# BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

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| **Complaint no. :** | **5784 of 2023** |
| **Order reserved on:** | **11.04.2025** |
| **Order pronounced on:** | **04.07.2025** |

1. Arti Kotwal
2. Bhaskar Kotwal

**Both R/O:** H. no. 16, Urban Estate, Sector-4, Gurgaon-122001, Haryana **Complainants**

Versus

M/s ATS Real Estate Builders Pvt. Ltd.
**Regd. office:** 711/92, Deepali, Nehru Place, New Delhi-110019 **Respondent**

**CORAM:**
Shri Arun Kumar **Chairman**

**APPEARANCE:**

Sh. Aman Kaushik Advocate for the complainants
Ms. Shivani Dang Advocate for the respondent

## ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made 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. N. | Particulars | Details |
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| 1. | Name and location of the project | "ATS Marigold" at Sector 89A, Gurgaon, Haryana |
| 2. | Nature of the project | Group Housing colony |
| 3. | Area of the project | 11.125 acres |
| 4. | DTCP License no. | 87 of 2013 issued on 11.10.2013 valid upto 10.10.2017 |
| 5. | Rera registration no. | Registered vide no. 55 of 2017 dated 17.08.2017 valid upto 6 years from the date of environment clearance |
| 6. | Allotment letter | 19.07.2014<br>(page no. 24 of complaint) |
| 7. | Date of apartment buyer agreement | 13.10.2014<br>(page no. 23 of complaint) |
| 8. | Apartment No. | 1124, 12th floor, in tower- 01<br>(Page no. 24 of complaint) |
| 9. | Tripartite agreement | 11.06.2015<br>(page no. 25 of reply) |
| 10. | Unit area admeasuring | 1750 sq. ft.<br>(page no. 25 of complaint) |

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| 11. | Possession Clause | 6.2 *The Developer shall endeavour to complete the construction of the* ***Apartment within 42 (forty two) months from the date of this Agreement, with the grace period of 6 (six) months i.e. ("Completion Date"), subject always to timely payment of all charges including the basic sale price, stamp duty, registration*** *fees and other charges as stipulated herein. The Company will send possession Notice and offer possession of the Apartment to the Applicant(s) as and when the Company receives the occupation certificate from the competent authority(ies).*<br>(Page no. 34 of the complaint) |
| 12. | Due date of possession | 13.10.2018<br>(Note: - due date of possession can be calculated from the date of agreement i.e., 13.10.2014)<br>6 month grace period is allowed being unconditional. |
| 13. | Total consideration | Rs. 1,22,33,500/-<br>(as per payment plan on page no. 54 of complaint) |
| 14. | Amount paid by the complainant | Rs.1,13,17,324/-<br>(as per SOA dated 22.08.2024 on page no. 58 of reply) |
| 15. | Occupation certificate | 16.06.2023<br>(page no. 49 of reply) |

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| 16. | Offer of possession | 20.06.2023<br>(page no. 69 of complaint) |
| 17. | Reminders for payment | 22.05.2018, 15.06.2018, 14.06.2021, 14.08.2021, 10.10.2021, 10.12.2021, 27.07.2023, 06.10.2023 (final) |
| 18. | Termination letter | 07.11.2023<br>(page no. 65 of reply) |

## B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

I. That the respondent had published advertisement of the project and invited applications for allotment of the residential apartments. The respondent assured the complainants that they are in the process of developing a project namely "ATS Marigold" at Sector-89A, Gurgaon.

II. That on the basis of such representations of the respondent and impressed with their assurances and plans, the complainant applied vide application dated 01.07.2014 and vide allotment letter dated 19.07.2014, the complainants were allotted one residential apartment bearing no. 1124 on the 12th floor of tower no. 01 having super built up area of 1750 sq. ft. which includes a built up area of 1480 Sq. ft. to the complainants having a total sale consideration of Rs. 1,22,33,500/- including EDC/IDC Charges of Rs. 6,56,250/- and two parkings of Rs. 6,00,000/- and also other charges in the prospected project at "ATS MARIGOLD", Sector-89A, Village Harsaru, Gurugram.

