

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

Complaint no.:  
Date of decision:

169 of 2024  
02.07.2025

Adish Kumar Gupta  
R/o:- 4196, Sector-23-A, Gurugram.

**Complainant**

Versus

M/s Ansal Housing and Construction Limited.  
**Registered Office at:** 15UGF, Indra Prakash  
Building, 21, Barakhamba Road, New Delhi-110001.

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sachin Yadav (Advocate)

Complainant

Amandeep Kadyan (Advocate)

Respondent

**ORDER**

1. The present complaint 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 29 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 provision 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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project	"Ansals Amantre"
2.	Location of the project	Sector-88-A, Gurugram.
3.	Nature of the project	Group Housing
4.	DTCP license	License no. 42 of 2013 Dated-06.06.2013
5.	HRERA Registered	Not Registered
6.	Allotment letter	Not on record
7.	Unit no.	T7-1103, Type-3BHK+ 3T Corner cum Park facing/adjoining (As on page no. 23 of complaint)
8.	Unit area	1830 sq.ft [Super Area] (As on page no. 23 of complaint)
9.	Apartment Agreement	Buyer's 08.01.2015 (As on page no. 21 of complaint)
10.	Possession clause	<b>Clause-31</b>

		<p>The Developer shall offer possession of the Unit any time, <b>within a period of 48 months from the date of execution of Agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later</b> subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a grace period of <b>6 months allowed to the Developer over and above the period of 48 months</b> as above in offering the possession of the Unit.</p> <p>[Emphasis supplied]</p> <p>(As on page no. 30 of complaint)</p>
11.	Due date of possession	08.07.2019 (08.01.2019 + 6 months grace period)
12.	Sale consideration	Rs.1,15,51,875/- (As on page no. 23 of complaint)
13.	Amount paid	Rs.28,06,574/-

		(As per the bank statement of the complainant annexed at page no. 18 of complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Reminders	19.01.2018 28.01.2016 16.02.2016 01.03.2016
17.	Cancellation letter	17.06.2016 (As on page no. 15 of reply)

### B. Facts of the complaint:

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

- I. That the respondent no.1 and the respondent no.2 (collaborator) presently own and possess large land holding situated in Sector - 88A Gurugram. The respondent planned to develop a residential apartment in a specific group housing complex named as "Ansals Amantre" on the said land.
- II. That believing upon the representations/assurances and warranties of the respondent to be true, the complainant agreed to purchase a residential apartment in the said project. The complainant booked the apartment somewhere in December 2013 and paid an amount of Rs.7,50,000/- on 21.06.2013, Rs.9,96,384/- on 01.10.2013 and Rs.10,60,190/- on 16.01.2013 to the respondent. The complainant had paid total of Rs.28,06,574/- to the respondent within six months time in the year 2013.

- III. That the Apartment Buyer's Agreement was executed on 08.01.2015 between the complainant and the respondent. As per Clause 31 of the said Apartment Buyer's Agreement, the respondent agreed to handover the possession of the unit on or before 08.07.2019 which includes the grace period as mentioned in the said Apartment Buyer's Agreement.
- IV. That somewhere in March 2014, the complainant tried to contact the respondent and enquire about the status of completion of the project in dispute but he was not able to receive any information.
- V. That the complainant tried to contact the officials of the respondent in every way of communication but all in vain. There was no heed paid to the concerns of the complainant by the officials of the respondent.
- VI. That it is pertinent to mention here that as per the Apartment Buyers Agreement, time is the essence with respect to the intending allottee obligations to pay the price of the said unit in accordance with the Schedule of Payments as given in Annexure - A along with other payments as applicable. It is pertinent to mention here that the payments were made in time and without major delays to the respondent.
- VII. That it was in November 2018, the complainant visited the project site to check the status of his tower and was left in utter shock when he saw that the construction of the said tower has not been completed till that day.
- VIII. That 08.07.2019 was the due date of possession as per the possession clause of the Apartment Buyers Agreement but shockingly the construction work of the tower in which the subject

unit is situated has not been completed yet. It has been more than 9 years from date of execution of the Apartment Buyers Agreement and the construction of the project has not been completed till date despite receiving substantial amount of the hard earned money from the complainant.

