject to Force Majeure circumstances, intervention of statutory authorities and Purchaser (s) having timely complied with all its obligations, formalities and/or documentation, as prescribed/requested by Seller/Confirming Part, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of all installments of the sale consideration as per the payment plan opted, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser (s) within a period of 36 months from the date of execution of Floor Buyer's Agreement.</b></p>
13.	Due date of delivery of possession	<p>22.06.2017</p> <p>(Note: 3 years from the date of execution of buyer's agreement i.e., 22.12.2013)</p>



		Grace period allowed being unqualified.
14.	Total sale consideration	Rs. 1,31,79,217/- (as per payment plan on page no. 49 of complaint)
15.	Total amount paid by the complainant	Rs. 67,84,643/-
	Amount paid by complainant	Rs. 35,94,839/-
	Amount paid by bank	Rs. 31,89,804/-
16.	Occupation certificate	16.10.2020 (page no. 112 of complaint)
17.	Offer of possession	Not offered
18.	Demand cum Payment request letter	18.09.2017, 12.02.2018, 07.03.2018, 09.04.2018, 04.07.2018, 23.08.2018, 19.11.2018
19.	Email for termination of unit	01.07.2022 (page no. 108 of reply)
20.	Conveyance deed with third party/Third party rights created on	19.01.2023 (page no. 113 of reply)

## B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. The respondent company/developer/bptp launched the development of residential apartment namely "Pedestal" Sector 70-A, Gurugram as part of the colony on land admeasuring 102.2 acres falling in revenue estate of Village Palra in Sector 70 & 70-A, Gurgaon-Manesar Urban Complex, Gurugram upon receiving the license bearing No. 15 of 2011 dated 07.03.2011. The Developer widely advertised the Pedestal project as one

of the best furnished and semi-furnished projects in the NCR and launched "subvention plan" for the same wherein it was promised by the Developer that the interest on the Bank Loan will be borne by the Developer/BPTP Limited till offer of Possession.

- II. That being persuaded by the Subvention Scheme launched by the Developer/BPTP, the Complainants had initially applied for allotment of two units on 02.09.2013 of under the "subvention plan" in BPTP Pedestal, Sector 70-A, Gurugram vide Application on the assurance of the Respondent Company/BPTP that the applicant shall pay 15% of the total amount of units at the time of booking and the EMI shall start only after the offer of possession. It was further assured that no EMI shall be payable by the applicant till possession. It was also assured by the Developer/BPTP that any interest accrued on the loan amount payable on the loan amount shall be payable solely by the Developer/BPTP till possession as mentioned in the advertisement. The subvention plan has also been mentioned in the Application Form as supplied to the Complainant. The relevant para of the Application Form that was supplied to the Complainants herein states "Under subvention scheme, Interest on Bank loan till date of letter of OOP for the Floor/Unit will be borne by the BPTP Limited."
- III. The developer assured that the delivery of the apartment shall be offered within 36 Months from signing of the apartment agreement ("ABA"). An additional 180 days of grace period was after the said commitment period was mentioned to cover the delay in case there is any unavoidable circumstance for timely completion of the Pedestal project.
- IV. Persuaded by the assurances of the Developer and the subvention plan, the complainants initially applied for booking of two units along with the Application Forms. The Complainant confirmation for both bookings and



were given Customer Code 147071 and 147067 and demand notice to pay, and the Complainants paid Rs.18,00,000/- for the bookings. Due to personal reasons (i.e. the complainant was transferred to Bangalore for job assignment) the complainants requested to Developer/BPTP to cancel the booking of one unit and continue with booking of one unit only. The Complainant signed affidavit, indemnity bond cum undertaking cancelling booking of customer code 147067 and transfer of the booking amount to customer code 147071. Thereafter, transfer of funds to customer code 147071 was done for allotment of one unit in the BPTP Pedestal project.

