BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 1596 of 2024
Date of complaint : 22.04.2024
Date of order : 16.07.2025

Tripta Rani Garg,
R/o: H. No. 617, Model Town, Phase-I,
Bhatinda-151001. **Complainant**

Versus

M/s Pareena Infrastructures Pvt. Ltd.
Having Regd. Office at: - Flat no. 2, Palm Apartment, Plot No. 13B, Sector - 6, Dwarka, New Delhi-110075.
Also at: C-7A, 2nd floor, Omaxe City Centre Mall, Sohna Road, Sector- 49, Gurugram-122018. **Respondent**

CORAM:
Ashok Sangwan **Member**

APPEARANCE:
Sukhbir Yadav (Advocate) Complainant
Prashant Sheoran (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 under the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name and location of the project	"Micasa", sector-68, Gurgaon
2.	Nature of the project	Group Housing
3.	Project area	12.25085 acres
4.	DTCP license no.	111 of 2013 dated 30.12.2013 valid up to 12.08.2024 (area 10.12 acre) 92 of 2014 dated 13.08.2014 valid up to 12.08.2019 (area 0.64 acre) 94 of 2014 dated 13.04.2014 valid up to 12.08.2024 (area 2.73 acre)
5.	RERA Registered/ not registered	Registered vide no. 99 of 2017 issued on 28.08.2017 up to 30.06.2022
6.	Allotment letter	15.07.2015 (page 56 of complaint)
7.	Unit allotted	2204, Tower-4, 20th Floor (page 64 of complaint)
8.	Unit admeasuring area	1483 sq. ft. (super area), (page 64 of complaint)
9.	Date of builder buyer agreement	21.07.2017 (page 58 of complaint)
10.	Possession clause	***13. Completion of Project*** *"That the Developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said Flat is to be located within 4 years of the start of construction or execution of this Agreement whichever is later...."* (page 71 of complaint)
11.	Date of start of construction	26.04.2016 (Date of start of excavation) (page 119 of complaint)
12.	Due date of possession	21.01.2022 [Calculated as per possession clause + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects

		having completion date on or after 25.03.2020]
13.	Reminders/Demand letter	03.05.2022 (page 119 of complaint)
14.	Pre-cancellation letter	22.08.2022 (page 51 of reply)
15.	Cancellation letter	25.09.2022 (page 54 of reply)
16.	Total sale consideration	Rs.92,48,176/- (excluding of applicable taxes and charges) (as per payment schedule on page 87 of complaint)
17.	Total amount paid by the complainant	Rs.74,10,485/- (as per cancellation letter dated 25.09.2022 on page 54 of reply)
18.	Occupation certificate	03.06.2024 (page 31 of reply)
19.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submission: -

I. That the complainant booked an apartment/unit bearing no. 2004, on 20th Floor in Tower-4 admeasuring 1483 Sq. ft in "Mi casa" project situated at Sector-68, Gurugram for a total sale consideration of Rs.92,48,176/- under the construction linked payment plan. It is pertinent to mention here that the complainant also gave a cheque bearing no. 163409 dated 17.03.2014 of Rs.6,00,000/- against the booking amount and the respondent issued the payment receipt for the same vide receipt no. 189.

II. That on 29.05.2014, the complainant further made a payment of Rs.7,93,005/- against the installment of the booked unit following the payment plan opted by him, and the respondent party issued the payment receipt for the said transaction vide receipt no. 521. Thereafter, the complainant on 13.06.2015 made a further payment of Rs.2,43,128/-

against the installment of the booked unit following the payment plan opted by him, and the respondent issued the payment receipt for the said transaction on 28.10.2017.

III. That on 15.07.2015, the respondent issued an allotment letter for the residential unit bearing no. 2004 on 20th Floor in Tower-4 admeasuring 1483 Sq. Ft super area. It is important to highlight here that the respondent has mentioned 12.06.2015 as an application for registration of the said unit, however, the complainant had paid the booking amount in 2014 vide cheque bearing no. 163409 dated 17.03.2014 of Rs.6,00,000/- and the respondent being using dominant possession put the date on the application form.

IV. That the complainant kept on paying the installments against the unit allotted to him as and when demands were raised by the respondent and following the payment plan as well. The complainant after the allotment, on several occasions, asked the respondent for the execution of BBA, however, the respondent deliberately delayed the execution of BBA and the reason behind doing so is best known to the respondent.