III. That the parties thereafter entered into a buyer's agreement dated 13.10.2014. As per 'clause 6.2' of the said buyer's agreement the

respondent are duly bound to complete the project within a period of three and half years from the date of execution of agreement. The said period of 42 months expired on May, 2018 and grace period has also expired.

IV. That the complainants have been paying the payment according to demand letters accordingly raised by the respondent on various time and for the timely payment to the demands of respondent, the complainants have also taken a bank loan form the SBI bank.

V. That the payment plan agreed between the respondent and complainants was a construction linked installment plan, wherein certain considerable initial payments are made to the builder according to construction stages within the first 3-4 months and the remaining in installments as and when certain levels of construction are achieved.

VI. That the respondent subsequently over the period from 2014 till 2018, while the construction was not taking place as per the timeline, kept raising regular demands until the stage of completion of flooring within the apartment. All the said demands were promptly paid by the complainant without any delay against receipts issued by the respondent.

VII. That on 20.08.2023 the complainants had received a communication from the respondent stating offer of possession & registration of conveyance deed and demanded the balance amount.

VIII. That the respondent had agreed for the registration of conveyance deed but in reality when the complainants approached the respondent for the same the respondent denied it and said that conveyance deed cannot be done at this time.

IX. That on 20.06.2023, the complainants received the offer of possession for the allotted unit from the builder, with an illegal demand of Rs. 12,50,175/-. The complainants, have already fulfilled their financial obligations by paying a total amount of Rs. 1,13,17324/- to the builder. The sudden demand for an additional Rs. 12 lakh is not only unjustified but also contradicts the total sale consideration stipulated in builder-buyer agreement.

X. That the complainants have not got the possession of their home/apartment even after an inordinate delay of over 05 years and are even now still waiting.

XI. That in view of the inordinate delay in giving possession to the complainants and further in absence of an actual date of handing over physical possession of the said apartment still, the complainant inter alia seek interest/ compensation for delay in handing over possession as per Section 18 of RERA till the date of giving actual physical possession of the apartment to the complainants.

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

4. The complainants have sought following relief(s).

(i) Direct the respondent to withdraw the unjust and illegal demand which is more than agreed consideration amount and to handover the actual, physical and vacant possession of the apartment bearing no. 1124 on 12th floor of tower 01 in ATS Marigold, sector-89A, Gurugram in terms of builder buyer agreement dated 13.10.2014.

(ii) Direct the respondent to pay delay possession charges at the rate of interest as per section 18 of Rera act 2016 read with rule 15 and 16 of Haryana real estate from 2018 till the date of handing over physical possession of the apartment to the complainants.

(iii) Direct the respondent to execute the conveyance deed as per the terms of RERA.

(iv) Direct the respondent to pay an amount of Rs. 5,00,000/- as litigation 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 complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer's agreement was executed between the complainants and the respondent prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.

II. That the complainants have no locus standi to file the present complaint.

III. That the complaint is bad for mis-joinder of parties.

IV. That the complaint is bad for non-joinder of necessary parties.

V. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 21.1 of the buyer's agreement.

VI. That the complainants, after checking the veracity of the project namely, 'ATS Marigold', Sector 89A, Gurugram had applied for allotment of an apartment vide booking application form dated 15.07.2013. The complainants had agreed to be bound by the terms and conditions of the booking application form.

VII. That based on the said application, respondent vide its allotment offer letter dated 19.07.2014 allotted to the complainants apartment no. 1124 on the 12th floor of tower no. 1 having super built up area of 1750 sq. ft. for a sale consideration of Rs. 1,19,33,500/-. The complainants signed and executed apartment buyer's agreement on 13.10.2014 and the complainants agreed to be bound by the terms and conditions contained therein.

VIII. That the complainants had availed loan facility from State Bank of India and a tripartite agreement dated 11.06.2015 was entered into between the parties to the complaint with State Bank of India.

