

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

Complaint no. : 430 of 2024
Date of complaint : 02.02.2024
Order reserved on : 22.05.2025

Jatin Mehta

R/o: 805, Abhaas Apartment, Sector-56, Gurugram-
122002

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:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Sushil Yadav (Advocate)

Shri Prashant Sheoran (Advocate)

Complainant
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.

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A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"Mi Casa", Sector-68, Gurugram
2.	Nature of the project	Residential Group Housing
3.	Project area	12.25085 acres
4.	DTCP license no.	i. 111 of 2013 dated 27.12.2013 valid up to 12.08.2024 (area 10.12 acre) ii. 92 of 2014 dated 13.08.2014 valid up to 12.08.2019 (area 0.64 acre) iii. 94 of 2014 dated 13.08.2014 valid up to 12.08.2024 (area 2.73 acre)
5.	Name of licensee	Pareena Infrastructure Pvt. Ltd. and others
6.	RERA Registered or not registered	Registered 99 of 2017 dated 28.08.2017 Valid up to 30.12.2022 (30.06.2022 plus 6 months Covid-19)
	Extension of registration	12 of 2023 dated 19.06.2023 Valid up to 30.12.2023
	Project Continuation-RC/REP/HARERA/GGM/99 OF 2017/	7(3)/47/2024/06 dated 23.07.2024 Valid up to 30.12.2025
7.	Unit no. and floor no.	103 and 15 th floor and Tower-4 (As per page no. 19 of the complaint)
8.	Unit area admeasuring	1483 sq. ft. (Super area) (As per page no. 19 of the complaint)
9.	Date of execution of apartment buyer's agreement	19.09.2015 (As per page no. 13 of the complaint)
10.	Possession clause	13. Completion of Project <i>That the developer shall, under normal conditions, subject to force majeure, complete construction of</i>

		<p><i>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, as per the said plans and specifications seen and accepted by the Flat Allottee(s) ...</i></p> <p><i>[Emphasis supplied]</i></p> <p>(As per page no.26 of the complaint)</p>
11.	Date of start of construction	<p>26.04.2016</p> <p>(As mentioned in demand letter at page 48 of complaint)</p>
12.	Due date of possession	<p>26.10.2020</p> <p>(Note: Due date to be calculated 4 years from the date of start of construction i.e., 26.04.2016 plus grace period of 6 months)</p> <p>(Note: Grace period of 6 months allowed as per HARERA notification no. 9/3-2020 dated 26.05.2020)</p>
13.	Payment Plan	<p>Construction linked payment plan</p> <p>(As per page no. 44 of the complaint)</p>
14.	Basic sale price	<p>Rs.79,30,342/-</p> <p>(As per summary on dues on page no. 40 of the complaint)</p>
15.	Total sale consideration	<p>Rs.93,43,829/-</p> <p>(As per summary on dues on page no. 40 of the complaint)</p>
16.	Amount paid by the complainant	<p>Rs.58,22,622/- [73% of BSP]</p> <p>(As mentioned in scancellation letter on page no. 50 of the complaint)</p>
17.	Application for grant of Occupation certificate (for tower-IV, V)	<p>15.05.2023</p> <p>(as per page no.16 of reply)</p>
18.	Demand/ reminder letters	<p>04.07.2016, 03.09.2016, 02.06.2017, 07.10.2017, 28.11.2017, 24.04.2018, 08.08.2018, 06.09.2018, 09.01.2019, 08.02.2019, 30.05.2019, 18.07.2019, 12.08.2019, 29.08.2019, 04.03.2022, 03.05.2022.,</p> <p>(As per cancellation letter on page no. 94-147 of the complaint)</p>

19.	Cancellation letter (due to non-payment)	10.01.2024 (As per page no. 50 of the complaint)
20.	Occupation Certificate/ completion certificate	03.06.2024 [For Tower IV, V, VII (EWS), Community Building & Convenient Shopping] (as per copy of OC submitted by respondent during proceedings dated 08.08.2024)
21.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submission: -