V. That after a long and continuous follow-up by the complainant, on 21.07.2017, a pre-printed, arbitrary, unilateral, and ex-facie BBA was executed inter-se the respondent and the complainant. It is pertinent to mention here that as per the possession clause of the said BBA, the respondent was obligated to give possession of the complainant's unit within 4 years from the date of start of construction or the date of execution of BBA, whichever is later. It is relevant to note here that the respondent had raised a demand on account of the start of excavation in March 2016 and raised a demand and the complainant paid the said demand on 26.04.2016, therefore, the due date of possession was 26.04.2020. It is

further pertinent to mention here that the respondent party has not given possession till today.

VI. That by 2019, the complainant had made a payment of Rs.74,10,485/- against her unit. It is pertinent to mention here that the complainant several times asked the respondent to issue a statement of account for her unit, however, the respondent never paid any heed to the reasonable demand of the complainant.

VII. That the complainant has been asking for the possession of her unit, however, the respondent never gave any firm date or any other update regarding the possession of the complainant's unit. It is germane to highlight here that the complainant had booked the unit in 2014 and it has been almost 10 years since the booking, but the respondent has not even been offered the possession of the complainant's unit.

VIII. That on 03.05.2022, the respondent sent a demand notice to the complainant, and in the said demand notice, a demand of Rs.11,74,575/- was raised by the respondent. It is relevant to note here that the said demand letter also reflects that the complainant has paid a total amount of Rs.74,10,485/- i.e., 80% of the total consideration to the respondent. It is further pertinent to mention here that the respondent did not credit the delayed possession interest in the said demand.

IX. That due to delay in delivery of the unit, the complainant wishes to sell her unit and she apprised the respondent about the same. It is pertinent to mention here that in 2023, the complainant found a buyer who was willing to purchase the complainant's unit, and the complainant enquired about the transfer process from the respondent. It is pertinent to mention here that the respondent outrightly denied for transfer of the complainant's unit. It is further pertinent to mention here that on 15.07.2023, Mr. Naveen Garg (son of the complainant) visited the office of the respondent, and there he met

Mr. Virender Kumar (Managing Director of the respondent company). Mr. Naveen Garg personally requested Mr. Virender Kumar to allow the transfer of the complainant's unit, however, Mr Virender Kumar said that they could not allow the transfer of the complainant's unit since they still have some unsold flats. Furthermore, Mr. Virender Kumar also mentioned that upon receiving authorization from the complainant, the respondent would surely get the complainant's unit sold within 60 days for a consideration of Rs.1,08,00,000/- and the same shall be credited in the account of the complainant. On 17.07.2023, the complainant through a letter authorized the respondent to sell her unit.

X. That the complainant waited for 60 days, however, no response on the sale of the complainant's unit was received from the respondent's end. Thereafter, the complainant asked for the payment receipts and statement of account for her unit, however, the respondent never bothered to provide the asked documents to the complainant. On 20.02.2024, Mr. Naveen Garg visited respondent's office and met Mr. Ravi whom he asked for statement of accounts and offered payment by cheque. Mr. Ravi refused to give statement of accounts and also refused to accept payment. On 21.01.2024, the complainant sent an email to the respondent and again asked to provide the statement of account for her unit and withdrew authorization to sell her unit dated 17.07.2023, but the said email went ignored, therefore, in the absence of an updated statement of account, the complainant made a payment of Rs.11,74,576/- on 01.02.2024 along with the TDS payment of Rs.11,746/- under protest, in lieu of the demand raised by the respondent in demand notice dated 03.05.2022. It is important to note here that the said demand was made in 2024 because of the acts and conduct of the respondent. The respondent has broken the trust of the complainant, and

the complainant has lost hope of getting possession of her unit since the delivery of possession has been delayed by the respondent for so long.

XI. Thereafter, the complainant asked to provide the payment receipt of the above-stated payment, statement of account and possession along with the status of the occupancy certificate on several occasions through emails dated 03.03.2024, 07.03.2024, 14.03.2024, and 28.03.2024. It is crucial to highlight here that when Naveen Garg paid a visit to the office of the respondent on 02.03.2024 to get the acknowledgment of the said payment of Rs.11,74,576/- along with the TDS payment of Rs. 11,746/-, then Mr. Mukesh attended the son of the complainant and he refused to give the payment receipts to him. Thereafter, Mr. Naveen Garg sought a meeting with Mr. Virender Kumar (MD), however, the complainant/her son never got a chance to meet Mr. Virender Kumar (MD).