IX. That the respondent raised payment demands from the complainants in accordance with the mutually agreed terms and conditions of the allotment as well as of the payment plan. The complainants made part-payment out of the total sale consideration and were bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration charges, stamp duty, service tax as well as other charges payable along with it at the applicable stage.

X. That the respondent vide its reminder dated 22.05.2018, had requested the complainants to make the due payment for the net payable amount of Rs. 1,42,586/- due to be paid by 31.05.2018. However, the complainants failed to remit the demanded amount despite reminders dated 15.06.2018, 14.06.2021, 14.08.2021, 10.10.2021 and 10.12.2021 were sent by the respondent to the complainants.

XI. That after completing the construction, the respondent vide its letter dated 11.10.2022, intimated the complainants that their unit is ready

for carrying fit-out works and requested the complainants to complete the interior/fit-out work within 3 months.

XII. That the possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. As per clause 6.2 of the buyer's agreement the construction was to be completed within a period of 42 months from the date of the agreement with a grace period of 6 months and the same was subject to the occurrence of force majeure conditions. The possession of the unit was to be handed over to the complainants only after the receipt of the occupation certificate from the concerned authorities. The respondent has already completed the construction of the tower in which the unit previously allotted to the complainant.

XIII. That after the completion of the construction, the respondent had applied for the grant of the occupation certificate vide application dated 26.08.2022. After scrutiny, the concerned authorities granted the occupation certificate for the tower in question only on 16.06.2023 and the respondent offered the possession to the complainant on 20.06.2023. The complainant were liable to pay a sum of Rs. 12,50,125/- including interest for delayed period.

XIV. That the complainants had been called upon to take the possession of their unit after payment of the amount due to the respondent and fulfillment of the requisite formalities yet the complainants were intentionally not coming forward to do so. The complainants were called upon several times to pay the outstanding dues and also to complete the requisite formalities. However, the complainants miserably failed to do so. Left with no other option, the respondent

sent reminder dated 27.07.2023 and a final reminder dated 06.10.2023 to the complainants.

XV. That timely payment of installments within the agreed time schedule was the essence of allotment. On account of non-fulfillment of the contractual obligations by the complainants despite several opportunities extended by the respondent, the allotment of the complainants was cancelled and the earnest money was forfeited vide termination letter dated 07.11.2023. The respondent is ready to refund the amount of the complainants as per the agreed terms and conditions of allotment of builder buyer's agreement.

XVI. That the complainants are real estate investors who had booked the unit in question with a view to earn quick profit in a short period. However, their calculations went wrong on account of slump in the real estate market and the complainants did not possess sufficient funds to honour their commitments. Since the allotment of the unit stands terminated and cancelled, the complainants are not left with any right, tittle or interest in the previously allotted unit. Thus, the complainants are not at all entitled to the reliefs sought in the present complaint. The complaint being an abuse of the process of law is liable to be dismissed.

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

**E. Jurisdiction of the authority**

8. The authority has complete territorial and 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, 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**

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) 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 complainants at a later stage.

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

**F.I Objection regarding jurisdiction of the complaint w.r.t the buyer's agreement executed prior to coming into force of the Act.**

12. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the buyers agreement was executed between the complainants and the respondent prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

13. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and would be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation would be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017*** which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...*

*122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

14. Further, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of

above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

**F.II Objection regarding complainants are in breach of agreement for non-invocation of arbitration**

16. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.

17. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on the catena of judgments of the Hon'ble Supreme Court, particularly in National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

**F.III Objection regarding the complainant being investor.**

18. The respondent has taken a stand that the complainant is the investor and not consumer, 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. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. 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;"*

19. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is 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 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 promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

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

(i) Direct the respondent to withdraw the unjust and illegal demand which is more than agreed consideration amount and to handover the actual, physical and vacant possession of the apartment bearing no. 1124 on 12th floor of tower 01 in ATS Marigold, sector-89A, Gurugram in terms of builder buyer agreement dated 13.10.2014.