- I. That relying on the promise and undertakings given by the respondent in the advertisements, complainant booked an apartment measuring 1483 sq. ft. in "Mi Casa" project of the respondent for total sale consideration is Rs.93,43,830/-. That the complainant made payment of Rs.58,22,622/- to the respondent vide different cheques on different dates.
- II. That flat buyer's agreement was executed on dated 19.09.2015 and as per BBA the Respondents had allotted a unit bearing no.1503, on 15th floor, in Tower-4 having super area of 1483 sq. ft. to the complainant. That as per clause 13 of the agreement, the respondent had agreed to deliver the possession of the flat within 4 years from the date of builder buyer agreement or start of construction whichever is later. i.e., 26.04.2016 (start of construction) due date of possession of the said unit was 25.04.2020.
- III. That the complainant used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going in full mode and accordingly asked for the payments which the complainant gave on time and the complainant when visited to the site was shocked & surprised to see that construction work is not in and no one was present at the site to address the queries of the complainant. It appears that respondent has played fraud upon the complainant. The only

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intention of the respondent was to take payments for the flat without completing the work and not handing over the possession on time. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant.

- IV. That despite receiving of more than 65% approximately payments on time for all the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted flat to the complainant within stipulated period.
- V. That it could be seen that the construction of the block in which the complainant flat was booked with a promise by the respondent to deliver the flat by 25.04.2020 but was not completed within time for the reasons best known to the respondent.
- VI. That the complainant visited many times to respondent to know the status of the said unit and for the possession of the same but respondent put the matter from one pretext to another and later respondent sent cancellation letter to complainant on 10.01.2024 without any pre cancellation notice or any other intimation.
- VII. That due to this omission on the part of the respondent the complainant has been suffering from disruption on his living arrangement, mental torture, and agony and also continues to incur severe financial losses. This could have been avoided if the respondent had given possession of the flat on time. That on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainant from the promise date of possession till the flat is actually delivered to the complainant.
- VIII. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the offices of the

respondent to deliver possession of the flat in question along with prescribed interest on the amount deposited by the complainant but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard-earned huge amount of money and wrongfully gains himself and caused wrongful loss to the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to pay interest on account of delay possession charges on amount paid by the complainant from the due date of possession till actual handover of the possession of the allotted 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.

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.
 - ii. That the construction of the said project is at an advance stage and the construction of various towers has already been completed and occupation certificate has been received and respondent has already applied for occupation certificate of the tower in which unit in question is situated and soon same will be granted to respondent by concerned authority.
 - iii. That the respondent continues to bonafidely develop the project in question despite of there being various instances of non-payments of instalments by various allottees. This clearly shows unwavering commitment on the part of the respondent to complete the project. Yet,

- various frivolous petitions, such as the present one seriously hampers the capability of the respondent to deliver the project as soon as possible.
- iv. The amounts which were realized from the complainant have already been spent in the development work of the proposed project. However, as the complainant failed to pay demand as per payment plan agreed upon by him the respondent cancelled the allotment, same is attached by complainant himself on page no.50 of complaint. That the malafide on the part of complainant is proved from the fact that in complaint he intentionally did not annex any document qua payment made by him to respondent just in order to conceal his defaults. In these circumstances, the present complaint deserves to be dismissed.
- v. 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 endeavour 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. That it is admitted fact by both the parties that construction was started on 26.04.2016.
- vi. That since prescribed period of 4.6 years is subject to force majeure circumstances. That there were a number of judicial orders, notifications and other circumstances which were completely beyond the reasonable control of the respondent, which directly impeded the ability and even the

intention of the respondent to continue with the development and construction work of the said project. That completion of the project shall be considered as 4 years after addition of force majeure circumstances. Similarly on account of corona virus pandemic HRERA granted additional time of six months for completion of project in year 2020 and additional 3 months in year 2021 from 01.04.2021 to 30.06.2021.