- IX. That the respondent failed to even register the said project in dispute under RERA and committed grave miscarriage of law on its own part. Without prejudice, it can be stated with conviction that there has been no intentional delay in payment from the end of the complainant and the complainant has made numerous representations to the respondent and has been constantly following up through personal messages, letters and calls but the respondent have not given any satisfactory response and no clarity regarding the likely date of delivery of the subject unit in dispute as per the Agreement.
- X. That, in the year 2019, the complainant visited the project site, and to the utter shock and surprise of the complainant the project was still under construction and the tower in which the complainant's unit was located has not yet completed. That the complainant constantly followed up regarding the status of the project but never received any satisfactory response from the respondent.
- XI. It is pertinent to mention that despite several calls, messages and personal visits by the complainant requesting the respondent to refund the amount paid by the complainant, no satisfactory response has been made on the concerned issue.
- XII. That it is the obligation of the Promoter under Section 12 of the RERA Act to adhere with the promises made under advertisement



and prospectus, and contravention of the same attracts the penalty.

The relevant extracts are reproduced hereunder:

***"12. Obligations of promoter regarding veracity of the advertisement or prospectus.***

*Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model Food Court Kiosk, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:*

*Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model Food Court Kiosk, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act."*

- XIII. That the RERA Act mandates the proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the Competent Authorities. The relevant extract of the Section 14 is reproduced hereunder:-

***"14. Adherence to sanctioned plans and project specifications by the promoter.***

*(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.*

*(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the Unit, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the*

said Unit, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the Unit, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take Food Court Kiosks in such building.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."

- XIV. In view of the above, the respondents contravened the provisions of the Act and are liable to be punished for making fraudulent promises to the complainant along with other allottees in the project. The respondent is liable to adhere to the Apartment Buyer's Agreement and Allotment Letter and in case of contravention of the same, the Act empowers the complainant to withdraw from the



project and seek a refund along with compensation for the amount paid till date.

- XV. It is submitted that the aforesaid facts clearly demonstrate that the respondent have usurped huge amounts from the complainant and diverted their hard-earned money to other uses, for its selfish commercial gains. The respondent cannot be allowed to re-invest hard-earned money of the complainant to enhance its residential gain, at the expense of the complainant, with no adequate compensation to them.

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

4. The complainant has filed the present compliant for seeking following reliefs:
- i. Direct the respondent to refund the entire amount deposited by the complainant along with the interest as prescribed rate.
  - ii. Direct the respondent not to charge holding charges till the present complaint is not decided.
  - iii. Direct the respondent to pay cost of the litigation to the complainant.
  - iv. Restrain the respondent from raising any fresh demand & any liability on the complainant.
5. On the date of hearing, the Authority explained to the respondent /promoter about the contravention 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 respondent:**

6. The respondent has contested the present complaint on the following grounds:

- I. That the present complaint is not maintainable and barred by limitation as the subject unit was cancelled by the respondent on 17.06.2016. That the present complaint was filed on 11.01.2024 i.e. after the delay of more than 8 years.
- II. That the complainant had approached the respondent for booking a flat no. T7-1103 in the project "Amantre", situated at Sector 88A, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an Apartment Buyer Agreement dated 08.01.2015 was signed between the parties.
- III. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement was signed between the complainant and the respondent in the year 2015. It is submitted that the regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. It is further submitted that Parliament would not make the operation of a statute retrospective in effect.
- IV. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. It is submitted that the complainant cannot be allowed to take advantage of his own wrong. That the complainant has defaulted in making payments from initial stages of booking. As can be clearly seen from the Statement of Accounts, that the complainants have always delayed the payment of instalments and therefore not abide by the clauses of the agreement.
- V. That the respondent gave several reminder notices dated

19.01.2016, 28.01.2016, 16.02.2016, 01.03.2016 etc. to the complainant for clearing the outstanding dues and vide letter dated 14.03.2016 gave a last opportunity to the complainants for the payment of Rs.28,35,891/- (outstanding dues of Rs.24,93,202/- plus interest Rs.3,42,688/-) by 04.04.2016 failing which the unit will be cancelled and earnest money will be forfeited. The complainant failed to make payment of the outstanding dues and his unit was cancelled as per the terms of the agreement. The said cancellation was informed to the complainant vide letter dated 17.06.2016.

- VI. That as per Section 19(6) of the Act, 2016, the allottee is obligated for timely payments as per the agreement. So, the timely payments is not only a contractual duty of the complainants but also the legal duty, which the complainant has failed to perform. Therefore, the complainant herein is at default without the fault of the respondent. That as per Section 11(5) of the Act 2016, the promoter may cancel the allotment only in terms of agreement for sale. Also, as per clause 19 of the agreement, the respondent can cancel the agreement if the complainants fail to make the payment on time. Therefore, as per the provisions of the Act of 2016, the respondent herein was well within its rights to cancel the allotment of the complainants in case of default of payment.
- VII. That the complainant has admittedly filed the complaint in the year 2024 and the cause of action accrued on 17.06.2016. Therefore, it is submitted that the complaint cannot be filed after a delay of almost 8 years and the same is barred by limitation. That the complainant has not impleaded the IHFL Ltd as a party. It is the

admitted case of the complainant that the IHFL LTD had, without the instructions of the complainant, transferred the loan amount to the respondent. Therefore, without having the IHFL LTD as a party it would be safe to assume that the complainant and the IHFL are hand-in-gloves with each other.

- VIII. That the delay has been occasioned on account of things beyond the control of the respondent. The respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.
- IX. That the respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. It is submitted that as per clause 32 the builder buyer agreement it is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession.
- X. That since the complainant is relying upon the agreement dated 08.10.2015 therefore, the clause 62 of the aforesaid agreement is relevant as it talks about the dispute being settled by appointing an arbitrator or through arbitration proceedings only.

- XI. That due to the acts of the complainant of not paying any EMIs to the IHFL Ltd., the respondent had to get dependent on other alternatives. The IHFL (Indian Bulls Housing Finance Ltd.) and the respondent got tangled in disputes and the IHFL had backed out to finance the "Amantre" project in question. Pursuant to which the respondent had filed a case before DRT Chandigarh wherein till date stay has been ordered on the Amantre Project.
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 these undisputed documents and submission 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**

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 complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;*

9. 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.
10. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section*



*72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

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

**F.1 Objection regarding Force majeure circumstances.**

12. The respondent-promoter has raised an objection that the handover of possession has been delayed due to certain circumstances which were beyond the control of the respondent and stated that the delay was caused due to various orders passed by the Hon'ble Punjab and Haryana High court, Hon'ble NGT, demonetization, outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date.
13. In the present case, the Apartment Buyer Agreement was executed between the parties on 08.01.2015. As per clause 31 of the Agreement dated 08.01.2015, the due date for offer of possession of the unit was within a period of 48 months from the date of execution of this agreement or 48 months from the date of obtaining all the required sanctions and approvals necessary for construction, whichever is later. As the date of obtaining all the required sanctions and approvals necessary for commencement of construction is not available, the due

date is calculated 48 months from the date of execution of the agreement. A grace period of six months over and above the said period was agreed between the parties, the same being unqualified is granted to the respondent. Thus, the due date of possession comes out to be 08.07.2019.

14. The respondent has submitted that due to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the environment pollution, shortage of labour etc but these were for a short period of time and are the events happening every year. The respondent was very much aware of these event and thus, the promoter/ respondent cannot be given any leniency based on the aforesaid reasons. The respondent has further stated that due to the outbreak of Covid-19 the project was stalled. The Authority is of the view that the Authority through notification no. **9/3-2020 dated 26.05.2020**, had already provided a six months extension for projects with completion dates on or after 25.05.2020 , the due date of possession in the present case is much before the above mentioned timeline. Thus, no relief in lieu of Covid-19 is granted to the respondent. Therefore, the due date of handing over possession was 08.07.2019.

**F.II. Objection regarding complaint being barred by limitation:**

15. The respondent has raised an objection that the present complaint is barred by limitation as the unit of the complainant was cancelled on 17.06.2016. The respondent issued demand letters and reminder notices to the complainant for making payment of the due installment. However, the complainant failed to make the payment and the allotment of the unit was cancelled on 17.06.2016 and thus, no cause

of action in favour of the complainant exists and the present complaint should be dismissed being barred by limitation.

16. The complainant has failed to fulfil his contractual obligation of making timely payments as per the agreed terms. The respondent, in accordance with the payment schedule, duly raised demand letters and upon non-payment, issued appropriate reminders and notices to the complainant. Despite receipt of these communications, the complainant remained in default and did not take steps to remedy the breach and thus, the allotment of the unit was cancelled by the respondent on 17.06.2016. But since, the respondent failed to refund the amount paid by the complainant after forfeiting the earnest money, the cause of action in favour of the complainant and against the respondent is continuing. Thus, the present complaint is not barred by limitation.

**F.III Objection regarding non invocation of Arbitration Clause:**

17. The respondent has raised an objection that the complainant has not invoked arbitration proceedings as per the Apartment Buyer's Agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

**" Clause-62**

*All or any disputes arising out or touching upon or in relation to the terms of the application and/or Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereof for the time being in force. The arbitration shall be held at an appropriate location in Delhi by sole arbitrator jointly appointed by the Developer and the Buyer and arbitrator decision shall be binding upon the parties and the cost of the Arbitration proceedings shall be borne by the Buyer".*

18. The respondent contented that as per the terms and conditions of the application form duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainant, the same shall be adjudicated through arbitration mechanism. The Authority is of the view that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the Buyer's Agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgements of the Hon'ble Supreme Court, Particularly in **National Seeds Corporation Limited v. M.Madhusudhan Reddy & Anr. (2012) 2 SCC 506**, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to or not in derogation of the other laws in force, Consequently the Authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Similarly, in **Aftab Singh and ors. V. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017**, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builders could not circumscribe the jurisdiction of a consumer forum.