XII. That on 28.03.2024, the respondent sent an email to the complainant, and it was mentioned by the respondent in the said email that the respondent had cancelled the complainant's unit vide cancelation letter dated 25.09.2022 on non-payment of due installments. It is pertinent to mention here that the complainant never received any cancellation letter dated 25.09.2022. The complainant paid all the demands as and when raised by the respondent, and the last installment paid by the complainant on 01.02.2024 was delayed because of the act and misconduct of the respondent itself. Moreover, the respondent sent the said email on 28.03.2024, and through said email, asked the complainant to present in its office on 27.03.2024 which clearly is not a clerical mistake since no rectified email was received by the complainant thereafter. It appears from the said fact that the respondent must be doing the said fraud with innocent allottees as well and the same pre-printed draft email is being sent by the respondent to the allottees.

XIII. That on 29.03.2024, the complainant sent her revert to the respondent's email dated 28.03.2024 through email. The complainant in her email denied the receipt of any cancellation letter dated 25.09.2022 and also, reiterated her grievance about the meeting with Mr. Virender Kumar. It is pertinent to mention here that the complainant several times asked the office bearers/staff of the respondent for a meeting with Mr. Virender Kumar and the receptionist of the respondent every time asked the complainant/her son to fill his details in the register but never arranged any meeting of complainant or her son with Mr. Virender Kumar.

XIV. That when Mr. Naveen Garg (son of the complainant) visited the office of the respondent on 29.01.2024 to get the statement of account of the complainant's unit, then Mr. Ravi (employee of the Respondent) attended the son of the complainant and he asked him to give him Rs.4,00,000/- in cash in addition to the dues pertaining to the unit and the interest thereon without any delayed possession penalty and further threatened by saying that non-payment of Rs.4,00,000/- will lead to the cancelation of the unit. Thereafter, Mr. Ravi kept on giving calls to the son of the complainant for the payment of Rs.4,00,000/- and on 09.02.2024 also sent a text over WhatsApp and asked for the payment of the said amount and threatened to cancel the unit. It is crucial to note here that as per the respondent's email dated 28.03.2024, the complainant's unit was cancelled on 25.09.2022, however, now in January 2024, the official staff (Mr. Ravi) of the respondent asked for a bribe of Rs.4,00,000/- to prevent the cancellation of the unit which clearly reflects that the complainant's unit has not been cancelled; it's just a threat to gain the money in an inappropriate manner from the allotee/complainant. Furthermore, the son of the complainant again paid a visit then someone namely Mohit Tiwari met the son of the complainant,

and he mentioned that the unit of the complainant was cancelled on 26.02.2024.

XV. That on 03.04.2024, the complainant again sent an email to the respondent and asked to provide the payment receipt for the latest payment of Rs.11,74,576/- along with the TDS payment of Rs.11,746/- made by the complainant, statement of account, cancelation letter and pre-cancelation letter, however, the respondent did not provide any of the asked document till today itself. Thereafter, being aggrieved and harassed by the fraud and misconduct of the respondent, the complainant through her son, Mr. Naveen Garg, on 03.04.2024 filed a complaint before the SHO, Police Station, Sector-50, Gurugram and reiterated all her grievances.

XVI. That the respondent party did not provide a statement of account to the complainant despite asking several times, however, as per payment receipts, demand letter, and transaction details available with the complainant, the complainant has paid a sum of Rs.85,85,060/- which is more than 92% of the total consideration.

XVII. That the main grievance of the complainant in the present complaint is that despite the complainant having paid more than 92% of the actual cost of the flat and is ready and willing to pay the remaining amount (justified) (if any), the respondent party has failed to deliver the possession of flat on promised time. It is pertinent to point out that the delayed possession penalty will be more than the remaining 8% amount of the cost of the flat.

XVIII. That the complainant does not want to withdraw from the project. The promoter has not fulfilled his obligation therefore as per obligations on the promoter under Section 18(1) proviso, the promoter is obligated to pay the interest at the prescribed rate for every month of delay till the handing over of the possession.

XIX. That the present complaint is not for seeking compensation, without prejudice, complainant reserves the right to file a complaint to Adjudicating Officer for compensation.

C. Relief sought by the complainant:

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

   i. Direct the respondent to set aside cancellation, handover possession, execute conveyance deed and to pay delay possession charges.

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. That the respondent is in the process of developing several residential group housing colonies in Gurugram, out of them one is "MICASA" at Sector 68, Gurugram. The tower 4 in which the unit in question was situated is already completed and respondent had received occupation certificate of the same.

   ii. That as per apartment buyer agreement the date of delivery of possession was not absolute and was subject to terms and conditions of agreement itself. That admittedly it has been written in the clause 13 that the company shall endeavor to complete the construction within period of 4 years from start of construction or execution of this agreement, whichever is later but said time period of 4 years are not absolute. That further extension of 6 months is also agreed between the parties at the discretion of respondent, however said period of 4 years 6 months is also not absolute and it is subject to several reasons beyond the control of respondent, and it was also agreed by the complainant that if the project gets delayed due to force

majeure circumstances than the said period consumed during concerned circumstances shall stand extended.

iii. That the construction of the said project was hampered due to non-payment of instalments by the allottees on time and also due to the events and conditions which were beyond the control of the respondent, which have materially affected the construction and progress of the project. Some of the force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under:

a) Delay in construction due to various orders/restrictions passed by National Green Tribunal, Delhi and other competent authorities for protecting the environment of the country.

b) Ban on construction due to various court orders as well as government guidelines.

c) The major outbreak of Covid-19

iv. That after issuance of allotment letter, the respondent raised demands against the ongoing construction however the complainant failed to pay the same on time. That the complainant intentionally annexed only payment details but conceal demand letter just in order to hide their mistake of not making payment. It is pertinent to mention here that the amount of Rs.11,74,575/- demanded by the respondent at the time of issuance of 1st pre-cancellation letter/demand was ultimately paid by the complainant on 01.02.2024, out of his own accord and in order to create false circumstances and evidence. It is submitted that said amount was demanded on 03.05.2022 and the complainant was specifically warned that if said amount was not paid in the time stipulated in said demand, the unit will be cancelled. The amount which was paid by the complainant in 2024 was made against letter dated 03.05.2022 and said letter specifically

says that if the payment was not received on or before 23.05.2022, the respondent shall be constrained to cancel the unit and admittedly said payment was made on 01.02.2024, however much prior to that the respondent had already cancelled the allotment of the complainant. That now the complainant falsely claims that she had not received any pre-cancellation or cancellation letter.

v. That from joint reading of payment details provided by complainant and demand raised by respondent it is crystal clear that complainant is habitual defaulter and due to defaults committed by the complainant her unit was got cancelled. That it is the complainant who failed to pay amount demanded by respondent. That there is no fault on the part of respondent. Thus, the complainant cannot be allowed to be benefitted from her own wrongs.

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 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

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 allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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.

F. Findings on the objections raised by the respondent.

F. I Objection regarding force majeure conditions.

12. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders/restrictions of the NGT as well as competent authorities, ban on construction construction due to various court orders as well as government guidelines and are covered under clause 13 of the buyer's agreement dated 21.07.2017. As per clause 13 of the agreement, the possession of the apartment was to be handed over within 4 years from the date of start of construction or execution of buyer's agreement, whichever is later. Therefore, the due date of possession is being calculated from the date of execution of agreement, being later. Further, an

extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession was 21.01.2022. As far as other contentions of the respondent w.r.t delay in construction of the project is concerned, the same are disallowed as the orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

G. Findings regarding relief sought by the complainant.

G. I Direct the respondent to set aside cancellation, handover possession, execute conveyance deed and to pay delay possession charges.

13. In the present complaint, complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

> *"**Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> .....
> *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)*

14. Clause 13 of the apartment buyer's agreement (in short, the agreement) dated 21.07.2017, provides for handing over possession and the same is reproduced below:

> *13. **COMPLETION OF PROJECT***
> *"THAT the Developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said Flat is to be located*

within 4 years of the start of construction or execution of this Agreement whichever is later...."

15. The respondent/promoter has proposed to handover possession of the subject apartment within a period of 4 years from the date of start of construction or execution of buyer's agreement, whichever is later. Therefore, the due date of possession is being calculated from the date of execution of agreement, being later. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 21.01.2022.

16. The complainant was allotted an apartment bearing no. 2004, Tower-4, 20th floor, admeasuring 1483 sq.ft. (super area) in project of the respondent named 'Micasa' situated at Sector 68, Gurgaon vide apartment buyer's agreement dated 21.07.2017 for a total sale consideration of Rs.92,48,176/- (excluding applicable taxes and charges). The complainant has submitted by 2019, the complainant had made a payment of Rs.74,10,485/- against her unit. On 03.05.2022, the respondent sent a demand notice to the complainant, and in the said demand notice, a demand of Rs.11,74,575/- was raised by the respondent, but the respondent did not credit the delayed possession interest in the said demand. The complainant made the said payment of Rs.11,74,576/- on 01.02.2024 along with the TDS payment of Rs.11,746/- under protest because of the acts and conduct of the respondent. On 28.03.2024, the respondent sent an email to the complainant, and it was mentioned by the respondent in the said email that the respondent had cancelled the complainant's unit vide cancelation letter dated 25.09.2022 on non-payment of due installments. The complainant paid all the demands as and when raised by the respondent, and the last installment was paid by the complainant on 01.02.2024 and the complainant never received any cancellation letter dated 25.09.2022. The respondent has submitted that vide

demand letter dated 03.05.2022, the outstanding dues of Rs.11,74,575/- was demanded by the respondent which was liable to be paid on or before 23.05.2022. However, the complainant out of her own accord, paid the said amount on 01.02.2024 i.e. post cancellation of the unit on 25.09.2022, in order to create false circumstances and evidence. The respondent has further submitted that numerous demand letter/reminders were sent to the complainant to pay the outstanding dues as per the payment plan. However, the complainant defaulted in making payments and the respondent was to issue pre-cancellation letter dated 22.08.2022, giving last and final opportunity to the complainant to comply with her obligation before finally cancelling the allotment of the unit vide cancellation letter dated 25.09.2022. Copies of the same along with dispatch proof have been placed on record and are presumed to be delivered to the complainant. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 25.09.2022 is valid or not.

17. On consideration of documents available on record and submissions made by both the parties, the Authority is of the view that on the basis of provisions of allotment, the complainant has paid an amount of Rs.74,10,485/- against the total sale consideration of Rs.92,48,176/- (excluding applicable taxes and charges), till cancellation of the unit and no payment was made by the complainant after September 2019. The respondent/promoter before cancellation of the unit has sent several reminders as per the payment plan agreed between the parties, before issuing a pre-cancellation letter dated 22.08.2022 giving last and final opportunity to the complainant to comply with her obligation to make payment of the amount due, but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 25.09.2022. It is a matter of record that post cancellation of the unit on 25.09.2022, neither the unit in question was reinstated nor any demand for

payment of outstanding dues against the said unit was raised by the respondent. However, the complainant on her own accord, paid an amount of Rs.11,74,575/- amount on 01.02.2024, which was due and payable on 23.05.2022. Thus, the said payment made by the complainant post cancellation of the unit cannot be taken into consideration while determining the issue of validity of cancellation. The Authority observes that Section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 21.07.2017 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. However, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136,*** and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage.* National Consumer Disputes Redressal Commissions in ***CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in ***CC/2766/2017*** in case titled as ***Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022,*** *held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money".* Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate

Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was farmed providing as under-.

> *"5. AMOUNT OF EARNEST MONEY*
> *Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money* ***shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may*** *be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

18. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.74,10,485/- after deducting 10% of the sale consideration of Rs.92,48,176/- 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 cancellation i.e., 25.09.2022 till actual refund of the amount within the timelines provided in Rule 16 of the Rules 2017.

19. The Authority further observed that post cancellation of the unit, the complainant has made a payment of Rs.11,74,575/- to the respondent on 01.02.2024. However, the said amount has not been refunded to the complainant till date. In view of the above, the respondent is directed to refund the said amount of Rs.11,74,575/- to the complainant.

H. Directions of the authority: -

20. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations

cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -

i. No case for delay possession charges is made out.

ii. The respondent/promoter is directed to refund the paid-up amount of Rs.74,10,485/- after deducting 10% of the sale consideration of Rs.92,48,176/- 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 cancellation i.e., 25.09.2022 till its realization.

iii. The respondent/promoter is further directed to refund the amount received by it post cancellation of the unit i.e. Rs.11,74,575/- to the complainant.

iv. 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.

21. Complaint stands disposed of.

22. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 16.07.2025