- vii. That the construction was stopped due to any reason either because of lockdown or any interim orders of Hon'ble Supreme court/ MCG/ Environment pollution control boards of state of Haryana and separately of NCR, it created a hurdle in pace of construction and after such period was over, it required considerable period of time to resume construction activity. That longer the construction remains in abeyance due to circumstances discussed herein, longer the time period required to start again.
- viii. That the orders are absolute and beyond the control of developers. That there are several others order and notifications which cases delay in the construction of 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.
- ix. That even the Hon'ble Apex court has already held that notice, order, rules, notification of the Government and/or other public or competent authority, including any prohibitory order of any court against development of property comes under force majeure and period for

handing over of the possession stood extended during the prevalence of the force majeure event.

- x. That project is not only delayed due to force majeure events but also get delayed due to non-payment of allottees and in the present case complainants is also among those allottees who never paid on time, rather delayed from few weeks to several months and now started blaming for non-delivery of possession.
- xi. That the complainant has not come before the authority with clean hands. That the complainant has tried to manipulate and twist the facts and circumstances in order to gain undue benefit from the authority. 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 did not annex any payment details and demand letters received by him just in order to hide their mistake of not making payment. That demand letters and reminders issued by respondent are as follow:

Sr.	Stage	Amount demanded	Date of demand/ Reminder	Due date	Amount paid	Date of payment	Delay
1.	Excavation	1183469	06.04.2016	26.04.2016	Part payment of Rs.1159084	04.05.2016	8 days
2.	Reminder	30398	04.07.2016	ASAP	Not paid		
3.	Reminder	31309	03.09.2016	ASAP	Not paid		
4.	Basement roof + previous dues	645927	28.01.2017	03.02.2017	Part payment of Rs.615327	13.01.2017	262 days
5.	Reminder	42304	02.06.2017	ASAP	Not paid		
6.	3 rd floor + previous dues	619580	10.06.2017	30.06.2017	Part payment of Rs.572743	21.07.2017	160 days
7.	7 th floor + previous dues	465754	04.10.2017	25.10.2017	Part payment of Rs.426932	08.11.2017	144 days
8.	Reminder	53691	28.11.2017	ASAP	Not paid		
9.	11 th floor + previous dues	632358	25.01.2018	14.05.2018	Not paid		
					593536	09.05.2018	196
10.	15 th floor	1063135	24.04.2018	14.05.2018	Not paid		
11.	19 th floor	1063136	08.08.2018	28.08.2018	Not paid		

12.	27 th floor+ previous dues	1964969	08.02.2019	28.02.2019	Not paid		
13.					Part payment of Rs.300000	22.05.2019	373 days
14.	31 st floor + previous dues	1820244	30.05.2019	19.06.2019	Not paid		
15.					Part payment of Rs.400000	06.06.2019	388 days
16.					Part payment of Rs.200000	15.06.2019	427 days
17.	Reminder	1386591	18.07.2019	ASAP	Not paid		
18.	Reminder	1220244	12.08.2019	ASAP	Not paid		
19.	Top floor	1636589	29.08.2019	18.09.2019	Not paid		
20.	Completion of brick work	3029327	04.03.2022	19.03.2022	Not paid		
21.	Completion of flooring slab	2836780	03.05.2022	23.05.2022	Not paid		

- xii. That after issuance of said letter the respondent waited for more than a year and ultimately when complainant failed to pay the amount if even after a period of 677 days, the respondent cancel the allotment of the complainant vide letter dated 10.01.2024 and also sent a demand letter as a reference that that since last demand against completion of flooring slab you have not paid any amount and till last demand up till now you have not paid even a single penny even after passing of 677 days, however complainant manipulating said letter wrongly and for the same reason he intentionally attached only first page of said letter as on the second page date of payment was mentioned as on or before 23.05.2022. Accordingly, on 10.01.2024 respondent cancel the allotment of the complainant.
- xiii. 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 he himself is responsible for cancellation.
- xiv. That it is the complainant who failed to pay amount demanded by respondent and there is no fault on the part of respondent. Thus, the complainants cannot be allowed to be benefitted from their 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.1 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 19.09.2015. All the pleas advanced in this regard are devoid of merit. Firstly, the events taking place such as orders of NGT in NCR region on account of the environmental conditions are for short duration which does not make a huge impact on project which can cause and justify inordinate delay of 3-4 years. Secondly, the respondent is claiming benefit of lockdown in lieu of Covid-19, which came into effect on 23.03.2020, due to Covid-19 there may be a delay but the same has been set off by the government as well as authority while granting extension in registration of the projects, the validity which expired from March, 2020 for a period of six (6) months. The due date of possession in the present case as per clause 13 is come to 26.04.2020, which is after March, 2020. Therefore, an extension of six months is to be given over and above the due date of handing over of possession in view of HARERA Notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Accordingly, the due date for handing over of possession is comes out to 26.10.2020. Thus, no period over and above grace period of 6 months can be given to the respondent-builder. Thus, the respondent



cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of its own wrong.

G. Findings regarding relief sought by the complainant

G.1 Direct the respondent to pay interest on account of delay possession charges on amount paid by the complainant from the due date of possession till actual handover of the possession of the allotted unit.

13. In the present complaint, the 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 and the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building: -

.....

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. The complainant was allotted an apartment bearing no. 103, Tower-4, 15th 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 19.09.2015 for a total sale consideration of Rs.93,43,829/- against which the complainant has paid a sum of Rs.58,22,622/- in all. The due date of possession as per clause 13 of the buyer's agreement dated 19.09.2015 is comes to be 26.10.2020 (calculated from the date of start of construction, being later) inclusive of 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. The complainant has submitted the respondent failed to timely construct and develop the project. The respondent has 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 despite giving several opportunities to the complainant to comply with his obligation

before finally cancelling the allotment of the unit vide cancellation letter dated 10.01.2024. Copies of the same along with dispatch proof have been placed on record and are not in dispute. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 10.01.2024 is valid or not.

15. Upon perusal of documents available on record and submissions made by both the parties, the Authority observes that, the complainant has paid an amount of Rs.58,22,622/- (which consists approximately 73% of BSP and 62% of TSC) against the total sale consideration of Rs.93,43,829/- and it is evident from the records that no further payment has been made by the complainant after July, 2019. It is also on record, that multiple demand/ reminder letters dated on 04.07.2016, 03.09.2016, 02.06.2017, 28.11.2017, 24.04.2018, 08.08.2018, 08.02.2019, 30.05.2019, 18.07.2019, 12.08.2019, 29.08.2019, 04.03.2022 and 03.05.2022 were sent by the respondent to the complainant, to clear the outstanding dues prior to the cancellation of the allotment. It is observed that as per Section 19 (6) & 19 (7) of the Act, 2016, the complainant-allottee was under an obligation to make timely payment as per the agreed payment plan towards consideration of the allotted unit. Despite being granted several opportunities to comply with his obligations, the complainant failed to discharge his obligation for making timely payment of the outstanding dues. Moreover, the respondent has completed the construction and has obtained the requisite occupation certificate on 03.06.2024. Thus, the respondent has cancelled the allotment of the subject unit due to non-payment on 10.01.2024.
16. Further, despite several requests and demand letters, the complainant neither contacted the respondent nor deposited the outstanding dues. And as per clause 7 of the buyer's agreement dated 19.09.2015, the respondent/promoter has a right to cancel the unit in case the allottee has breached the agreement to sell executed between both the parties. Clause 7 of the buyer's agreement is reproduced as under for a ready reference:

7. TIME IS ESSENCE

That the Time is the essence with respect to the Flat Allottee(s) obligations to pay the Sale Price as provided in Annexure-1, Summary of dues along with other payments such as applicable Service Tax, stamp duty, registration fee and other charges stipulated under this Agreement to be paid on or before due date or as and when demanded by the Developer as the case may be and also to perform or observe all the other obligations of the Flat Allottee(s) under this Agreement. It is clearly agreed and understood by the Flat Allottee(s) that it shall not be obligatory on the part of the Developer to send reminders regarding the payments to be made by the Flat Allottee(s) as per the Schedule of Payments in Annexure-II or obligations to be performed by the Flat Allottee(s). In case of delay in making payment by the Flat Allottee(s) to the Developer as per the Schedule of Payments as stated in Annexure-II, then the Flat Allottee(s) shall pay interest on delayed payments@ 18% p.a. compounded quarterly at the time of every succeeding instalment which shall be calculated from the due date of outstanding payment/amount without prejudice to the Company's right to cancel the allotment. Even then, if the Flat Allottee(s) fails to pay the Instalments) along with interest within 60 days, from the due date, the Developer shall have the right to terminate the Agreement and forfeit the EARNEST MONEY as detailed hereinabove and allotment of the said apartment shall stand cancelled and the flat Allottee(s) shall not have any lien/charge/interest/right on the said apartment.

17. In view of the above findings, the Authority observes that the complainant is not entitled for the reliefs being sought under the present complaint as the subject unit of the complainant was cancelled by the respondent after issuing proper reminders as per the terms and conditions of the payment plan annexed with the buyer's agreement dated 19.09.2015. Therefore, the cancellation letter dated 10.01.2024 is hereby held to be valid in the eyes of law.
18. But after cancelling the unit, the respondent is not entitled to keep the money paid by the complainant with it and the respondent is under obligation to return the paid-up amount after deducting the amount of earnest money. The Authority observes that clause 5 of the buyer's agreement talks about that in the event of default or breach of any terms and conditions of the buyer's agreement by the allottee, the respondent is entitled to forfeit the amount of earnest money. The relevant Clause 5 of the buyer's agreement is reproduced as under for a ready reference:

5. ERANEST MONEY

The Allottee(s) agrees that out of the amounts) paid/payable towards booking amount for provisional allotment of the apartment or towards total price; the amount paid by the Allottee(s) towards booking amount along with the application for the provisional allotment of the said apartment and all other amounts paid towards the said apartment till, at the time of or after the execution of the Apartment Buyers Agreement, **up to 15% of the basic sale price, shall be treated as earnest money (as the case may be)** to ensure fulfilment by the applicants) of the terms and conditions as contained in this application and Apartment Buyers Agreement. The applicant(s) hereby authorizes the Company to forfeit this earnest money along with interest paid, due or payable along with any other amount non-refundable in nature.

In the event; **the Allottee(s) falls to perform any obligations or commits breach of any terms and conditions mentioned in the Application, Allotment Letter and the Apartment Buyer Agreement including but not limited to the occurrence of any event of default as stated in this Apartment Buyer Agreement or default in payment of instalments, despite having been issued demand/ notice in that regard, the Developer shall have the right to forfeit the amount of Earnest Money without any further notice to the Allottee(s).** If the amount paid by the Allottee(s) is less than the forfeitable amount, then the Allottee(s) undertake to make good the shortfall of the forfeitable amount. This is in addition to any other remedy/right, which the Developer may have. The parties agree that the conditions for forfeiture of earnest money shall survive till the execution and registration of the conveyance deed for the Apartment

19. However, the issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the 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 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."

20. Also, Hon'ble Apex Court in **Civil Appeal no.3334 of 2023** titled as **Godrej Projects Development Limited Versus Anil Karlekar** decided on 03.02.2025 has held that 10% of BSP is reasonable amount which is liable to be forfeited as earnest money.
21. 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. Thus keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.58,22,622/- after deducting 10% of the sale consideration of Rs.79,30,342/- 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 such balance

amount, from the date of cancellation i.e., 10.01.2024 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the authority: -

22. 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. The respondent/promoter is directed to refund the paid-up amount of Rs.58,22,622/- after deducting 10% of the sale consideration of Rs.79,30,342/- 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 such balance amount, from the date of cancellation i.e., 10.01.2024 till its actual realization.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
23. Complaint stands disposed of.
24. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.05.2025