- V. That, Developer/BPTP allotted Unit No. C-74 SF having 3 bed Rooms, 1 Servant room and 1 Study Room in BPTP Pedestal vide Allotment Letter dated 11.11.2013 at the total sale price of Rs.1,27,59,217/- including BSP, Development Charges, car Parkings and PLC.
- VI. Upon the assurance of the Developer/BPTP regarding delivery of possession of the apartment within a Period of 36 Months from signing of agreement + 6 Months of grace period for inevitable circumstances the Complainants were made to sign a pre-printed, one-sided, and unilateral Floor Buyer's Agreement ("ABA") on 22.12.2013. The unit, as per the terms of the ABA, was to be handed over on or before 22.12.2016 and with grace period till 22.06.2017. The payment Schedule of the ABA was appended in the ABA.
- VII. On 16.01.2014 HDFC approved of loan for Rs.95,69,400/- for 20 Years. A Tripartite Agreement was signed on 23.01.2014 between BPTP, HDFC & Complainants Mr. Syed Meraj Ahmad & Mrs. Kanez Jafri. Thereafter, HDFC Home Loan Agreement was signed on 28.01.2014. The Complainant made Payment of Rs. 5,67,225/- towards the difference of 15% of sale price payable after 45 days of Booking and Rs. 26,22,579/-

towards 25% of Sale price through the HDFC Loan account. The Complainant also handed over few signed cheques on the assurance of the developer and HDFC that the same shall not be misused by the Respondents.

- VIII. It is pertinent to mention here that BPTP had confirmed that the subvention scheme period shall be till offer of possession in line with the advertisement, application form and the ABA dated 22.12.2013 assuring that the EMI will start on the offer of possession though it has been mentioned till 30th Nov 2015 in the tripartite agreement. However, it was assured by Developer/BPTP that BPTP is likely to complete the construction by November 2015, and in such eventuality the EMI will start upon offer of possession in November 2015 only. BPTP further assured that upon failure of BPTP to offer possession in November 2015 the Tripartite Agreement will be amended accordingly.
- IX. That, to the utter shock and surprise of the Complainants, the Complainant received SMS on 01.12.2015 from the HDFC Bank /Respondent No.3 that ECS/Pre-EMI Interest will be deducted from the account of the Complainant. It is pertinent to mention here that upon the payment of 15% of the sale price of the unit, the deduction of ECS/Pre-EMI Interest from the account of the Complainant was illegal and arbitrary and against the terms of the ABA with the Developer/BPTP.
- X. Upon this breach of the terms and conditions of the agreement, the Complainant visited the Office of Developer on 02.12.2015 at Udyog Vihar, Gurugram and raised protest regarding the deduction of money from the account of the Complainant against the terms of the understanding with BPTP. In the meeting with the Officers of the Developer/BPTP, the Developer/BPTP accepted that the deductions were not in line with the terms of the agreement and further assured the



Complainant HDFC will be informed to not to deduct ECS/Pre-EMI Interest from the account of the Complainant.

- XI. Contrary to the assurance given by the Developer, an amount of Rs.26,715/- was deducted from the account of the Complainant on 05.12.2015 by HDFC. The Complainant sent an e-mail to the Developer on 11.12.2015 stating that the deduction of money towards Pre-EMI interest accrued on the loan amount before the offer of possession was breach of the Apartment Buyer's Agreement.
- XII. The Developer replied vide e-mail dated 27.01.2016 and informed that HDFC bank had been notified regarding the debit of the ECS/Pre-EMI Interest for few customers. The bank will reverse the debit and there will be no deduction in complainants account until the subvention period i.e. till offer of possession. The Developer further stated that since the project was delayed the subvention duration has been extended by a year and informed that the Pre-EMI interest amount needs to be evaluated and borne by the company/BPTP. The e-mail further assured that the offer of possession shall be made on or before 30.11.2016 and that the new timeline for the subvention duration in the project would be extended till the offer of possession as per the new timeline. That the ECS/Pre-EMI Interest amount was refunded after multiple follow-ups by the Complainant.
- XIII. That the Project was hugely delayed and there was no offer of possession till 22.12.2016 i.e. expiry of 36 months from the date of the ABA. That even after the expiry of the Grace Period of 6 months there were no-show on the part of the Developer. There was no communication from BPTP regarding the progress and possession of the apartment even till end of 2016 when the apartment ought to have been offered for possession by the Developer/BPTP. It is pertinent to mention here that the Developer



had not even made the demand of Second Floor Roof Slab till the expiry of 36 months (i.e. till 22.12.2016) from signing of the ABA dated 22.12.2013.