(ii) Direct the respondent to pay delay possession charges at the rate of interest as per section 18 of Rera act 2016 read with rule 15 and 16 of Haryana real estate from 2018 till the date of handing over physical possession of the apartment to the complainants.

(iii) Direct the respondent to execute the conveyance deed as per the terms of RERA.

20. The above mentioned relief no. (i), (ii) and (iii) are interrelated to each other. Accordingly, the same are being taken up together for adjudication.

21. In the present complaint, the complainants booked a unit in the project of respondent namely, ATS marigold, situated at sector 89A, Gurugram. The complainants were allotted a unit bearing no. 1124, 12th floor in Tower 1 admeasuring 1750 sq. ft. vide allotment letter dated 19.07.2014. Thereafter, the apartment buyer's agreement was executed between the complainants and the respondent on 13.10.2014 for the total sale consideration of was Rs. 1,22,33,500/- and the complainants has made a payment of Rs. 1,13,17,324/- against the same in all. As per clause 6.2 of the agreement, the respondent was required to hand over possession of the unit within a period of 42 months from the date of execution of agreement along with grace period of 6 months. The due date of possession comes out to be 13.10.2018 calculated from the date of agreement i.e., 13.10.2014

including grace period of 6 months as it is unqualified. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 16.06.2023 and thereafter, has offered the possession on 20.06.2023.

22. The complainants in the present complaint is seeking delay possession charges as well as possession of the unit. The complainants have pleaded that the respondent has arbitrarily cancelled their unit vide letter dated 07.11.2023. It is further contended that the respondent has raised several illegal and unjust demands.

23. The plea of the respondent is otherwise and stated that the demand were raised as per payment plan annexed with apartment buyer's agreement dated 13.10.2014 and the complainants have made payment of Rs. 1,13,17,324/-. However, various reminder letters were issued but despite repeated follow ups the complainants failed to act further and comply with their contractual obligations and therefore the unit of the complainants was finally terminated vide letter dated 07.11.2023.

Now the question before the authority is whether the cancellation issued vide letter dated 07.11.2023 is valid or not.

24. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that the apartment buyer agreement was executed between the complainants and respondent on 13.10.2014. The sale consideration of the unit was Rs. 1,22,33,500/- and the complainants has made a payment of Rs.1,13,17,324/- against the same in all. As per the payment plan annexed as Schedule IV in the agreement dated 13.10.2014 at page 55 of the complaint, the complainants were required to make payments as

per the stage of construction. The complainants has taken the plea that they withheld payment on the ground that construction was not fully completed. However, this contention is not sustainable in light of the material available on record. The respondent has obtained the occupation certificate (OC) from the competent authority on 16.06.2023, which conclusively establishes that construction of the project has been duly completed.

25. Accordingly, in terms of the payment schedule agreed upon by the parties and the fact of completion evidenced by the OC, it was incumbent upon the complainant to honour the demand and make payment as per the agreed terms. The failure to do so amounts to a breach of contractual obligations.

26. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit as per apartment buyer agreement dated 13.10.2014. The respondent after giving reminders dated 27.07.2023 and 06.10.2023 for making payment for outstanding dues as per payment plan. Despite issuance of aforesaid reminders, the complainants have failed to take possession and clearing the outstanding dues. Therefore, the respondent cancelled the unit on 07.11.2023.

27. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainants is hereby declined as the complainants-allottee have 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.

28. 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. 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."*

29. 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, and 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 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 07.11.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

(iv) **Direct the respondent to pay an amount of Rs. 5,00,000/- as litigation charges.**

30. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the

complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

**H. Directions of the authority**

31. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

    i. The respondent/builder is directed to refund the deposited amount of Rs.1,13,17,324/-after deducting 10% of the sale consideration along with an interest @11.10% on the refundable amount, from the termination/cancellation 07.11.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

    ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

32. Complaint as well as applications, if any, stands disposed off accordingly.

33. File be consigned to registry.



**(Arun Kumar)**
**Chairman**

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 04.07.2025