

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

Complaint no. : 2372 of 2024  
Date of filing: 27.05.2024  
Date of decision : 27.05.2025

Leenna Verma

**Regd. Address:** A-112, Anand Vihar, New Delhi-110009

**Complainant**

Versus

1. M/s BPTP Limited

**Regd. office:** OT-14, 3<sup>rd</sup> Floor, Next Door, Parklands, Sector 76, Faridabad, Haryana-121004

2. M/s. HDFC Bank Limited

**Regd. office:** HL Wings, 1<sup>st</sup> Floor, Sector 11, Plot-2, Pocket-4, Dwarka, New Delhi-110075

**Respondents**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairperson**  
**Member**  
**Member**

**APPEARANCE:**

Sh. Garvit Gupta and Harshita Setia  
(Advocates)

Sh. Harshit Batra (Advocate)

Sh. Virender Singh (Advocate)

**Counsels for Complainant**

**Counsel for Respondent no. 1**

**Counsel for Respondent no. 2**

**ORDER**

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

Sr. No.	Particulars	Details
1	Name of the project	'BPTP Terra, Sector 37D, Gurugram, Haryana.
2	Date of allotment letter	24.05.2023 (Page no. 23 of complaint)
3	Date of execution of flat buyer's agreement	11.08.2023 (Page no. 48 of complaint)
4	Date of execution of Tripartite agreement	16.08.2023 (Page no. 39 of complaint)
5	Approval of loan granted by HDFC Bank dated	02.08.2023 (Page 70 of complaint)
6	Unit no.	T21 -1904, 19 <sup>th</sup> floor, Tower-T21 (Page no. 26 of complaint)

7	Unit area admeasuring	106.538 sq.mt (Page no. 26 of complaint)
8	Possession clause as per BBA	<b>11. 1 Possession of Apartment</b> <i>Schedule for possession of the said Apartment</i> <i>The Promoter agrees and understands that timely delivery of possession of the Apartment to the Allottee and the Common Areas to the association of allottees or the competent authority, as the case may be, provided under Rule 2(1)(f) of the Rules, is the essence of the Agreement. The Promoter assures to hand over possession of the Apartment as per the timelines mentioned in the table below unless there is delay or failure due to "force majeure", court orders, Government policy/ guidelines, decisions affecting the regular development of the Project. If, the completion of the Project is delayed due to the above-mentioned conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment.</i> <b>ON OFFER OF POSSESSION (WITHIN 120 DAYS FROM BOOKING)</b> (Page no. 56 of complaint)
9	Due date of delivery of possession	24.09.2023 Calculated from the date of allotment of unit i.e., 24.05.2023
10	Total consideration	Rs.1,64,65,682/- (Page no. 109 of REPLY)
11	Total amount paid by the complainant	Rs. 59,45,000/-

		(as per SOA attached with offer of possession on page no. 109 of reply)
12	Occupation certificate	24.08.2022 (Page no. 104 of reply)
13	Offer of possession	16.08.2023 (Page no. 107 of reply)
14	Reminder/Demand notice dated	18.08.2023, 19.09.2023, 20.11.2023 (Page no. 119,126,133 of reply)
15	Termination/ cancellation intimation	26.12.2023 (Page no. 94 of complaint)

### B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
  - a. That the respondent no.1 is a company incorporated under the Companies Act, 1956 having its registered office at the above-mentioned address and existing under the Companies Act, 2013. The respondent is comprised of several clever and shrewd types of persons. The respondent no.1 now does not enjoy good reputation at all and has cheated many innocent people like the complainant. Respondent no. 2 is the financial institution that had sanctioned the loan amount to the complainant for her to make payments towards the sale consideration of the unit allotted by respondent no.1.
  - b. That the respondent no.1 offered for sale units in its upcoming project which claimed to comprise of several building/towers consisting of self-contained independent flats, plots along with common support



infrastructure, parking sites and community buildings on a piece and parcel of land.

- c. That the complainant, induced by the assurances and representations made by the respondent no.1, decided to book a residential unit in the project of the respondent no.1 and subsequently made payment of Rs. 16.45 lacs between 15th May, 2023 till 19<sup>th</sup> May 2023.
- d. That the respondent no.1 issued an allotment letter dated 24.05.2023 vide which a 4BHK flat bearing no. T21-1904, Tower T21 admeasuring 106.538 sq. mtr of carpet area was allotted to the complainant. The total sale consideration, inclusive of the IDC, EDC, Parking Charges, PLC, Government fees/taxies/levies, common areas, IFMS and GST was Rs. 1,65,65,775/-.
- e. That as per the payment plan forming part of Annexure A of the Allotment letter and later the agreement for sale as well , 10% of the total price was to be paid at the time of booking; 20% of the total price was to be paid within 30 days from the booking; 65% of the total price was to be paid within 90 days from the booking and remaining 5% of the total price was to be paid on offer of possession. When the complainant approached the respondent no.1 to enquire about the execution of the agreement pertaining to the unit, it was informed to her that the same would be shared soon with the complainant and that the complainant should not make any default as per the payment plan. Believing the assurances of the respondent no.1 to be true and considering the fact that the complainant had made substantial payment to the respondent no.1, the complainant in lieu of the same, thereafter made the following payments to the respondent no. 1: -