- XIV. Till Nov 2017 multiple EMI were deducted by HDFC from the account of the Complainant totalling up to Rs 3.1 Lacs. That after multiple follow ups by the Complainant, the ECS/Pre-EMI Interest were returned by BPTP on an average delay of 90 plus days after it was debited. The financial planning of the Complainant was disturbed due to undue burden created by the Developer/BPTP. Thereafter, from Dec 2017 onwards BPTP stopped returning the ECS/Pre-EMI Interest amount back into the Complainants Bank account. Many requests were made by the Complainant mentioning that since the unit was booked under the Subvention Plan no deduction shall be made from the account of the complainant but the same was of no avail for the Complainant. That since the project was delayed beyond the reasonable period the Complainant had no choice but to withhold payments of further instalments as the continuous deductions of ECS from the account of the Complainant against the terms of the ABA and non-development of project had put the complainant in between the devil and the deep blue sea. The Complainant feared the intention and financial viability of the Developer/BPTP as the Complainants were trapped by the developer/BPTP in a haywire project which was nowhere near completion even after the lapse of more than 42 months from the date of signing of the ABA. The modus operandi of the Developer/BPTP was to extract as much payments as possible from the allottees and keep them dragging with a hugely delayed project so that they have no option left to opt out from the project. Few e-mails dated 30.07.2017, 04.08.2017, 08.08.2017, 10.08.2017, 09.04.2018 and 01.05.2018 sent by the

Complainant for refund of the amount illegally deducted from the account of the Complainant have been attached.

- XV. BPTP started asking for payments for first floor slab, second floor slab and sending multiple reminders and threatening letters and mails intimidating the Complainant and threatening to cancel the booking in illegal and arbitrary manner and to forfeit the deposits by the Complainant. That, since there were multiple deductions from the account of the Complainant and the project was hugely delayed, the Complainant demanded refund of the ECS/Pre-EMI Interest already deducted as the deductions were illegal and unilateral against the terms of the agreement. It is pertinent to mention here that none of the demand letters had any reference to the commitments of returning the EMI/ECS deducted by the HDFC bank. It is evident from the acts of the Developer/BPTP that the developer intentionally, mischievously and maliciously kept the complainant trapped the allottee/Complainant in its fetters by deliberately deducting and withholding the money from the account of the Complainant.
- XVI. That even after a delay of 4 years the project was nowhere near completion since no offer of possession was ever made to the Complainant herein till November 2021. The Complainant demanded the Refund of amount already deducted from the account of the complainant. Many e-mails were sent by the Complainant for the refund of the amount but the same were of no avail to the Complainant. The developer replied vide e-mail dated 23.11.2017 that the amount would be refunded and asked the complainant to wait till further instructions. It is pertinent to mention here that during the period of 05.12.2016 till 05.01.2022 an amount of Rs.16,62,687/- has been illegally and wrongfully deducted as ECS/Pre-EMI Interest amount from the account of the Complainant out



of which only Rs.3,16,681/- has been refunded by the developer despite several promises and communications made by the Developer/BPTP regarding refund of the wrongly deducted ECS/Pre-EMI Interest from the account of the Complainant which clearly shows the high-handedness and dominant behaviour of the Developer/BPTP.

- XVII. That on 12.11.2021 the Complainant again called the Developer and requested to refund the Pre-EMI interests paid so far. BPTP committed to return the EMI/ECS and to revert on e-mail. Neither the money came to the account of the Complainant nor the email. On 01.07.2022 executive of BPTP/Developer called the Complainant and informed that the Unit has been terminated and the Complainant would get the refund shortly which was followed by the e-mail of the same date informing the Complainant regarding the termination of allotment. It was further informed by the Developer that the unit has been terminated and refund amount has been given to HDFC. The Developer further refused to interact with the Complainants and directed them to contact HDFC bank for refund of the same. On enquiry from the HDFC bank it has transpired that the HDFC Bank has closed the loan account in an inappropriate manner without following the due process of law and without seeking any approval/consent of the Complainant and even without informing the Complainant of the closure details of loan account by any mode of communication. That the HDFC Bank has also worked hand in glove with the Developer/BPTP in the present transaction and has duped the Complainants of its hard-earned money.
- XVIII. It is submitted that the Developer has failed to develop the project and offer the possession in accordance with the timelines of the project and started deducting the ECS/Pre-EMI Interest in an arbitrary, illegal and unilateral manner. That the Developer/BPTP lured and trapped the

Complainant to enter into the transaction without there being any intent on the part of Developer/BPTP to deliver the project in time. The offer of possession was to be made in December 2016, but the developer miserably failed and committed the breach of terms of the agreement. That the respondents have defaulted, mis-represented and cheated the complainant by not completing the project in time and deducting the Pre-EMI interest from the account of the Complainant which is against the terms of the ABA. The Complainant has not received any amount, or details of the payments from the Respondents despite several requests. The Developer is trying to take benefit of its own wrong which is untenable as per the established law and precedents.

- XIX. That, the Developer has cheated the Complainant and has misappropriated its hard-earned money and breached the terms of the ABA and has failed to offer the possession within 36 months from the date of the ABA. The Developer has illegally deducted an amount of Rs.13,46,006/- (Rs.16,62,287- Rs.3,16,681/-) as ECS. Additionally, the Complainant has made payment of Rs. 54,38,637/- towards the Booking Amount and EMIs.
- XX. That, out of Rs.67,84,643/- the developer is liable to refund of Rs.35,94,839/- to the Complainant along with the interest from the dates of respective payments as envisaged under the provisions of RERA Act-2016 since the Developer has miserably failed to give possession of the apartment in accordance with the terms of the agreement. That the Developer is liable for breach of the provisions of Section 11, 12, 13, 18 and 19 of the Real Estate Regulation Act- 2016.

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

4. The complainant has sought following relief(s).



I. Direct the respondent to refund of Rs. 35,94,839/- paid by the complainant along with interest.

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 no. 1 & 2**

6. The respondent no. 1 has contested the complaint on the following grounds.

- a. That the Complainant being interested in the real estate development of the Respondent under the name and style of "Pedestal @70A" tentatively applied for the provisional allotment of the Unit vide application form and was consequently allotted Unit no. C-74-SF, tentatively admeasuring 1400 sq. ft. vide the provisional allotment letter dated 17.11.2013. The Complainant categorically and on his own volition chose to remit the payments as per the subvention linked plan.
- b. That after the provisional allotment of the Unit, a Floor Buyer's Agreement (the "FBA") was executed between the Parties on 22.12.2013.
- c. At the outset, it needs to be noted that as per the FBA, the unit was allotted to Mr Syed Meraj Ahmad and Mrs Kanex Jafri. However, the present Complainant has been filed by Mr Syed Meraj Ahmad only. An unsigned document stated to be affidavit of Mrs Kanex Jafri authorising Syed Meraj for signing on her behalf has been annexed in the Complaint, however, no SPOA has been annexed. This is in addition to the fact that the said affidavit is unsigned. As such, the Complaint is bad for non-joinder of necessary party and should be dismissed on this account itself.
- d. That it is pertinent to note that the Complainant had taken a loan from HDFC for disbursement of payments against the Unit and consequently,

a tripartite agreement dated 23.01.2014 was executed amongst the parties and HDFC.

- e. That at the outset, it needs to be categorically noted that the Complainant was bound to make the due and timely payment against the Unit as per Clause 2.1. It was only on the categorical representation, assurance, and warranty given by the Complainant in respect to timely payment that the Unit was allotted to the Complainant. The obligation of the Complainant to make the timely payment also arose from the Section 19(6) of the Real Estate(Regulation and Development) Act, 2016 The relevant parts of the said clause 2.1 and Section 19(6) of the RERA, 2016.
- f. That however, the Complainant failed in making the due payment as per the agreed terms and conditions of the FBA, despite several reminders having been issued. The last payment was made by the Complainant on 08.06.2017. Till date, the Complainant has made the payment of Rs. 55,71,804 (self-payment of Rs. 23,82,000 and through bank Rs. 31,89,804) out of the total net cost of Rs. 1,31,79,217.
- g. That it was categorically agreed between the parties that time is of the essence of the contract and in case of non-payment by the complainant, the respondent had a right to terminate the allotment of the complainant and forfeit the earnest money and non-refundable amounts as per clause 7.1 of the BBA.
- h. That as noted above, when the Respondent raised the demand for the milestone on casting of 1<sup>st</sup> and 2<sup>nd</sup> floor slabs, i.e., demand letters dated 18.11.2017 and 12.02.2018, the Complainant had miserably failed in making the complete payment, upon which, the Respondent had issued four reminders, and upon the continuous non-compliance on part of the Complainant, a last and final opportunity letter was issued by the Respondent on 19.11.2018 which categorically noted that upon the non-



payment by the Complainant, the Complainant will have noted to have waived his allotment. Upon the continuous act of non-payment by the Respondent, the unit was terminated on 01.07.2022.

- i. That upon the termination of the Unit, the Respondent rightly forfeited the earnest money and other non-refundable amounts and refunded the balance Rs. 31,89,804 to HDFC Bank, who thereupon, closed the loan account of the Complainant, as evident from the Bank NOC.
- j. That accordingly, after termination of the Unit, the Respondent has a right to forfeit the earnest amount along with delayed interest and total tax against the unit. That the right of the Respondent to validly cancel / terminate the Unit arises not only from the Agreement but also from the Model RERA Agreement which also recognizes the default of the allottee and the forfeiture of the interest on the delayed payments upon cancellation of the unit in case of default of the allottee.
- k. Moreover, the Hon'ble Haryana Real Estate Appellate Tribunal in **Ravinder Pal Singh v Emaar MGF land Ltd. Appeal No.255 of 2019** allowed the forfeiture of earnest money along with "*the statutory dues already deposited with the government*". Accordingly, the cancellation has been validly made and now, the Complainants have no right or lien over the Unit and hence, the present Complaint is bound to be dismissed.
- l. That this Hon'ble Authority has adjudicated similar issues of termination and has upheld the same noting the default on part of the Complainant. For instance, this Authority in **Rahul Sharma Vs Roshni Builders Private Limited MANU/RR/0975/2022** noted that the respondent had issued reminders, pre-cancellation letter, the last and final opportunity letter to the complainant. The OC for the project of the allotted unit was granted on 13.12.2021 and the respondent cancelled the unit of the

complainant with adequate notices. Thus, the termination was held to be valid.

- m. That furthermore, it is additionally noted that the due date of possession as per clause 1.4 and 5.1 was 36+6 months from the date of execution of the FBA. At this stage, it is submitted that the benefit of grace has to be given as has also been considered by the Hon'ble Appellate Tribunal, Chandigarh in the case titled as **Emaar MGF Land Ltd. vs Laddi Praramjit Singh Appeal no. 122 of 2022** that if the grace period is mentioned in the clause, the benefit of the same is allowed.
- n. Hence, the subjective due date of possession comes out to be 22.06.2017. It is also pertinent to mention that the delivery of possession was further subject to *force majeure* circumstances, as noted in clause 10.1., which is reiterated as under:
- 10.1. The Seller/Confirming Party shall not be held responsible or liable for not performing any of its obligations or undertakings provided for in this Agreement if such performance is prevented due to Force Majeure conditions. as defined in clause 1.14.*
- o. Apart from the continuous act of non-payment by the Complainant, the Respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization etc. and other force majeure circumstances, yet, the Respondent completed the construction of the Project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the Complainants and demanding the prices only as and when the construction was being done. That all these circumstances come within the purview of the *force majeure* clause and hence allow a reasonable time to the Respondent.



- p. That the Respondent, despite grave defaults on part of the Complainant, earnestly fulfilled its obligation under the FBA and completed the Project as expeditiously as possible in the facts and circumstances of the case. The defaults committed by the Complainant and due to various factors beyond the control of the Respondent affected the constriction of the project. However, despite the same, the occupancy certificate was attained by the Respondent on 16.10.2020.
- That the Respondent has complied with all of its obligations, not only with respect to the FBA with the Complainant but also as per the concerned laws, rules and regulations thereunder and the local authorities and also the TPA with HDFC.
- q. That moreover, it is essential to state at this instance that the Respondent has already transferred the ownership of the Unit to a third-party as the Unit has been sold to Harendra Rory, Nilesh Roy, and Rakesh Roy who enjoy the complete rights and ownership over the Unit via conveyance deed dated 19.01.2022 bearing vasika number 12524, hence, any relief against the said Unit cannot be imposed upon the Respondent as the Respondent has no right or title over the said Unit.
- r. That the facts and circumstances of the present case reveal that the Complainant has no right or lien over the unit in question. The ownership as well as the physical possession of the Unit in question is enjoyed by a third party after the Unit of the Complainant was validly terminated.
- s. That without prejudice to the contentions and rights of the Respondent, it is submitted that upon the uphold of termination and deduction of 10% of the total sale price, no amount remains to be payable on part of the Respondent.

- t. The aforementioned calculations reveal that excess amount has been paid by the Respondent and it is actually the Complainant who is bound to make the payment of the excess amount paid. Accordingly, the present complaint should be dismissed and/or the Complainant should be directed to make the payment of the excess amount of Rs. 1,15,592.71/-.

**7. Reply on behalf of Respondent no. 3**

- a. That the answering Respondent no. 3 i.e. HDFC Ltd now as HDFC Bank Ltd is no way concerned with the present complaint except that it had sanctioned and disbursed the Home Loan in terms and conditions of the Home Loan Agreement (Loan A/c No 609831482) and Tripartite Agreement dated 23.01.2014. However, for the sake of brevity, the answering respondent is filing this reply.
- b. that the mandate of Real Estate (Regulatory and Development) Act of 2016 is to protect the interest of home-buyers from the delays and defaults on part of the errant developers. The subject matter of the present Complaint has arisen due to the alleged default on part of Respondent No. 1 & 2 in timely construction and handover of the project. However, the Complainants have decided to wrongly implead HDFC Ltd now as HDFC Bank Ltd. as Respondent no. 3. The Complainants have chosen to ignore the fact that the relationship of HDFC Ltd now as HDFC Bank Ltd. and the Complainants have arisen out a Loan agreement which has no correlation whatsoever with the builder. In the humble submission of the answering Respondent, this Hon'ble Authority lacks jurisdiction to issue any directions or orders to any other person or entity who is not a *promoter, real estate agent or allottee* and Respondent no. 3 being the lender, does not fall under any of the aforementioned categories. The instant complaint is liable to be dismissed on account of mis-joinder of parties. The domain of services provided by the



Respondent no. 3 is completely separate and independent of Respondent No. 1 and hence the Complainants ought to be dismissed as against Respondent No.3 on account of lack of jurisdiction.

**F. Finding on objections raised by the respondent.**

**F.1 Objection regarding force majeure conditions:**

8. The respondent-promoter alleged that the construction of the project was delayed due to force majeure conditions such as orders of Hon'ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. As per the flat buyer's agreement, the due date of handing over of possession comes out to be 22.06.2017. The events such as Hon'ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and plea taken by respondent is devoid of merits.

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

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

9. The complainant was allotted a unit bearing no. C-74-SF, 2<sup>nd</sup> Floor admeasuring area 1400 sq. ft. in the project of the respondents named "Pedestal @70A at Sector-70 & 70A, Gurugram for a total sale consideration of Rs.1,31,79,217/- vide allotment letter dated 11.11.2013. A floor buyer's agreement was executed between the complainant, respondent no.1 and 2 on 22.12.2013 under subvention scheme. Thereafter, a tri-partite agreement was also executed between the complainant, respondent no. 1, 3 and

Housing Development Finance Corporation Limited on 23.01.2014 for financing the purchase of said unit.

10. The complainant has submitted that as per payment plan agreed between the parties vide buyer's agreement dated 22.12.2013, the complainant was obliged to make payments for the first 2 stages of construction and the same were duly paid by him. On 06.11.2013, the respondents made a demand of Rs.35,99,948/- on achieving the milestone "start of construction". Then respondent raised the demands for milestone on casting of 1<sup>st</sup> and 2<sup>nd</sup> floor slab i.e., demand letters dated 18.11.2017 and 12.02.2018, the complainant had failed in making the complete payment. Therefore, the respondents have submitted that they have raised all the demands as per the payment plan, but the complainant had miserably failed in making the complete payment, upon which, the respondents had issued three reminders, and upon the continuous non-compliance on part of the complainant, a last and final opportunity letter was issued by the respondent on 19.11.2018 which categorically noted that upon the non-payment by the complainant, the complainant will have noted to have waived his allotment. Upon the continuous act of non-payment, the unit was terminated on 01.07.2022. Further, upon the termination of the unit, the respondent rightly forfeited the earnest money and other non-refundable amounts and refunded the balance Rs.31,89,804/- to HDFC Bank, who thereupon, closed the loan account of the complainant, as evident from the Bank NOC/Loan closure. Now the question before the Authority is whether the cancellation made by the respondent vide email dated 01.07.2022 is valid or not.
11. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that as per the payment plan agreed between the parties, the complainant was obliged to make payments on time. Even otherwise, as per clause 7.2 of the buyer's agreement dated



22.12.2013, the complainant was solely liable to make payment of the outstanding due installments in the event of any dispute arising out of the agreement. It is notable that the respondents have sent several reminders as per the payment plan agreed between the parties, before issuing a final demand notice dated 19.11.2018 giving last and final opportunity to the complainant to comply with its obligation to make payment of the amount due, but the same having no positive results and ultimately leading to cancellation of unit vide email dated 01.07.2022. Further, Section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 22.12.2013 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. However, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928*** and ***Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage.* National Consumer Disputes Redressal Commissions in ***CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in ***CC/2766/2017*** in case titled as ***Jayant Singhal and Anr. VS. M3M India Limited*** decided on **26.07.2022**, held that 10% of basic sale price is reasonable amount to be

forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

**"5. AMOUNT OF EARNEST MONEY**

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

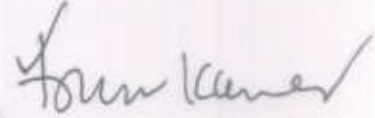
12. Keeping in view the aforesaid factual and legal provisions, the respondents/promoter is directed to refund the paid-up amount of Rs.35,94,839/- after deducting 10% of the basic sale consideration of Rs.1,31,79,217/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 01.07.2022 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017  
ibid.

**H. Directions of the authority**



13. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondents/promoter is directed to refund the paid-up amount of Rs. 35,94,839/- after deducting 10% of the basic sale consideration of Rs. 1,31,79,217/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 01.07.2022 till its realization.
  - 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.
14. Complaint stands disposed of.
15. File be consigned to registry.

Dated: 11.04.2025



**Arun Kumar**

**Chairman**

Haryana Real Estate  
Regulatory Authority,  
Gurugram