BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 4223 of 2023
Order pronounced on: 06.03.2025

1. Sunil Gola
2. Deepak Gola **Complainants**
Both R/o: H.No. 185, Chattarpur, New Election Office,
New Delhi- 110074

Versus

M/s Advance India Projects Ltd.
Regd. office: M/s Advance India Projects Ltd, 5th Floor,
Sector-62, Gurugram-122002 **Respondent**

CORAM:
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Shri Vinay Yadav (Advocate) **Complainants**
Shri Harshit Batra (Advocate) **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, and the delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project	AIPL Joy Square, Sector 63 A, Gurugram, Haryana
2.	Nature of the project	Commercial Complex
3.	DTCP License No.	119 of 2011 dated 28.12.2011. 71 of 2014 dated 29.07.2014
4.	RERA Registration	259 of 2017 dated 31.12.2022
5.	Unit no.	GF-096B, Ground Floor, Tower- Joy Square (As on page no. 31 of reply)
6.	Unit admeasuring	337.60 sq. ft. (As on page no. 31 of reply)
7.	Allotment Letter	06.02.2019 (As on page no. 31 of reply)
8.	Date of execution of builder buyer agreement	Not executed
9.	Possession clause	**(j). Possession clause** *The Company shall subject to force majeure conditions* ***proposes to handover possession of the Unit on or before December 2022 notified by the Promoter*** *to the Authority at the time of registration of the Project under Real Estate (Regulation & Development Act), 2016 and Haryana Real Estate (Regulation & Development) Rules, 2017 and regulations made thereunder for competition of the Project or as may be further revised/approved by the Authorities.*

		(As on page no. 26 of reply)
10.	Due date of delivery of possession	December 2022 (As per possession clause of application form)
11.	Total sales consideration	Rs. 60,09,617/- (As per page no. 03 of reply)
12.	Total amount paid by the complainant	Rs. 25,86,348/- (As on page no. 03 of reply)
13.	Payment Plan	Fixed Monthly Income (As on page 22 of complaint)
14.	Pre-Termination Letter	29.10.2018 (As on page no. 44 of reply)
15.	Final Termination Letter	24.12.2019 (As on page no. 56- of reply)
16.	Occupation Certificate	09.11.2023 (As on page no. 33 of reply)
17.	Cheque No.004042 of Rs. 6,65,589/- and 2nd cheque no.004043 of Rs. 6,65,589/- sent by respondent	02.09.2024 (Additional documents filed by the respondent on 14.01.2025)

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

a. That in the year 2018, marketing agents of the Respondent had approached the complainants and placing trust in the respondent the complainants booked a commercial unit measuring 337.60 sq. ft. bearing unit no. GF/096B in the project "AIPL Joy Square" of the respondent.

b. The total consideration for the above-mentioned unit was Rs.59,75,585/- approx. and on 27th March 2018 the respondent signed a one-sided booking form (heavily weighted in the respondent's favour) with the complainants. The respondent has not provided with the copy of booking form/agreement/allotment letter to the complainants therefore, the

complainants are filing draft of the application form as available with complainants.

c. The complainants had been paying the due instalments on a regular basis to the respondent. The company had been charging the complainants with late payment @18% per annum on the delay of payment on the complainant's part and this was despite the fact that the respondent's project was lagging behind the schedule promised by the respondent in one sided project prospectus.

d. Upon the various demand letters raised by the respondent, the complainants have paid a total of INR 25,86,438/- against the total sale consideration till year 2019 which comes to approximately 45% of the total consideration.

e. The respondent unanimously without any prior intimation cancelled the unit of the complainants vide the intimation letter dated 24.12.2019.

f. Upon this the complainants approached the respondents at their office; however, the respondent didn't give any chance to the complainants and informed them that they have allotted the same unit to someone else at higher price and rather tried to force the complainants to repurchase the unit at a higher price. Seeing no option left the complainants accepted the termination and requested the respondent to refund their due amount.

g. Even after 4 years of intimation of termination, numerous reminders through e-mails, office visits and calls, the respondent has remained silent and have chosen not to honour the agreements/ documents signed by it.

h. Thereafter, the complainants sent a legal notice dated 16.08.2023 to the respondent through their counsel which was duly served to the respondent for refund of his hard-earned money along with the interest which the respondent has been enjoying even after cancellation of the unit.

i. Till date the respondent has failed to either give reply of the notice or to return the amount deposited by the complainants along with interest. The respondent has also not given/handed over copy/original of the documents signed by the complainants for booking the unit at their project.

j. The respondent has clearly violated the provisions of agreement/documents signed by them and RERA, 2016. The respondent has not paid any heed to the requests of the complainants and has not refunded the hard-earned money of complainants till date.

k. Till date the complainants have paid Rs. 25,86,438/- to the respondent against the allotted Unit which comes to approximately 45% of the total sales consideration i.e. Rs. 59,75,585/-.

l. The respondent is liable to pay Rs. 25,86,438/- along with interest @18% per annum calculated from the date of respective payments which comes to a total of Rs. 48,05,138/- as on 30.09.2023.

C. Relief sought by the Complainants:

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 @18% from date of payments made by the complainant till date of payment to the complainants.

ii. Direct the respondent to pay a compensation amount of Rs.5,00,000/- for mental agony, harassment and loss of opportunity and litigation expenses.

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 complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The complainants are not the "Allottees" but were Investors who have booked the retail unit in question as a speculative investment in order to earn rental income/profit from its resale.

b. The complainants being interested in the project of the respondent booked a unit admeasuring 337.60 sq. ft. bearing unit no. GF/096B in the real estate project, "AIPL Joy Square" vide an application form which was accepted by the respondent and hence, the parties are bound by the terms and conditions of the said application form. Subsequently, an allotment letter dated 06.02.2019 was issued by the respondent. The parties agreed to make the payment for the Unit on a time-linked payment plan.

c. Thereafter, the respondent requested the complainant to execute the buyer's agreement, however, the complainants failed to execute the same. in the event of failure of the complainants to execute the buyer's agreement, the relationship between the parties is governed by the agreed terms of the application form and the relevant laws including the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations thereunder.

d. At the outset, it needs to be noted that there has been no default, whatsoever, on part of the respondent in completing its obligations. That the development of the project has also been completed and the occupation certificate has been received on 09.11.2023. That the respondent has ensured the highest degree of care and has duly completed its obligations. That in such a circumstance, no default can be accorded to the respondent. On the other hand, the complainant has miserably failed in fulfilling its obligations.

e. It is imperative to note that the timely payments against the unit were an inseparable part of the allotment of the unit. That the complainants have miserably failed to mention that they have defaulted in payment of monies against the unit. It needs to be categorically noted that the complainants agreed to make the payments on time as per the agreed payment plan, as per clause (h) of the application form, despite which, that the complainants failed to comply with the said obligation.

f. The obligation of the complainants was the timely payment against the unit, either done through a loan or without, despite the same, the complainants continued to cause grave default. It is submitted that till date, the complainants have paid only Rs.25,86,438/- out of the total sale consideration of Rs. 60,09,617/-(exclusive of other charges and stamp duty), as evident from the statement of accounts dated 10.01.2024. Upon continuous defaults being caused by the complainants in making the payment as per the agreed terms and conditions of the allotment, the complainants stood in the event of default and the respondent had the right to terminate the unit under clause (h) of the application form.

g. It is a matter of record that the complainants time and again defaulted in making timely payment of instalments. That as per the agreed time linked payment plan, the obligation of the complainants to make the due payment was strictly in accordance with the same, however, the Complainants defaulted in making the due payments, at various occasion.

h. The complainants had to pay Rs. 21,86,437/- within 150 days of booking of the unit as per the agreed payment plan. Various reminder letters dated 25.08.2018, 09.09.2018, 25.09.2018 were issued to the complainants to make the payment of the said instalment. Thereafter, due to continuous default of the complainants, pre-termination letters dated 06.10.2018 and 29.10.2018 were also issued to the complainants, wherein last and final

opportunity to remit Rs. 21,86,437/- in 15 days was given, failing which, it was categorically noted that the Respondent shall terminate/cancel the application form/allotment of the subject unit and shall further forfeit the earnest money along with other non-refundable amounts in terms of the application/ builder buyers' agreement and on such termination/cancellation of the unit, the complainants shall be left with no right, title, interest and lien on the subject unit/project.

