

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

Complaint no.: 1093 of 2024  
Date of filing: 20.03.2024  
Date of decision: 13.05.2025

Kuldeep Yadav  
**Regd. Address at:** #2796-A, 2<sup>nd</sup> floor, C-1  
Block Sushant Lok, Near Paras Hospital,  
Gurugram-122009

**Complainant**

Versus

1. M/s Ansal Housing Limited (Formerly known  
as Ansal Housing & Construction)

**Regd. Office at:** - 606, Indraprakash, 21,  
Barakhamba road, New Delhi-110001

2. M/s Samyak Projects Pvt. Ltd.

**Regd. Office at:** - 111, 1<sup>st</sup> floor, Antriksh  
Bhawan, 22 KG Marg, New Delhi-110001

**Respondents**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairperson  
Member  
Member**

**APPEARANCE:**

Mr. Rishab Gupta (Advocate)  
Mr. Amandeep Kadyan (Advocate)  
Mr. Shanker Wig (Advocate)

**Counsel for Complainant  
Counsel for Respondent no. 1  
Counsel for Respondent no. 2**

**ORDER**

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall

be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainants, 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	"Ansal Hub 83 Boulevard", Sector-83, Gurugram
2.	Total area of the project	2.60 acres
3.	Nature of the project	Commercial complex part of residential colony
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid up to and 71 of 2010 dated 15.09.20210 valid up to
5.	Name of licensee	Buzz Estate Pvt. Ltd. & others.
6.	Registered/not registered	Registered vide no. 09 of 2018 dated 08.01.2018 for 2.80 acres Valid up to 31.12.2020
7.	Unit no.	G-003 [pg. 29 of complaint]
8.	Area of the unit	962 sq. ft. [pg. 29 of complaint]
9.	<b>Date of execution of BBA</b>	<b>27.04.2015 (R2 is the confirming party)</b> <b>[pg. 25 of complaint]</b>
10.	Possession clause	<b>Clause 30.</b> <i>The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as</i>

		described in clause 31. Further, there shall be of grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit.  (Emphasis supplied) [page 36 of complaint]
11.	Due date of possession	27.04.2019 6 months of grace period is allowed *Due date of possession inadvertently mentioned as 26.10.2018 in the proceedings dated 13.05.2025 instead of 27.04.2019.
12.	Sale consideration	Rs.1,54,83,390/- (as per page 29 of complaint)
13.	Total amount paid by the complainant	Rs.31,00,000/- (as per page 21 of complaint)
14.	Offer of possession	Not offered
15.	Occupation certificate	Not obtained
16.	Cancellation	04.12.2023 As recorded in POD dated 28.03.2024

### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
  - a. That as per assurances and promises made by the respondent's company in their advertisement, the complainants agreed to purchase the commercial shop in the project Ansal HUB -83 Boulevard, situated at Sector- 83 Gurugram. That after booking, the complainants were allotted unit no. G-003, Shop, Ground Floor measuring 962 sq. ft. Sale area, of Project Ansal HUB -83 Boulevard, situated at Sector- 83 Gurugram.
  - b. That Developer Buyer agreement was executed on 27.04.2015 inter se between parties. The basic sale consideration of the said unit was ₹1,54,83,390/- and the total sale consideration was ₹1,63,27,708.84 (inclusive EDC, IDC, & Other charges/ taxes). That as per Annexure A- at



page no, 21 of the Developer Buyer Agreement, the payment plan was settled as possession linked plan wherein on 25.08.2014 i.e. 30% of booking amount; next payment within 100 days from the booking amount on 17.12.2014 100% LCC and last 70% of payment on offer of possession.

- c. That in compliance of said Annexure A of the Developer Buyer Agreement, complainants have paid up to 30% of from the date of booking i.e. an amount of ₹31,00,000/- has been paid by complainant and the remaining amount was to be paid at the time when respondents company would provide the offer of possession to complainants after obtaining Occupation Certificate and necessary approvals/ sanctions from the Concerned Authorities/ Departments.
- d. That according to the terms of the Developer Buyer Agreement, the respondent's company were supposed to deliver possession within 42 months from the date of execution of BBA i.e. on or before 26.10.2018. The construction was not completed, so the respondents company extended the period of 6 months as grace period i.e. 26.04.2019, which is the final date of delivery of possession as agreed/ assured/ in the terms of Developer Buyer Agreement.
- e. That complainant was regularly in contact with the officials of respondent company to know about the status of construction of project and final date of delivery of possession but officials of respondent's company were making lame excuses and has not given a response to the requests of complainants. Nor even the payment of assured return was paid to the complainant till date. The respondents' company are in default in payment of assured return as agreed under Assured return agreement.



- f. That utter a shock, complainants received an email dated 12.09.2022 wherein it has been stated the project has been transferred/ handed over by Ansal Housing & Constriction Pvt Ltd company to respondent no. 2 in Arbitration proceedings/ Litigation held between respondent no. 1 and 2 inter se and had issued various other emails to get execute the one sided/ arbitrary/ unilaterally agreement with complainants which is completely against the law & facts. The terms of addendum agreements/ other documents are unilateral and arbitrary wholly one sided in favour of respondents for which complainants have clearly raised objection to their emails on various time but respondent no. 2 being in dominant position has not paid any heed to their requested and ultimately , now respondent no. 2 is bent upon to cancel the unit by sending cancellation letter dated 04.12.2023 through you which is completely against the law and statutory provision of law.
- g. That in view of aforesaid view upheld/ analysed by the Hon'ble Arbitral Tribunal, respondent no. 2 is specifically restrained to create any third-party rights and respondent no. 2 have intentionally opted by sending such threaten notice like the present cancellation notice through its Advocate. The complainant received the Cancellation notice dated 04.12.2023 which was replied by the complainants on 20.12.2023.
- h. The respondent no. 2 has no right to cancel the unit rather is under legal obligation to obtain the occupation certificate from the Concerned Department and then issue demand notice as per the terms of the Developer Buyer Agreement. That the respondent no. 2 is playing its own policy without adhering the statutory provision of law and order passed by the Hon'ble Arbitral Tribunal. Violation of any order passed by any tribunal results to Contempt of Court Act. It should not be out to mention here that the project ANSAL HUB-83 BOULEVARD, Sector- 83

Gurugram, has not been got registered / Transferred in name of Respondent no. 2 under the statutory laws and Parliamentary Act, i.e. RERA Act. The respondent no. 2 has not registered this project and in spite of doing the project registration, is bent upon to issue cancellation notice to drag the innocent customers so that under this threat notice respondent no. 2 may receive the receivable from customers like complainants without obtaining Occupation certificate and without offering possession to complainant.

- i. That the respondent has failed to fulfil its obligations as under Builder Buyer agreement and also has failed to provide any offer of possession of the Commercial shop till now. It is clear cut case of abuse of their dominant position of the respondents in the market and such an act needs to be penalized against the respondents. Hence, the cause of action has been arisen to the complainants to file the present complaint before the Hon'ble Authority.
- j. Thus, the respondents in the given circumstances, has voluntarily committed breached terms of the Builder Buyer Agreement dated 27.04.2015 and have acted arbitrarily with the complainant for which the respondent's company should be even prosecuted criminally for cheating, fraud and criminal breach of trust.

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

4. The complainant has sought following relief(s):
  - a. Direct the respondent to pay interest for every month of delay at prevailing prescribed rate of interest.
  - b. Respondent company be restrained from cancelling the unit by sending cancellation letter dated 04.12.2023 and to provide offer of possession of unit.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent no. 1**

6. The respondent has contested the complaint on the following grounds:
- a. That the complainants had approached the answering Respondent for booking a shop in an upcoming project Ansal Boulevard, Sector 83, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. a builder buyer agreement dated 27.04.2015 was signed between the parties.
  - b. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the complainant and the answering Respondent was 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.
  - c. That even if for the sake of argument, the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainant belatedly. The complainant has admittedly filed the complaint in the year 2024 and the cause of action accrue in 2019 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.
  - d. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2015 without coercion or any duress cannot be called in question today. It is submitted that the builder buyer agreement provides for a penalty in the event of a delay





in giving possession. It is submitted that clause 34 of the said agreement provides for Rs. 5/ sq foot per month on super area for any delay in offering possession of the unit as mentioned in Clause 30 of the agreement. Therefore, the complainant will be entitled to invoke the said clause and is barred from approaching the Hon'ble Commission in order to alter the penalty clause by virtue of this complaint more than 9 years after it was agreed upon by both parties.

- e. That the Respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the approval for digging foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the Respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the Complainant.
- f. That the answering Respondent has adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the answering Respondent. It is further submitted that the builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. 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 Answering 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.

- g. That the answering respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. It is submitted that clause 31 of the builder buyer agreement is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession.
- h. That the answering Respondent has clearly provided in clause 34 the consequences that follow from delayed possession. It is submitted that the Complainant cannot alter the terms of the contract by preferring a complaint before the Hon'ble HRERA Gurugram.
- i. That admittedly, the Complainant had signed and agreed on Builder Buyer Agreement dated 27.04.2015. That perusal of the said agreement would show that it is a Tripartite Agreement wherein M/s Samyak Projects Pvt. Ltd is also a party to the said agreement.
- j. That the perusal of the Builder Buyer Agreement at page 3 would show that M/s Samyak Projects Pvt. Ltd not only possesses all the rights and unfettered ownership of the said land whereupon the project namely Ansal boulevard, Sector 83 is being developed, but also is a developer in the said project. That the operating lines at page 3 of the Builder Buyer Agreement are as follow: "The Developer has entered into an agreement with the Confirming Party 3 i.e M/s Samyak Projects Pvt. Ltd to jointly promote, develop and market the proposed project being developed on the land as aforesaid."
- k. The said M/s Samyak Project Pvt. Ltd. in terms of its arrangement with the respondent could not develop the said project well within time as was agreed and given to the respondent, the delay, if any, is on the part of M/s Samyak Project Pvt. Ltd. not on the part of respondent, because



the construction and development of the said project was undertaken by M/s Samyak Project Pvt. Ltd.

1. That in an arbitral proceeding before the Ld. Arbitrator Justice A.K Sikri, M/s Samyak Project Pvt. has taken over the present project the answering Respondent for completion of the project and the Respondent has no locus or say in the present project.

**E. Reply by respondent no. 2**

7. The respondent has contested the complaint on the following grounds:
  - a. That the Respondent No. 2 i.e. Samyak Projects Pvt. Ltd. (Landowner) and Respondent No.1 i.e., ANSAL Housing Constructions Ltd. (Developer/ AHL) entered into a Memorandum of Understanding dated 12.04.2013 (hereinafter referred to as "MoU") in respect of construction and development of a Project known as ANSAL BOULEVARD 83 (hereinafter referred to as "said Project"), situated on a land admeasuring 2.60 acres (equivalent to 20 Kanal 16 Marlas, situated in Village Sihi, Tehsil & District Gurgaon in Sector - 83 of Gurgaon, Manesar forming a part of License No. 113 of 2008 dated 01.06.2008 and License No. 71 of 2010 dated 15.09.2010. As per the said MoU, the Respondent No.1 being the Developer, made sales of various Units to the Allottee(s), executed Builder Buyer Agreements) with Allottee(s) and also received sale consideration amount from the Allottee(s). The Respondent No.2 was not a party to any Builder Buyer Agreement executed between Respondent No. 1.
  - b. That the perusal of the Builder Buyer Agreement at page 3 ("Clause D") would show that M/s Samyak Projects Pvt. Ltd possesses all the rights and unfettered ownership of the said land whereupon the projects namely boulevard 83, Sector 83 Gurgaon, Haryana is being developed. That the operating lines at page 3 (Clause D") of the Builder Buyer



Agreement are as follows: "The Developer has entered into an agreement with the confirming party i.e., M/s Samyak Projects Pvt. Ltd.

- c. As Respondent No.1 failed to fulfil its obligation under the said MoU and construction of the said Project was substantially delayed. Therefore, due to abject failure of Respondent No. 1 to perform its obligations under the said MoU and to construct the said Project, the Respondent No.2 being left with no other option, terminated the said MoU vide Termination Notice dated 10.11.2020. The Respondent No.2 also published a Public Notice in the newspaper dated 16.12.2020 informing the public at large about the termination of said MoU by Respondent No.2 due to breach of the terms of MoU by the Respondent No.1.
- d. The Respondent No.1 challenged the termination of MoU before the Hon'ble High Court of Delhi in OMP (I) (COMM) No.431 of 2020 in the matter titled as "Ansal Housing Limited vs. Samyak Projects Private Limited" under Section 9 of the Arbitration and Conciliation Act, 1996. The Hon'ble High Court of Delhi was pleased to refer the matter to Arbitration and appointed Justice A.K Sikri, (Retired Judge of Supreme Court) as the Sole Arbitrator and appointed local commissioner.
- e. The Learned Arbitrator rejected the prayer of Respondent No.1 for stay on the termination of MoU and directed the Respondent No.1 to handover the possession of said Project on 14.10.2021 to Respondent No.2 for taking over the balance construction of the said Project. The Learned Arbitrator vide Order dated 02.09.2022 held that Respondent No.2 shall also be free to approach the allottees and demand and/or collect monies from them in respect of their Units.
- f. That the Respondent No. 2 is authorized and directed to conduct its operations and does so with integrity and honesty, and in relation to the present project in particular, has displayed its bona fide intent at every





juncture. That, in fact, the commercial shop of the complainant is duly completed in all respects. However, the occupancy certificate has yet not been granted to the Respondent No. 2, as the Respondent No. 2 got the project by the way of interim arbitration order. That the significant progress of the project to the point of completion in itself substantiates and proves Respondent No. 2's bona fide intent.

- g. That after taking over the charge of the company, Respondent No.2 communicated with all the stakeholders including the Complainants, and in its dealings, made every effort to accommodate the different situations of each stakeholder, further proving its bona fide intent.
- h. That the Complainant was served with as many as 11 notices and reminders to come forward and comply with the formalities as mentioned in the said notices, but the Complainant felt shy of sitting across the table to resolve any issues, despite the Respondent No. 2's display of integrity and good faith, due to ulterior motives that have now become apparent.
- i. That the Respondent No. 2, after observing that the Complainant was not coming forward and did not seem inclined to comply with the formalities and settle his dues towards the Respondent No. 2, despite being given every opportunity to do so, was constrained to cancel the flat of the complainant and apprised him of the same via the Cancellation letter dated 04.12.2023.
- j. That it is not out of place to mention here that the contention raised by the complainant in his para no. 10, that there is a status quo in the said project is wrong and false and the said issue is deliberately raised by the complainant just to confuse and mislead the Hon'ble Authority. It is equally important to mention here that the status quo is not on the said project in which the complainant had booked the said shop but in some





other project. It is also important to mention that the Respondent no.2 has already annexed the copy of the order passed by the former judge of Supreme Court of India who is the sole arbitrator of the project.

k. That it is also equally important to mention here that third-party rights had already been created by the Respondent No 2 in the above said shop bearing number G-003 and had already been sold to another allottee and the amount has been paid to the Complaint.

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 these undisputed documents and submission made by the parties.

#### **F. Jurisdiction of the authority**

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **E.I Territorial jurisdiction**

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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.*

12. 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.

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

**G.I. Direct the respondent to pay delayed possession charges on the amount paid at prescribed rate from the due date of possession till physical possession of the unit.**

**G.II. Respondent company be restrained from cancelling the unit by sending cancelation letter dated 04.12.2023 and to provide offer of possession of unit.**

13. The complainant in the present matter was allotted the unit bearing no. G-003 admeasuring 962 sq. ft. approx. super area vide builder buyers' agreement dated 27.04.2015 for a total sale consideration of ₹1,54,83,390/- The complainant agreed to pay the instalments as per the construction linked payment plan annexed with the buyer's agreement. The complainant had paid an amount of ₹31,00,000/- against the sale consideration of the unit. As per clause 30 of the BBA executed between the parties the respondent was obligated to complete the construction of the said unit and hand over possession of the unit within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later with a grace period of 6 months. The due



date shall be calculated from the date of execution of agreement i.e., 27.04.2015 since the date of start of construction is not known therefore, the period of 42 months expires on 27.10.2018. As far as grace period of 6 months is concerned the same is allowed being unqualified. Accordingly, the due date of possession comes out to be 27.04.2019.

14. The authority is of the view that the builder buyer's agreement was signed by the complainant and the respondent no. 1. The respondent no. 2 is a confirming party to that BBA. In the builder buyer agreement, it was specifically mentioned that respondent no. 2(land owner) and respondent no. 1(developer) entered into a MoU dated 12.04.2013 whereby the development and marketing of the project was to be done by the respondent no. 1 in terms of the license/permissions granted by the DTCP, Haryana. Although the respondent no.2 i.e., Samyak Projects Pvt. Ltd. cancelled the agreement vide termination notice dated 10.11.2020 and the matter is subjudice before the arbitral tribunal appointed by Delhi High Court vide order dated 22.01.2021. It is relevant to refer the definition of the term 'Promoter' under the section 2(zk) of the Real Estate (Regulation and Development) Act, 2016.

"2. Definitions.-

(zk) "promoter" means

a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or  
xxxxxxx"

15. The authority observes that landowner is covered by the definition of promoter under sub clause (i) or (ii) of section 2(zk). A person who constructs or causes to be constructed a building or apartments is a



promoter if such building or apartments are meant for the purpose of selling to other persons. Similarly, a person who develops land into a project i.e., land into plots is a promoter in respect of the fact that whether or not the person also constructs structures on any of the plots. It is clear that a person develops land into plots or constructs building or apartment for the purpose of sale is a promoter. The words, "causes to be constructed" in definition of promoter is capable of covering the landowner, in respect of construction of apartments and buildings. There may be a situation where the landowner may not himself develops land into plots or constructs building or apartment himself, but he causes it to be constructed or developed through someone else. Hence, the landowner is expressly covered under the definition of promoter under Section 2 (zk) sub clause (i) and (ii).

16. Further, the authority observes that the occupation certificate for the project is yet to be received and the project stands transferred to the respondent no. 2 who is now responsible to complete the same. In view of the above, the liability under provisions of Section 18(1) of the Act & Rules read with builder buyer agreement shall be borne by both the respondents jointly and severally and the liability to handover the unit shall lie with respondent no. 2.
17. The respondents submitted that the complainants are defaulter and have failed to make payment as per the agreed payment plan. Various reminders and final opportunities were given to the complainant and thereafter the unit was cancelled vide letter dated 04.12.2023.
18. The authority before illustrating upon the relief sought by the complainants shall observe whether the cancellation letter dated 04.12.2023 issued by the respondent is valid or not?
19. The authority has gone through the payment plan, which was duly signed by both the parties. Furthermore, it is matter of record that the complainants



booked the aforesaid unit under the above-mentioned payment plan and paid an amount of ₹31,00,000/- towards total consideration of ₹1,54,83,390/- which constitutes 20.02% of the total sale consideration.

20. It is pertinent to mention here that the complainant was obligated to pay ₹49,10,433/- till 17.12.2014 and rest amount on the offer of possession whereas, the complainant has defaulted in making the payment as agreed at the time of execution of the BBA. The respondent no. 2 sent a reminder vide mail dated 12.09.2022 followed by many reminders. Despite issuance of aforesaid numerous reminders, the complainant has failed to clear the outstanding dues. The respondent no. 2 has given sufficient opportunity to the complainant before proceeding with termination of allotted unit. Thereafter, the respondent no. 2 issued final reminder letter dated 15.09.2023, and finally cancelled the subject unit vide letter dated 04.12.2023.
21. As per clause 24 of the agreement, the respondent/promoter has a right to cancel the unit in case the allottee makes default in making the payment. The said clause is reproduced as under for a ready reference:

*"If payment of instalment/other dues are not received within the stipulated period given in the opted payment plan and/or in the event of breach of any of the terms and conditions of the application and Agreement by the Buyer, the Allotment can be cancelled at the sole discretion of the Developer and the Developer shall be entitled to sell the said Unit at such price and on such terms and conditions to such other person or party (new Buyer) as the Developer may in its absolute discretion deem fit. The Developer shall refund to the Buyer the amount paid by the Buyer towards the basic sale price in pursuance of this Agreement after receiving back the original documents from the Buyer and after compliance of necessary formalities by the Buyer but after deducting there from 20% of the basic sale price of the unit which constitute the earnest money. In case the unit is cancelled as above, the balance amount, if any, shall be refunded by Developer to the Buyer within 30 days after receiving original documents from the Buyer, Only if Developer delays in refunding the balance amount, if any, as above, the developer shall be liable to pay interest @ 5%PA on refund amount for the period*



starting from 30 days after receiving original documents from the Buyer till actual date of refund."

22. That the above-mentioned clause provides that the promoter has right to terminate the allotment in respect of the unit upon default on part of the complainants including timely payment of consideration. Further, the allottee is under obligation to make payments towards consideration of allotted unit as per payment plan annexed with BBA dated 27.04.2015 as per section 19(6) & 19(7) of Act of 2016.
23. Thereafter, the respondent/promoter issued demands letter and further, issued termination letter to the complainant. The respondent no. 2 cancelled the unit of the complainant after giving adequate demands notices. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainant is hereby declined as the complainant-allottee has violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainant after certain deductions as prescribed under law.
24. 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 Ors. VS. Sarah C. Ors., (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 a 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."*

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 respondents are directed to refund the amount received from the complainants after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of termination/cancellation 04.12.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**H. Directions of the authority**



26. 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 respondents are directed to refund the amount received from the complainants i.e., ₹31,00,000/- after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of termination/cancellation 04.12.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid.*
- b. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

27. Complaint stands disposed of.

28. File be consigned to registry.

(Ashok Sangwan)  
Member

(Vijay Kumar Goyal)  
Member

(Arun Kumar)  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 13.05.2025**