19. While considering the issue of maintainability of a complaint before a consumer forum/commission in the face of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as **M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC. The relevant para of the judgement passed by the Supreme Court is reproduced below:

*"This court in the series of judgements as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection act on the strength an arbitration agreement by Act,1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant have also been explained in Section 2© of the Act. the remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

20. Therefore, in view of the above judgements and considering the provisions of the Act, the Authority is of the view that complainant is well within the right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.



**G. Findings on the reliefs sought by the complainant:**

**G.I. Direct the respondent to refund the entire amount deposited by the complainant along with the prescribed rate of interest.**

21. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

***"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 to 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."*

*(Emphasis supplied)*

22. The complainant submitted an application for the provisional allotment of an apartment in the project namely "Ansals Amantre," located at Sector-88A, Village Harsaon, Gurugram, Haryana. An Apartment Buyer's Agreement was executed between the complainant and the respondent on 08.01.2015 in respect of unit bearing no. T7-1103, Type-3BHK, Admeasuring 1830 sq.ft. of sale area for a sale consideration of Rs.1,15,29,000/-. As per clause 31 of the Agreement dated 08.01.2015, the respondent undertook to handover possession



of the unit within 48 months from the date of execution of Agreement or within 48 months from the date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later. Further, a grace period of six months is allowed to the respondent over and above the period of 48 months in offering possession of the unit to the allottees. As the date of obtaining the sanctions is not available so the period of 48 months is calculated from the date of execution of the agreement. Accordingly, the due date for handing over possession of the unit is calculated 48 months from 08.01.2015 plus six months i.e., the due date of handing over of possession comes out to be 08.07.2019.

23. The respondent has not obtained the Occupation Certificate from the competent authority for the project till date. The complainants have paid a sum of Rs.28,06,574/- out of the sale consideration of Rs.1,15,29,000/-.
24. After considering the documents on record and the submissions made by the parties, the Authority observes that due to the complainant's persistent defaults and despite being afforded multiple opportunities to make the payments, the respondent ultimately cancelled the allotment of the apartment on 17.06.2016 after serving various reminders to the complainant.
25. The Authority is of the considered view that the demand was raised by the respondent at the appropriate stage. However, the complainant failed to fulfil his corresponding obligation i.e., timely payment of the outstanding dues. The cancellation of the complainant's allotment was done by the respondent in accordance with due process, and the Authority finds no evidence of mala fide intent or procedural

irregularity on the part of the respondent. Accordingly, the cancellation of the allotment is upheld. The respondent is directed to refund the amount paid by the complainant, after deducting the earnest money in accordance with the terms of the agreement.

26. In this case, refund can only be granted after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides 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. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is liable to refund the paid-up amount of Rs.28,06,574/- after deducting 10% of the sale consideration of Rs.1,15,29,000/- 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 filing of the complaint i.e., 16.01.2024 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

**G.II Direct the respondent to not charge holding charges till the present complaint is not decided.**

28. With respect to the claim for holding charges, it is observed that the unit in question stood cancelled in the year 2016. Accordingly, the respondent is not entitled to levy or recover any holding charges and no directions are required to be issued in this regard. .

**G.III. Direct the respondent to pay litigation charges.**

29. The complainant is seeking the above mentioned reliefs w.r.t compensation. The Hon'ble Supreme Court of India in Civil Appeals no. 674445-679 of 2021 titled as **M/s Newtech Promoters and Developers Ltd. V/s State of UP (Supra)** has held that an allottee is entitled to claim compensation and litigation charges under Section 12, 14, 18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation and litigation charges shall be adjudicated by the adjudicating officer having due regards to the factors mentioned in Section 72. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation

**H. Directions of the Authority:**

30. 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) of the Act.
- i. The respondent/promoter is directed to refund the paid-up amount of Rs.28,06,574/-, after deducting 10% of the sale consideration being earnest money along with interest on such balance amount at the rate of 11.10% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of filing of the complaint i.e., 16.01.2024 till its actual 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.

31. Complaint stands disposed of.

32. File be consigned to the registry.

Dated: 02.07.2025

**(Ashok Sangwan)**

Member

Haryana Real Estate  
Regulatory Authority,  
Gurugram