i. Thereafter, on 14.11.2018, the complainants paid the instalment. The respondent acceded to the request of the complainants. However, the complainants continued with their default. That the complainant's default was also reflected from the cheque dated 10.12.2018 that were returned un-encashed as was stopped by the drawer. The same was also communicated to the complainant on 03.01.2019 and thereafter, again on 07.01.2019, the complainant were requested to remit the outstanding dues.

j. An amount of Rs. 25,86,438/- was due and payable by the complainants within 18 months of booking as per the agreed payment plan, for which, a demand letter dated 11.09.2019 was issued to the complainants. The complainants failed to make the due payments, and hence, the reminder letters dated 01.11.2019 and 11.11.2019 were issued to make the payment of the said instalment.

k. Thereafter, a pre-termination letter dated 02.12.2019 was also issued to make the said payment of Rs. 25,86,438/-, giving a last and final opportunity to the Complainant to make the payment, failing which, it was categorically noted the respondent shall terminate/cancel the application form/allotment of the subject unit and further shall forfeit the earnest money along with other non-refundable amounts in terms of the application form and on such termination/cancellation of the unit, the

complainants shall be left with no right, title, interest, and lien on the subject unit/project.

l. Despite repeated reminders having been given, the complainants made no payment and continued with their default. That it was only after absolute non-compliance by the complainants that the unit was finally terminated vide letter dated 24.12.2019 and the earnest money, delayed payment, brokerage etc were deducted. For ease of convenience, the default of the complainants is also shown in below mentioned table:

Milestone	Demand	Reminder	Pre-termination	Termination
At the time booking	-	-		
Within 150 days Booking		25.08.2018 09.09.2018 25.09.2018	06.10.2018 29.10.2018	
Within 18 month booking	11.09.2019	01.11.2019 11.11.2019	02.12.2019	**24.12.2019**
On offer possession	NA			

m. The right of the respondent to validly terminate the unit arises not only from the application form and breach of payment plan 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.

n. After the termination of the unit, no right or lien of the complainants exists in the said unit and the relationship between the parties came to an end. that after the said termination, there is no locus of the complainants to approach the Ld. Authority. That 'no person should be granted the benefit of their own wrong' is a settled principle of law, and is squarely applicable in the present case, where the default of the complainants had led to the termination of the unit.

o. It is of extreme pertinence to note that prior to the termination of the unit, the respondent has rightly paid the assured returns to the complainants,

total amounting Rs. 1,52,580 (inclusive of TDS) from February 2019 till September 2019.

p. Moreover, and without prejudice to the aforementioned, it is submitted that the Unit was terminated on 24.12.2019 and the present complaint has been filed on 06.09.2023, i.e., after 3 years, 9 months and 12 days of termination of the unit and hence, is barred by limitation. That no cause of action persists as on date and hence, the present complaint is liable to be dismissed.

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 the objections raised by the respondent

F.I. Objection regarding complainants being investors

12. The respondent has taken a stand that the complainants are investors and not consumer. Therefore, they are not entitled to the protection of the Act and also not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the application form it is revealed that the complainants are

buyers and paid total price of Rs. 25,86,348/- to the promoter towards purchase of an unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

13. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the application for allotment, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr***. has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

F.II Objections regarding complaint being barred by the limitation

14. The respondent-promoter raised the contention that the complaint is barred by limitation. As far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid

opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

15. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in ***MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020*** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

16. In the present matter, the cause of action arose on 24.12.2019 when the respondent terminated the unit. The complainant subsequently filed the present complaint on 03.10.2023, i.e., after a period of 3 years, 9 months from the date of the cause of action. Notably, the period from 15.03.2020 to 28.02.2022, is to be excluded from this calculation due to statutory provisions. Furthermore, the respondent has retained the amount paid by the complainant throughout this period without effecting a refund following the termination. Consequently, the cause of action continued to subsist during the entire period. In light of these considerations, the Authority finds that the present complaint has been filed within a reasonable time frame and is therefore not barred by the statute of limitations.

G. Findings on relief sought by the complainants:

G.I Direct the respondent to provide full refund of the amount paid till date together with interest @18% from date of payments made by the complainant till date of payment to the complainants.

17. The complainants were allotted a unit in the project of respondent "AIPL Joy Square" at sector 63-A, Gurugram vide allotment letter dated 06.02.2019 for a total sum of Rs. 60,09,617/- and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs. 25,86,348/-. The complainants intends to withdraw from the project and are 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."*

18. 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. The respondent has also contended that the respondent has rightly paid the assured returns to the complainants, total amounting Rs. 1,52,580 (inclusive of TDS) from February 2019 till September 2019, however, no documents have been annexed in support of the same.

19. Now when the complainant approached the Authority to seek refund, it is observed that as per para 5 at page 27 of the reply i.e., booking application form, 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:

> *I/We have sought detailed explanations and clarifications from the Company and the Company has readily provided such explanations and clarifications and after giving careful consideration to all facts, terms and conditions, I/we have signed this Application Form and paid the advance booking amount for provisional allotment.* ***I/we further undertake and assure the Company that in the event of rejection off my/our Application for Booking as per decision of the Company, even in the***

eventuality of forfeiture of my/our Earnest Money *(as defined in Schedule-1 hereinafter) in accordance therewith, I/we shall be left with no right, title, interest or lien under this Application/booking a against any Unit in relation of the said Project or against the Company in any manner whatsoever.*

20. The Authority observes that the cancellation of the unit has been made due to due to non-payment after the issuance of pre-termination letter dated 29.10.2018. Hence the cancellation stands valid. 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.

21. 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 unit 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 farmed 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.*

22. **Admissibility of refund at prescribed rate of interest**: The complainants are seeking refund amount at the prescribed rate of interest on the amount 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.*

23. 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.

24. 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%.
25. The respondent company has already obtained the occupation certificate of the project on 09.11.2023. Thereafter, the respondent/promoter issued demand/reminder letter and further, issued termination/cancelation letter to the complainants. The cause of action arose on 24.12.2019 when the unit got terminated due to default (non-payment) on the part of the allottees as only an amount of Rs. 25,86,348/- has been paid out of sale consideration of Rs. 60,09,617/- which consists only 43% of sale consideration. Thus, the cancellation of the unit is valid. Further, the complainants/ allottees have violated the provisions of section 19(6) & (7) of the Act of 2016.
26. 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. 25,86,348/- 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., 24.12.2019 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.
27. It is observed that the counsel for the respondent, on 14.01.2025, has placed on record additional documents, specifically cheque numbers 004042 and 004043 dated 02.09.2024, purportedly issued by the respondent in favour of the complainant towards refund of the amount in question. However, upon perusal of the record, it is noted that no documentary evidence has been

submitted to establish receipt or encashment of the said cheques by the complainant. Further, no postal or courier receipts evidencing dispatch of the said cheques have been annexed, nor has the complainant acknowledged receipt of the same. Therefore, the amounts mentioned in the aforementioned cheques can be considered for deduction, if encashment of said cheques has been made by the complainants and interest on that component is to be paid only till it's encashment, if any.

F.II Direct the respondent to pay a compensation amount of Rs. 5,00,000/- for, mental agony, and harassment and loss of opportunity and litigation expenses.

28. 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 can approach the appropriate forum to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.

H. Directions issued by the Authority:

29. 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. 25,86,348/- after deducting the earnest money which shall not exceed the 10% of the sale consideration 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. The amount paid by the respondent towards assured returns along with the amount refunded, if any, shall be duly adjusted from the total refundable amount payable to the complainant and the remaining balance shall be refunded by the respondent to the complainant along with interest as prescribed in para 24 of this order.

III. 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.

30. Complaint stands disposed of.

File be consigned to the Registry.

Dated: 06.03.2025

(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram