

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

Complaint no. 58 of 2024
Date of filing complaint 30.01.2024
First date of hearing 20.03.2024
Date of decision 22.01.2025

Mrs. Luxmi
R/o: N-706, BPTP Spacio, Sector 37D, Gurugram,
Haryana

Complainant

Versus

Signature Global Developers Private Limited
Registered office: 1308, 13th floor, Dr. Gopal Das
Bhawan, 28 Barakhamba Road, New Delhi- 110001
Correspondence Address: Ground floor, Tower-A,
Signature Towers, South City-I, Gurugram, Haryana

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Dhananjai Jain (Advocate)

Complainant

Shri Mintu Kumar (AR of the company)

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 thereunder or to the allottee 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	"Signature Global City 37D", Sector 37D, Village Gaduli Kalan, Gurugram
	Project Area	20.5890 acres
2.	Nature of the project	Affordable Plotted Colony under DDJAY
3.	DTCP license no.	08 of 2021 dated 05.03.2021 valid upto 04.03.2026
	Name of licensee	Lalwani Brothers Buildcon LLP and Unistay Hospitality Pvt. Ltd.
4.	RERA Registered/ not registered	Registered Registration no. 31 of 2021 dated 13.07.2021 Valid upto 29.09.2024
5.	Unit no.	37D-J5-1F (As per BBA at page 29 of complaint)
6.	Unit admeasuring area	770.55 sq. ft. (Carpet Area) 144.78 sq. ft. (Balcony Area) (As per BBA at page 34 of complaint)
7.	Date of builder buyer agreement	20.12.2021 (As on page 25 of complaint)
	Possession clause as per builder buyer agreement	7. Possession of the Residential Independent Floor "7.1 The Promoter assures to handover possession of the Residential Independent Floor along with parking as per agreed terms and conditions by 30-04-2023 and 31-12-2023 for floor nature unless there is delay due to "force majeure", Court orders, Government policy/guidelines, decisions, etc. affecting the regular development of the real estate project....." (Emphasis supplied) (As per BBA at page 44 of complaint)
8.	Due date of possession	31.12.2023 (As per clause 7.1 of the buyer's agreement)

9.	Total sale consideration	Rs.87,56,502/- (BBA at page no. 31 of complaint)
10.	Total amount paid by the complainant	Rs.19,01,908/- (SOA dated 14.02.2025 filed by way of affidavit dated 25.02.2025)
11.	Cancellation Notice	25.11.2023 (page no. 58 of reply)
12.	Final Settlement Letter issued by respondent in favour of the complainant	16.11.2023 (page no. 30 of reply)
13.	Provisional allotment made in favour of third party, "Babita Devi"	13.01.2024 (page no. 58 of reply)
14.	Occupation certificate	29.07.2024 (page no. 8 of documents placed on record by respondent dated 30.12.2024)
15.	Offer of possession issued in favour of "Babita Devi"	13.08.2024 (page no. 60 of reply)

B. Facts of the complaint:

3. The complainants have made the following submissions by filing of present complaint dated 30.01.2024: -
 - a) That the respondent approached the complainant in the year 2021 and offered to invest in its upcoming project "Signature Global City -37D" and offered lucrative and fully furnished independent floors with all the amenities, assuring delivery of possession of the said floors by 31.12.2023.
 - b) That based on representations and warranties of the respondent, the complainant booked the complainant booked a unit bearing no. 37D-J5-LF in the year 2021 admeasuring a super area of 770.55 Sq. Ft. for a total consideration of Rs. 87,56,502/- including GST, Cess and other taxes etc. vide a registered agreement to sale dated 20.12.2021.
 - c) That as per the terms of the said agreement, the respondent was bound to handover the possession of the said unit by 31.12.2023 however the construction status of the said property is far from completion. The complainant visited the site and was shocked to see that the building structure itself is yet to be completed.



- d) That the complainant has made timely payment of Rs. 44,02,059/- which has been admitted in the customer ledger dated 20.11.2023 issued by the respondent.
- e) That the complainant handed over a cheque bearing no. 000124 dated 15.09.2023 in favour of SGDPL Signature Global City 37D amounting to Rs. 43,05,649/- drawn on HDFC Bank against the payment of the due amount however the said cheque was allegedly misplaced by officials of the respondents and the same has been admitted being misplaced by the respondent.
- f) That the complainant has issued the said cheque in favour of the respondent which was the balance payment towards the said unit however it was under a design that the said cheque was misplaced by the officials of the respondent so that a cancellation notice may be issued by the respondent on the pretext of non-payment by the complainant.
- g) That the complainant was surprised to understand as to how a cheque of such high value can be misplaced after being properly handed over to the concerned officer of the respondent. The respondent has derived a new and indigent method of defrauding its customers as the market rates of the said unit has been increased and thus the respondent intends to re-sale the said unit for a much higher price.
- h) That the complainant has and had all the intention to make good the payment of outstanding dues as per the terms of the said agreement however even after it being fault of your representatives and officers who have misplaced a cheque of such huge amount. Thereafter the respondent illegally issued a cancellation notice on 25.11.2023 based on the non-payment of the due consideration.
- i) That the factum of delays and the structure of the building not even being complete has come to the knowledge of the complainant after the issuance



of the cheque. The same necessitates that there must be clear assurance and promise from the said of the respondent to handover the complete floor as per the agreed stipulation and the complainant is ready and willing to make the balance payment as when the said property is ready to be offered for possession.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - I. Direct the respondent to quash cancellation notice dated 25.11.2023 issued by respondent to the complainant.
 - II. Direct the respondent not to cancel/alienate the allotment of said unit to any third party.
 - III. Direct the respondent to handover the physical possession of the unit after completing all the requirements of the said independent floor in all aspects as per Agreement for Sale.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds vide its reply dated 20.03.2024:
 - a) That the respondent had launched its project i.e., "Signature Global City-37D" located at Sector 37D, Gurugram, Haryana on the land admeasuring 20.5890 acres and notified under Deen Dayal Awas Yojana by the Government of Haryana vide notification no. PF-27A/6521.
 - b) That the delivery of the independent floor shall be delivered by 31.12.2023, however subject to force majeure and other terms and conditions mentioned in the buyer's agreement dated 20.12.2021. The complainant is the one who approached the respondent and showed her interest in the project of the respondent and applied for the same.
 - c) That before entering into buyer's agreement dated 20.12.2021, the complainant inspected the site where the project is to be constructed along

with the ownership records and other related documents, and she also acknowledged that the respondent has provided all information and clarifications as required and same is recorded in recital H.

- d) That the delivery of possession and execution of conveyance deed is subject to force majeure circumstances, intervention of statutory authorities etc. affecting the regular development of the real estate project. This has also been recorded at clause 7.1 of the buyer's agreement dated 20.12.2021. It was further specifically mentioned that if the possession is delayed due to force majeure, then the respondent shall be entitled to extension of time for delivery of possession of the residential independent floor.
- e) That the complainant is not entitled to possession as the complainant failed to adhere the terms and conditions of the buyer's agreement dated 21.12.2021, as the complainant failed to make the payment despite repeated reminder due to which the allotment of the complainant was cancelled, and she is no longer an allottee of the said independent floor.
- f) That the complainant intentionally did not disclose the fact that the alleged cheque was dishonoured when the same was represented by the respondent before its banker. Further, the respondent vide e-mail dated 21.09.2023 intimated about such incident, however the complainant never paid any heed to it hence the respondent cancelled the allotment of the complainant after serving pre-cancellation notice dated 04.07.2023.
- g) That the allotment of the complainant was cancelled vide letter dated 05.10.2023 and the complainant had filed the present complaint with the intention to revive her allotment.
- h) That further, if the complainant had the intention to make the payment, then even after bouncing of the cheques, the complainant could have made the payment when intimation and pre-cancellation notice were being sent to the complainant apart from the several reminders.

7. All other averments made in the complaint were denied in toto.
8. 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 oral as well as written submissions made by the parties.

E. Written Submissions filed by the complainant:

9. The complainant has made the following additional submissions vide its written submissions filed during the course of proceedings dated 26.03.2025:
 - a) That the complainant made a payment of Rs.21,90,307/- on 22.03.2022 as first instalment as per the terms of the said builder buyer agreement. Further, the complainant handed over a cheque against the second instalment amounting to Rs.20,92,123/- and the entry of the said cheque is also reflected in ledger account statement at page no. 65- Annexure A2 of the complaint. The complainant made the required amount available in the bank account before handing over the cheque to the respondent. The respondent also issued a receipt against the cheque amounting to Rs.21,15,933/- to the complainant. Therefore, the complainant in the complaint had made a payment of Rs.44,02,059/-.
 - b) That the complainant tendered the said amount to the respondent under the belief that the said cheque would be presented to the bank and because of the same the respondent had issued receipt pertaining to the said amount to the complainant.
 - c) That the respondent informed the complainant that the said cheque has been misplaced by the respondent and therefore, the respondent asked for a fresh cheque. The complainant handed over a fresh cheque to the respondent as the respondent assured that they shall fill in the amount of second instalment and present the cheque to the bank.

- d) That the respondent filled an amount of Rs.43,05,649/- on the said cheque and presented the same to the bank without taking consent from the complainant. The complainant had arranged for second instalment which amounted to a sum of Rs.20,92,123/-. However, the respondent intended to cancel the unit of the complainant, however as the respondent intended to cancel the unit of the complainant as the respondent deliberately presented a cheque of an exorbitant amount and that too without prior information or approval of the complainant.
- e) That the complainant is ready and willing to make the entire payment as per the terms of buyer's agreement and therefore prayed for setting aside of cancellation letter dated 27.11.2023. Further, the respondent also tried to sell the unit to some third party during the pendency of the present complaint.

F. Written Submissions filed by the respondent:

10. The respondent had made some additional submissions vide its written submissions dated 02.01.2025:
- a) That the complainant has failed to effectuate timely payment under the builder buyer agreement/agreement for sale. It is evident from the conduct of the complainant that the cheques allegedly issued by her were dishonoured upon presentation to the respondent's bank.
- b) That the following cheques issued by the complainant were dishonoured:
- Cheque No. 000116** for Rs. 21,15,933/- dated 25.11.2022, dishonoured due to **incorrect name** (Discrepancy in title)
 - Cheque No. 000124** for Rs. 43,05,649/- dated 15.09.2023, dishonoured due to **insufficient funds**, with intimation sent to the complainant immediately.
- c) At this stage, it is crucial to highlight the complainant's attempt to mislead the Court by altering her statement at various stages. Initially, the complainant, in her complaint, made the submission that "*the complainant*



handed over a cheque bearing No. 00124, dated 15.09.2023, in favour of SGDPL Signature Global City 37D, amounting to Rs. 43,05,649/-, drawn on HDFC Bank, against the payment of the due amount for her floor; however, the said cheque was allegedly misplaced by the officials of the Respondents."

- d) However, in her reply to the application filed by the respondent for seeking clarification of the order dated 16.10.2024, the complainant took a summersault by asserting that *the misplacement pertains to a cheque of Rs. 21 lakhs, rather than the originally stated Rs. 43 lakhs.*
- e) Hence, it is evident from the conduct of the complainant, that the complainant is just trying to fabricate a false narrative, demonstrating that the current assertions are mere afterthoughts intended to mislead the Court and are made without any consistency or credibility. Such conduct raises serious doubts about the complainant's bona fides and the reliability of her claims. Notably, it is categorically denied that these cheques were misplaced by the respondent as alleged by the complainant as the same are dishonoured. Even prior to cancellation of the said allotment, the respondent duly sent the following reminders, intimation letters, and pre-cancellation notices to the complainant urging for payment:

Sr. No.	Particulars of Document	Date	Annexures No. in Reply
1.	Reminder -1	26.12.2022	Annexure R-2
2.	Reminder 2: Copy of the pre- Cancellation	16.01.2023	Annexure R-3
3.	Reminder 3: Copy of the email dated 04.07.2023 (Reminder letter unit no. 37D-J5-1F)	04.07.2023	Annexure R-4
4.	Reminder 4: Copy of Pre- Cancellation Notice SG/8.2.1/F54/R0	04.07.2023	Annexure R-5
5.	Copy of the Email dated 21.09.2023 Subject: Cheque Bounce Intimation	21.09.2023	Annexure R-6
6.	Reminder 5: Copy of the Email dated 05.10.2023 (Reminder letter unit no. 37D-J5-1F)	05.10.2023	Annexure R-7
7.	Copy of the Cancellation Notice SG/8.2.1/F46/R0	05.10.2023	Annexure R-8
8.	Copy of the Email dated 20.10.2023, (Subject: - Intimation Letter)	20.10.2023	Annexure R-9
9.	Copy of the Email dated 16.11.2023 and Final Settlement Letter (Colly)	16.11.2023	Annexure R-10



However, despite the above-mentioned multiple reminders, the complainant did not respond or make any payment.

f) That following are the details of payments made by the complainant:

S. No.	Date of payment	Payment mode	Payment reference	Paid amount*
1	19-09-2021	Online	126287524091	1,00,000/-
2	06-12-2021	Cheque	000098 HDFC	3,75,000/-
3	06-12-2021	Cheque	000099 HDFC	3,75,000/-
4	15-03-2022	Cheque	000107 HDFC	10,51,908/-
Total payment made by complainant				19,01,908/-

g) The following credit notes were issued to the complainant as part of the applicable schemes (Inaugural Discount and Gold Coin):

S. No.	Date of payment	Payment mode/ reference	Payment	Credit notes for the amount
1.	19-09-2021	Credit note against Gold Coin		51,000/-
2.	10-02-2022	Credit note against Inaugural discount		3,10,000/-
Total amount for which Credit note has been given				3,61,000/-

h) That despite the adjustment of said amount in ledger, this cannot be considered as the amount paid by the complainant being beneficiary of scheme applicable at relevant point of time. It is unequivocally established that the complainant has neither paid the outstanding amount as per the terms of the buyer's agreement nor have the cheques issued by the complainant been honoured. Therefore, the cancellation of the allotment was carried out in accordance with the terms of the BBA and is legally valid.

G. Jurisdiction of the authority

11. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the following reasons given below.

G.I Territorial jurisdiction

12. 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 entire Gurugram District for all

purpose 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 the complete territorial jurisdiction to deal with the present complaint.

G.II Subject matter jurisdiction

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

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

H. Findings on the relief sought by the complainant.

H.I Direct the respondent to quash cancellation notice dated 25.11.2023 issued by respondent to the complainant.

H.II Direct the respondent not to cancel/alienate the allotment of said unit to any third party.

H.III Direct the respondent to handover the physical possession of the unit after completing all the requirements of the said independent floor in all aspects as per Agreement for Sale.

15. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

16. The factual matrix of the case reveals that the complainant was allotted unit no. 37D-J5-1F in the respondent's project at the sale consideration of Rs. 87,56,502/-. A buyer's agreement was executed between the parties on 20.12.2021. The possession of the unit was to be offered by 31.12.2023 in terms of clause 7.1 of the buyer's agreement executed between the parties. Therefore, the due date of handing over possession comes out to be 31.12.2023.
17. The plea of the complainant is that the complainant has paid a sum of Rs. Rs. 44,02,509/- towards the subject unit and is ready and willing to retain the allotted unit in question. However, the respondent submitted by way of affidavit dated 25.02.2025 that only an amount of Rs.19,01,908/- has been paid by the complainant as two cheques allegedly issued by the complainant amounting to Rs.21,15,933/- and Rs.43,05,649/- were dishonoured upon presentation before the respondent's bank. An updated statement of accounts dated 14.02.2025 was also placed on record substantiating the same.
18. On the contrary, the complainant placed on record a copy of receipt against the cheque payment amounting to Rs.21,15,933/- issued by respondent to her. Perusal of the said receipt issued by respondent to the complainant on 31.12.2022 reveals that same was issued subject to realization of cheque, as mentioned in the "Note" appended to the receipt.
19. For deciding the actual amount paid by the complainant to the respondent, the authority vide its order dated 12.03.2025 directed both the parties to provide relevant documentary proof of payment made by the complainant along with respective bank statements owing to various discrepancies in amount paid by the complainant. In compliance of the said orders, the respondent submitted its bank statement highlighting the entries wherein it is clearly indicated that cheque amounting to Rs.21,15,933/- submitted for

realisation on 02.01.2023 was dishonoured on the same date owing to title being different and cheque amounting to Rs.43,05,649/- submitted for realisation on 18.09.2023 was also dishonoured on the same date due to insufficient funds. It is important to note that the complainant neither gave any documentary proof of payment made by her nor submitted bank statement substantiating the fact that an amount of Rs.44,02,509/- has been paid by her.

Thus, after a careful perusal of documents available on record as well as submissions made by the parties, it can be ascertained that the complainant has paid only Rs.19,01,908/- towards the unit in question.

20. Further, the respondent cancelled the allotted unit of the complainant vide cancellation letter dated 25.11.2023 and a final settlement letter dated 16.11.2023 was issued in favour of the complainant. Thereafter, third party rights were created against the said unit on 13.01.2024 by selling the unit in question to Ms. Babita Devi. Now, the question before the authority is whether the cancellation is valid or not?
21. The authority has gone through the payment plan (Schedule 'C') of the agreement executed between the parties, same is extracted below for ready reference: -

Sr. No.	Particulars	(%)
1.	At the time of submission of application form or Clearance of Cheque (whichever is earlier)	9%
2.	On Allotment or 60 days from the submission of application (whichever is earlier)	16% of total price Simultaneously to registration of BBA
3.	Within 8 months from the date of booking or Clearance of Cheque (whichever is earlier)	25%
4.	Within 14 months from the date of booking or Clearance of Cheque (whichever is earlier)	25%
5.	Within 20 months from the date of booking or Clearance of Cheque (whichever is earlier)	20%
6.	On Offer of Possession	5% of total price+ Possession Charges/Other Charges (If Any) as applicable.

22. After, considering the documents available on record as well as submissions made by the parties, the authority is of considered view that the respondent is right in raising demands as per payment plan agreed between the parties, i.e., towards the stage “within 8 months from the date of booking or clearance of cheque (whichever is earlier)”.
23. The respondent sent reminder letter dated 26.12.2022 and pre-cancellation letter dated 16.01.2023 to clear the outstanding dues amounting to Rs.21,16,524.58/-. Another pre-cancellation notice dated 04.07.2023 was sent to the complainant to clear the outstanding dues of Rs.23,92,500.25/-. Further notice of termination dated 05.10.2023 was also sent giving the last opportunity to the complainant to clear the outstanding dues of Rs.47,48,686.04/-, failing which the allotment of the complainant would be terminated. However, the complainant continued with his default and failed to make payment even after receipt of pre-cancellation notice dated 04.07.2023 leading to cancellation of unit vide letter dated 25.11.2023.
24. As per clause 9.3 of the buyer’s agreement, the respondent has a right to cancel the unit and forfeit the earnest money where an allotment of the unit is cancelled due to default of complainant to make timely payments as per the agreed payment plan. Clause 9.3 of the buyer’s agreement is reproduced under for ready reference:

9.3

(i) In case the Allottee fails to make payments for demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate prescribed in the Rules.

(ii) 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, the Promoter may cancel the allotment of the Unit for Residential usage along with parking in favor of the Allottee and refund the money paid to him by the allottee by forfeiting the booking amount paid for the allotment, taxes paid by the Allottee 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.

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.

25. Further, Section 19(6) and Section 19(7) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. The respondent has given sufficient opportunities to the complainants and finally cancelled the allotted unit of the complainant vide letter dated 25.11.2023. Hence, cancellation of the unit in view of the terms and conditions of the buyer's agreement dated 20.12.2021 is held to be valid.
26. Now, the second issue for consideration arises as to whether after cancellation the balance amount after deduction of earnest money of the basic sale consideration of the unit has been sent to the claimants or not. An account statement dated 12.07.2023(Annexure R9 at page 102 of reply) clearly manifests that an amount of Rs.36,93,023/- has been refunded back to the complainant after deduction of 10% earnest money amounting to Rs.18,46,490/-. 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."

27. 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 can't retain more than 10% of sale consideration as earnest money on cancellation. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the basis 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/cancellation i.e., 14.03.2023 till the actual date of refund of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017
ibid.


I. Directions of the authority

28. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations

cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- I. The respondent is directed to refund the paid-up amount of Rs.19,01,908/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration. The amount already paid by the respondent to the complainant may be adjusted from the refundable amount and shall return the balance amount to the complainant. The refund should have been made on the date of cancellation i.e., 14.03.2023. Accordingly, the interest at the prescribed rate i.e., 10.95% is allowed on the balance amount from the date of cancellation till the actual date of refund of the amount within the timelines provided in Rule 16 of the Rules, 2017, *ibid*.
 - 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.
29. Complaint stands disposed of.
30. File be consigned to registry.

Dated:26.03.2025


Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram