BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**5855 of 2023**
Complaint filed on:		**03.01.2024**
Date of decision	**:**	**30.05.2025**

Vineet Kumar
Kiran Kumari Singh
R/o: - Flat 5/1, 1st floor, B block, Ganesh Lakshya Apartment, Jai Parkash Udyaan, Adityapur, Jharkhand- 831013 **Complainants**

Versus

M/s Advance India Projects Ltd.
Office at: - 232-B, 4th Floor, Okhla Industrial Estate, Phase III, New Delhi-122002 **Respondent**

CORAM:
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Sh. Pranav Sarthi (Advocate) Complainants
Sh. Dhruv Rohatgi (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 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 to the allottee as per the agreement for sale executed *inter se* them.

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:

S. No.	Particulars	Details
1.	Name of the project	AIPL Joy Square
2.	Project location	Sector 63 A, Gurugram, Haryana
3.	Nature of the project	Commercial Complex
4.	Application dated	19.02.2019 (Page 31 of the reply)
5.	Allotment of unit	14.03.2019 (Page 48 of the reply)
6.	Unit no.	508, 5th floor (Page 48 of the reply)
7.	Unit area admeasuring	859.40 sq. ft (Page 48 of reply)
8.	Date of buyer's agreement	Not executed
9.	Possession clause	**(j)** *The company shall subject to force majeure conditions proposes to* ***handover possession of the unit on or before 31st December 2022*** *notified by the company to the authority at the time of registration of the project....* (As per page no. 37 of reply)
10.	Due date of possession	31.12.2022 (As clause j of application form at 48 of reply)
11.	Total sale consideration	Rs.78,05,076/- (As per payment plan at page no. 49 of reply)
12.	Reminders/demand letters	07.05.2019, 01.12.2019, 11.12.2019, 12.04.2021
13.	Amount paid by the complainant	Rs.17,29,085/- (page 70 of the reply)
14.	Occupation certificate	09.11.2023 (page 72 of the reply)
15.	Intimation of constructive possession	03.10.2020 (page 86 of the reply)

16.	Amount paid towards assured return	Rs. 1,30,870/- (page 68 of the reply)
16.	Termination letter	12.04.2021 (page 70 of the reply)

B. Facts of the complaint

3. The complainant has made the following submissions: -

i. That the complainants are law abiding citizens of India and are permanent resident of the address mentioned hereinabove. At the time of booking, the complainants were working for gain and were residents of Gurugram, whereas respondent is a company incorporated under the provisions of the companies act, 1956 with the registrar of companies, Delhi. The respondent company is involved in real estate activities. The respondent's project namely, advance India private limited joy square is a retail and commercial project being in sector 63A Gurugram, Haryana.

ii. On 19.02.2019, based on the assurances and representations of timely completion, loan processing, and other amenities, the complainants paid an advance sum of Rs.5,00,000/- to the respondent towards allotment of the unit no. 508 on the 5th floor in the project of the respondent. This payment was duly acknowledged and accepted by respondent vide payment receipt dated 20.02.2019.

iii. On 12.03.2019, complainants paid a further sum of Rs.3.64,543/- to respondent towards allotment of the unit. Thus, by now, the total payment made to the respondent was Rs.8,64,543/- that was more than 10% of the total cost of the unit i.e., Rs.78,05,070/- without any written agreement as stipulated under section 13 of the Act.

iv. That pursuant to aforesaid payments, the respondent vide allotment letter dated 14.03.2019 allotted unit no. 508, 05th floor, in joy square

tower, Gurugram, Haryana, Sector 63A, having an area of 859.40 sq. ft. to the complainants.

v. That, on 06.05.2019, the complainants further paid a sum of Rs.8,64,542/- towards sale consideration of the unit to the respondent. Thus, the complainants had paid a total sum of Rs. 17,29,085/- out of total sale consideration of Rs.78,05,070/- to the respondent i.e., almost 22 % of the total cost of the unit. Based on the assurances, representations, and mutual discussion between the complainants and respondent, it was agreed and understood that the respondent would share a list of bank/financial institution(s) which would approve the project for housing loan and finance schemes. In fact, this mutual understanding of the parties is evident from the emails exchanged between the complainants and HDFC bank.

vi. That the respondent vide an email dated 31.10.2019 informed the complainant that their allotment letter and the payment receipts for aforesaid payments towards the unit were being dispatched. In response, the complainants vide email dated 05.11.2019 to the respondent sought clarification as to how the next date of payment, and tie-up with banks for loan approval. The complainants further clarified and emphasized that as the delay was on part of the respondent, they would not be liable to pay interest, if any.

vii. Pursuant to aforesaid emails and the mutual understanding between the parties, the respondent vide email dated 09.11.2019 informed that it would soon be sharing the final list of the banks with the complainants soon. In reply, the complainants categorically sought a confirmation from the respondent that it would levy penalty on payment of instalments as the delay was on respondent's part. This understanding

between the parties was confirmed vide email dated 11.11.2019 from respondent to complainant.

viii. That in stark contrast to the aforesaid mutual understanding between the parties, the respondent in a shocking turn of events issued a pre-termination email/letter dated 18.01.2020 to complainants. The complainants strongly objected to the same vide email dated 21.01.2020 wherein the impending issue of the final list of approved banks for housing loan was pointed and sought immediate resolution to the said issue. The complainants seek liberty of this Hon'ble Authority to refer and rely upon the contents of the said emails. The respondent thereafter vide email dated 29.01.2020 admitted that the said pre-termination notice was issued wrongly and requested the complainants to ignore the same, and further assured the complainants about the long impending issue of housing loans.

ix. That, without any update on the issue of the bank housing loans and the status of the project, the respondent issued a termination letter dated 12.04.2021 served on the complainants vide email dated 12.04.2021. That being aggrieved by complete inaction and gross deficiency in service, the complainants vide email dated 01.05.2022 sought status of the project from the respondent. The complainants thereafter also visited the project site and the office of the respondent to follow up on the termination letter and refund of sale consideration amount but to no avail. It is admitted and undisputed that by May 2019, the respondent had accepted almost 22% of the total cost of the unit. without entering into an agreement with the complainants.

x. In light of the aforesaid facts and circumstances, it is submitted that the respondent has violated Sections 12 of the Act as the respondent misrepresented the facts about the project based on which the

complainants booked the unit in the project. The respondent further kept making false assurances to the complainants about the final list of banks for approved housing loans. The mutual understanding between the parties was based on assurances and representations made by the respondent, who were supposed to enter into a tripartite agreement with the concerned bank for financing of the housing loan for the balance sale consideration amount for the unit. However, due to complete failure of respondent, the same never materialized. Nonetheless, the respondent without fulfilling its obligations unlawfully issued the termination letter dated 12.04.2021. Thus, the complainants are filing the present complaint before this Hon'ble Authority for redressal of their grievances.

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

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

   i. Direct the respondent to refund the total amount of Rs.17,29,085/- received by the respondent to the complainant along with interest as per provision of the Act of 2016.

   ii. Direct the respondent to pay litigation charges of Rs. 50,000/- to the complainants.

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 has contested the complaint on the following grounds:

   i. The present complaint is liable to be dismissed for non-joinder of proper and necessary party. It is pertinent to note that the present complaint is verified and supported with affidavit of one Ms. Kiran Kumari, who is the co-applicant of the unit pertaining to the present

complaint. However, Ms. Kiran Kumari has not been made party to the present complaint. It is therefore of utmost importance for the proper adjudication of the complaint that the present complaint filed under RERA-GRG-4929-2023 be dismissed for non-joinder of necessary party in the Proforma B.

ii. That the complainant herein has got no locus standi or cause of action to file the present complaint. Moreover, from the aforesaid facts it is apparent that the complainant has malafidely filed the present complaint with the objective to arm twist the respondent and to treat the complainant above law neglecting the applicable rules and procedures.

iii. That the complainants are not "Allottees" but "Investors" who had booked the unit in question as a speculative investment in order to earn rental income/profit from its resale.

iv. The respondent has already terminated the allotment of the complainants, who had failed to complete all the formalities, execution of the buyer's agreement and more specifically, payment of dues for the unit, despite repeated reminders. The reliefs sought in the false and frivolous complaint are barred by estoppel.

v. The complainants had approached the respondent and expressed an interest in booking a unit in the commercial colony developed by the respondent and booked the unit in question, bearing number 508, 5th floor, admeasuring 859.40 sq. ft. (tentative area) situated in the project developed by the respondent, known as "AIPL Joy Square" at Sector 63A, Gurugram, Haryana. The complainants vide application form applied to the respondent for provisional allotment of a unit bearing number 508, 5th floor in the project. It is a matter of record that the complainants were also provided with a copy of the buyer's agreement,

containing the detailed terms and conditions, to which any objection was never raised from the complainants. The said fact was also acknowledged by the complainants, in the duly executed application form dated 19.02.2019.

vi. However, the complainants not only failed to execute the agreement to sell, but even failed to pay the registration charges for the same, despite repeated reminder requests and follow up. It is wrong, immoral, and unethical on the part of the complainant to now contend that the respondent has demanded or collected more than 10% of the total sale consideration, prior to signing of the buyer's agreement/agreement to sell. That the present case is nothing but an afterthought concocted story, made after the issuance of the termination letter by the respondent due to defaults of the complaints. It is the complainants who deliberately and wilfully neglected to execute the agreement for sale despite repeated calls, made to them, calling for execution of the agreement for sale and payment of the registration charges. It is a waiver and estoppel on the part of the complainants who have themselves paid more than 10% without execution of agreement for sale. The respondent cannot be fastened with the liability for the default and breach on the part of the complainants. The respondent now understands the motive behind not deliberately executing the agreement for sale despite regular follow ups, as it is now evident that the complainants did not have adequate funds and in order to wriggle out of their contractual liabilities and forfeiture, they chose to not execute the buyer's agreement, unless adequate funds were available with them. It is further submitted that the development of the project depends on the funds flow from the allottees i.e. payment of instalments on time and in case any of allottees do not pay or fails to pay the

instalments, the fund flow of the project gets affected, which has a cascading effect on the progress of the development of the project, which not only has direct bearing on the allottees, but a severe financial, reputational and prejudicial effect on the promoter/ developer.

vii. The complainant prior to approaching the respondent had conducted extensive and independent inquiries regarding the project then took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent. The complainant consciously and wilfully opted for subvention scheme plan and subsequently to get the assured returns from the unit pertaining to the present complaint requested for changing the same to flexi-payment plan for remittance of the sale consideration for the unit in question and further represented to the respondent that he shall remit every instalment on time as per the payment schedule. It is submitted that the respondent had no reason to suspect Bonafide of the complainants.

viii. That pursuant to the singing and submitting the application form, the respondent had no reason to suspect the bonafide of the complainant and the allotment letter dated 14.03.2019 was issued to them.

ix. The respondent awaited the complainants to execute the buyer's agreement, already shared with them, along with the application form, however, the complainants failed to execute the same and send it to the respondent. The said buyer's agreement would have formed the essence of the transaction between the parties. It is a matter of record that the respondent, kept on requesting the complainants for execution of the buyer's agreement/agreement to sell and sought registration charges for the registration of the said documents, as per the requirements under the RERA Act. The respondent issued emails dated 16.11.2019 and again on 04.04.2020, calling upon the complainants to

issue a cheque for the registration of the agreement to sell. however, the complainants failed to comply with the said requests also. It is pertinent to submit that the respondent has been in due compliance of the provisions of the RERA act and cannot be penalized for the wilful disobedience of the complainants, who have been allotted the unit and chose to not execute the buyer's agreement, despite repeated reminders. The respondent could not have kept its unit blocked and not seek further demands, due to non-compliance by the complainants/ allottees. It is further relevant to submit that if there was any default or violation by the respondent, the complainants ought to have and would have raised an objection at the relevant point in time, which was never done, and the complainants continued to make partial payments to the respondent. Without prejudice, it is submitted that the complainants cannot and should not be allowed to raise or be awarded such frivolous claims, specifically refund, without forfeiture in terms of the contract. Additionally, the respondent is also entitled to the adjustment of the assured returns paid to the complainants from the refundable amounts.

x. That the complainant, after making the initial payment of Rs.17,29,085/- in three tranches, despite being sent repeated demand letters, reminder letters and emails, failed to make further payments.

xi. The complainants were interested to avail a loan facility, however, could not secure the same for the reasons best known to the complainants. The respondent, though not obligated to, yet assisted the complainants to secure a loan facility from a bank, however, the same was not advanced to the complainants by the concerned bank. It is relevant to submit that the complainants on their own got sanctioned a loan from Piramal Housing Finance, for which a sanction letter was also sent through email by the complainants, vide email dated 06.05.2019.

however, the complainants for the reasons best known to them, did not proceed with the said loan facility with Piramal Housing Finance.

xii. Despite sending several reminders, pre-termination letter and letter of intimation of termination, the complainant defaulted in making timely due payments which was an obligatory on the complainant, however the complainant has gravely defaulted in the same.

xiii. Owing to the defaults of the complainants in making further payments, the respondent was constrained to issue a pre-termination letter dated 17.01.2020 to the complainants. However, as a goodwill gesture, the respondent kept the same in abeyance, allowing the complainants further time to avail a loan facility and further tried to assist the complainants to connect with banks.

xiv. That in terms of Clause "(j)" of the application form, the respondent had assured to handover possession of the unit on or before December 2022.

xv. That despite the defaults of the complainants and several other such defaulting allottees, the respondent has completed the development of the said project and applied for the occupation certificate on 26.06.2023 and obtained the occupation certificate of the project on 09.11.2023.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainants-allottees

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 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

10. 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) The promoter shall-*
>
> *(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.*

11. 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 complainant at a later stage.

12. 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. (Supra) 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."*

13. 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.I Objection regarding maintainability of complaint on account of complainant being investor

14. The respondent took a stand that the complainant is investor and not allottees and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he 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 allotment letter, it is revealed that the complainant is buyer, and they have paid a considerable amount to the respondent-promoter towards purchase of 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.*

15. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to 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". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

F.II. Objection regarding non-joinder of proper and necessary party.

16. The respondent has raised a preliminary objection contending that the present complaint has been verified and supported by an affidavit of Ms. Kiran Kumari, who is the co-applicant in respect of the unit forming the subject matter of the present proceedings. However, it has been further contended that Ms. Kiran Kumari has not been impleaded as a party to the present complaint.

17. Upon perusal of the record, it is observed that the learned counsel for the complainant has filed an application for amendment of *Performa B* on

04.04.2025, wherein the co-applicant, Ms. Kiran Kumari, has been duly arrayed as a party to the complaint. In view of the same, the objection raised by the respondent stands infructuous.

G. Findings on the relief sought by the complainant

G. I Direct the respondent to refund the total amount of Rs.17,29,085/- received by the respondent to the complainant along with interest as per provision of the Act of 2016.

18. The complainants were allotted a unit in the project of respondent "AIPL JOY SQUARE" vide allotment letter dated 14.03.2019 for a total sum of Rs. 78,05,076/- and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs. 17,29,085/-. The complainant intends to withdraw from the project and are seeking refund of the paid-up amount.

19. The respondent vide it's reply stated that the unit was cancelled on account of non-payment after issuance of multiple reminders. Further vide proceedings dated 30.05.2025 counsel for the respondent stated that an amount of Rs.1,30,870/- has been paid to the complainants till July'20 and the same has been confirmed by the complainant. Now, the question arises whether the cancellation is valid or not. The complainant has opted for time linked payment plan annexed with the application for at page no. 49 of the reply. As per the opted payment plan, the complainant has to pay any amount at time of booking, 10% from 30 days from the booking date, 10% from 75 days from date of booking, and so on. The complainants were required to pay as per the demands raised by the respondent as per the payment plan.

20. As per clause (j)of the application form provides for handing over of possession and is reproduced below:

> *"The company shall subject to force majeure conditions proposes to* ***handover possession of the unit on or before 31st December 2022*** *notified by the company to the authority at the time of registration of the project...."*

21. The due date of possession as per application form is 31.12.2022 and the respondent has obtained the OC on 09.11.2023. Though the respondent has raised a demand letter dated 07,05.2019, 01.12.2019 and 11.12.2019 for payment of outstanding dues and after that a reminder letter dated 12.04.2021 was issued by the respondent but the complainant never responded to the same. Thereafter, the respondent issued cancellation notice of the unit on 09.11.2023. As per documents placed on record it is evident that the complainants have failed to make the payments as per the opted payment plan. In view of the afore-mentioned facts, the cancellation of the unit dated 12.05.2023 stands valid.

22. However, now when complainant approached the Authority to seek refund, it is observed that as per clause (h) of application at page 37 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:

> *After allotment of the Unit, I/we may at my/our option raise finance or loan for purchase of the Unit. However, getting the loan sanctioned and disbursed shall be my/our obligation. In the event loan is not being sanctioned/disbursed or the same gets delayed for any reason whatsoever, the payment to the Company as per payment plan shall not be delayed. I/We confirm and agree that delay in sanction/disbursement or non-sanction of the loan shall not be a ground for delay in payment of the outstanding dues to the Company, and any such delays* ***may result in levy of interest by the Company or cancelation/termination of the Allotment Letter and forfeiture of the entire Earnest Money (10% of the Total Consideration of the Unit)*** *together with interest on delayed payment, brokerage if paid etc.*

23. 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:

> ***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.*

24. The respondent company has already obtained the occupation certificate of the project on 09.11.2023. Thereafter, the respondent/promoter issued intimation of constructive offer of possession dated 03.10.2020 and further, issued pre-termination latter dated 17.01.2020, however no heed was paid by the complainant to that letter. Thereafter the respondent issued a termination letter to the complainants. The cause of action arose on 12.04.2021 when the unit got terminated due to default (non-payment) on the part of the allottees as only an amount of Rs.17,29,085/- has been paid

out of sale consideration of Rs.78,05,076/- which consists only 22% 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.

25. 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. 17,29,085/- after deducting 10% of the sale consideration after adjusting the amount already paid towards assured returns i.e., Rs.1,30,870/- in respect of the said unit 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., 12.04.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. II Direct the respondent to pay litigation cost of Rs. 50,000/-.

26. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in case titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C)***, 357 held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.

H. Directions of the Authority

27. 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):

    a. The respondent/promoter is directed to refund the paid-up amount of Rs.17,29,085/- after deducting the earnest money which shall not exceed the 10% of the sale consideration along with prescribed rate of interest. The amount already paid towards assured returns (Rs.1,30,870/-) in respect of the said unit be also adjusted from above refundable amount.

    b. The respondent is directed to refund the remaining balance amount to the complainants along with interest at the prescribed rate of 11.10% per annum from the date of cancellation (12.04.2021) till actual realization of amount.

    c. 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.

28. Complaint stands disposed of.

29. File be consigned to registry.

V.I

(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 30.05.2025