- i. Rs. 18 lacs on 15.06.2023

ii. Rs. 10 lacs on 10.07.2023

iii. Rs. 10 lacs on 11.07.2023

iv. Rs. 5 lacs on 21.07.2023

- f. That, after the issuance of the allotment letter, the complainant made payment of Rs. 43 lacs to the respondent no.1. Hence, the total amount paid by the complainant to the respondent no.1 before issuance of the agreement of sale was Rs. 59.45 lacs which was more than 10% of the total sale consideration.
- g. That the complainant informed the respondent no.1 that she would be availing the loan facility in order to make the payment towards the total sale consideration towards the unit to be allotted by the respondent no.1 and towards the payment demands as and when they would be demanded by the respondent no.1. The complainant also enquired about the list of specific banks associated with the respondent through which the loan facility could be availed hassle-free. The respondent no.1 accordingly made the representation to the complainant that the complainant can avail said loan facility respondent no.2 as the said bank had a tie-up with the respondent no.1. It was also assured that all the assistance required would be given by the respondent no.1 to the complainant for availing the same and that no difficulty whatsoever at any stage till the handing over of possession would be caused to the complainant for the purpose of disbursement of the amount from the said bank towards the total sale consideration of the unit.
- h. That, Accordingly, the complainant applied for loan with the respondent no.2 and the loan to the tune of Rs. 50,00,000/- was accordingly sanctioned in favour of the complainant. The same is evident from a bare

perusal of the letter dated 02.08.2023. Thereafter, a Tripartite Agreement was executed on 10.08.2023 between the complainant, the respondent no.1 and respondent no.2 i.e. HDFC Bank Limited. As per the terms and conditions of the said Tripartite Agreement, it was decided that Respondent no.2 **would, based on the requests and representations,** and shall make the disbursement periodically to respondent no.1. It was also decided that the respondent no.2 had considered the requests with a clear understanding that the said payment would be disbursed on the basis of the request from the complainant. Moreover, no.2 all the documents with respect to the unit in question as and when the same is requested by respondent no.2.

- i. That the vide Disbursement request letter dated 10.08.2023, the complainant requested respondent no.2 to disburse Rs. 50,00,000/- to Respondent no.1 towards the unit in question. Hence, as per the terms of the Tripartite Agreement, Respondent no.2 was obligated to disburse the said amount to respondent no.1. It is pertinent to mention herein that the project in question was got financed by respondent no.1 from Kotak Mahindra Investments Limited who vide its letter dated 11.08.2023 to respondent no.1 had issued a no objection for transfer of the said flat to the complainant. Accordingly, after the receipt of no objection from Kotak Mahindra Investments Limited, an agreement for sale was got executed by respondent no.1 with the complainant on 11.08.2023. It is pertinent to mention herein that as per agreement for sale dated 11.08.2023, the possession was to be offered to the complainant within 120 days from the date of booking.
- j. That respondent no.1 vide its letters dated 14.08.2023 issued a no objection certificate and permission to mortgage to respondent no.2



granting no objection for respondent no.2 for financing the unit against security of the unit.

- k. That thereafter the complainant in lieu of clause 6 of the tripartite agreement made the balance payment of its part as per the following details: -

Rs. 10,00,000/- on 18.08.2023; Rs. 10,00,000/- on 20.08.2023

Rs. 10,00,000/- on 21.08.2023; Rs. 6,64,948/- on 22.08.2023

Rs. 10,00,000/- on 24.08.2023; Rs. 3,00,000/- on 11.10.2023

Rs. 3,50,000/- on 31.10.2023; Rs. 2,21,932/- on 02.11.2023

Hence, the total amount paid by the complainant to the respondent no.1 against the unit in question, exclusive of the loan amount, was Rs. 1,14,81,880/-. It was represented by respondent no.2 that the loan amount of Rs. 50,00,000/- would be paid by respondent no.2 to the respondent no.1 and hence the complainant was throughout under an impression that the total amount paid against the sale consideration was Rs. 1,64,81,880/- out of the total sale consideration of Rs. 1,65,65,775/-.

- l. That as per Clause 11.1 of the Agreement, respondent no.1 was to handover the possession of the unit to the complainant. when, somewhere in February, 2024, the complainant enquired the same from respondent no.1, it was informed to her that the unit has already been terminated by respondent no.1 on account of non- payment vide termination letter dated 26.12.2023. On the perusal of the said termination letter, the complainant was informed for the very first time that the unit allotted to her has been terminated. It is pertinent to mention herein that no reminders or even the said termination letter was ever received by the Complainant.



- m. That shocked and surprised by the same, the complainant approached respondent no.2 who informed the complainant that the loan amount of Rs. 50,00,000/- could not be disbursed on account of non-cooperation on the part of the respondent no.1 in completing the documentation formalities and on account of pendency of disbursement on the part of respondent no.1. It is important to mention herein that the complainant had never received any communication from either of the respondents that the amount has not been disbursed by respondent no.2 to respondent no.1 on account of failure of respondent no.1 to provide necessary documents to respondent no.2. The complainant again on 05.03.2024 approached respondent no.1 and made it clear to them that she was interested in taking the possession of the unit in question and to use it for self-residence purposes.
- n. That the complainant has come to know that there are several allottees who are suffering on account of omission on the part of the respondents. The respondent no.1 failed to pay any heed to the email dated 24.03.2024 sent by the complainant and the complainant along with her family was constrained to visit the office of the respondent no.1. When the complainant informed the representatives of the respondent no.1 about the omission on the part of the respondent no.1 and how it the complainant who is facing hardships, the representatives of the respondent no.1 apologized for the same and assured the complainant that it would reallocate the unit in the name of the complainant.
- o. That complainant, in the failure of the respondent no.1 to do so, again requested the respondent no.1 telephonically and by visiting its office to update her about the date of withdrawal of the termination letter and reallocation. The respondent no.1 yet again, with mala fide motives, gave

an assurance that it would do so within a period of one week. However, yet again, the assurances made by the respondent no.1 turned out to be false. No concrete steps were taken by the respondent no.1. The respondent no.1 kept on misleading the complainant by giving incorrect information and assurances that it would do the needful soon.

- p. That that the respondents have committed various acts of omission and commission by making incorrect and false statements at the time of booking. There has been invalid cancellation by respondent no.1 despite receipt of substantial payment from the complainant. The failure of the respondents has resulted in serious consequences being borne by the complainant.
- q. That the respondent no.1 has misused and converted to its own use the huge hard-earned amounts received from the complainant in the project in a totally illegal and unprofessional manner and the respondents have been least bothered about the compliance of the terms and conditions of the allotment. The complainant has been duped of her hard-earned money paid to the respondent no.1 regarding the unit in its project.
- r. That the respondent no.1 is enjoying the valuable amount of consideration paid by the complainant out of her hard-earned money and the complainant realizing the same, demanded the allotment to be restored. But a week ago, the respondent no.1 has in complete defiance of its obligations refused to do the same leaving her with no other option but to file the present complaint. The complainant has been informed that respondent no.1 would soon re-allot the unit to a third party and the complainant has also filed an application under Section 36 of the RERA Act, 2016 seeking interim relief of stay on creating of third-party rights on the said unit.

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

4. The complainants have sought following relief(s).
- Direct the respondent no.1 to revoke the cancellation letter dated 26.12.2023 and issue re-allotment letter in favour of the complainant.
  - Direct respondent no.1 to handover the physical possession of the unit in a habitable condition to the complainant after the receipt of the remaining amount, if any.
  - Direct no.1 not to charge any additional demand in contrary to the terms of the Agreement for Sale.
  - Direct the respondent no.2 to disburse the loan amount as per the terms of the Tripartite Agreement. Direct the respondent to allow the complainant to visit and inspect the shops and not to levy Holding charges till the outcome of this complaint.
  - Pass other relief as may deem fit by this Hon'ble Authority in favour of the Complainant and against the respondents.
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 1.**

6. The respondent no. 1 has contested the complaint on the following grounds.
- That after the issuance of the allotment of the Unit to the Complainant, copies of the Buyer's Agreement were given to the Complainant on 29.05.2023 with a specific requirement of returning the executed copy of the same; however, the Complainant failed to do so.
  - That at this stage, it is categorical to note that the respondent no. 1 had rightly followed all the applicable laws, rules, and regulations. That prior to the handover of the buyer's agreement, only 10% of the amount was accepted by the Respondent No. 1. However, the complainant miserably failed in living up to her obligations qua timely execution of the agreement, as was also agreed under the booking form under clause 30.
  - That, however, the complainant miserably failed in living up to the same and had made certain payments at her own volition. It is not the case that



respondent no. 1 had encashed any cheque/dd given by the complainant; however, the complainant made certain transactions, without taking the assent of the Respondent No. 1 and without following the due procedure of law, for which the Complainant is solely responsible.

- d. That the respondent no. 1 had vehemently communicated to the complainant of the delay in the execution of the agreement, to which the complainant acceded and further assured, represented, and warranted that any other non-compliance shall not occur. Believing on the assurances, representations, and warranties of the complainant, the buyer's agreement was executed on 11.08.2023. Hence, the Parties are bound under the contractual relationship between the parties.
- e. That as per Clause 11.1 of the agreement, the due date of offer of possession of the unit was 120 days from the date of booking of the unit (17.05.2023), and hence the due date of offer of possession of the Unit comes out to be **17.08.2023**.
- f. That the development of the project was already completed, even prior to the booking of the unit by the complainant and the respondent no. 1 had already received the occupation certificate for the unit on 24.08.2022 and had also offered the possession of the unit to the complainant on 16.08.2023, i.e., before the due date of offer of possession of the unit, hence, there is no violation whatsoever, on part of the respondent No. 1. However, the complainant has failed to take possession of the unit after remittance of the balance sales consideration.
- g. That, It is submitted that in the present complaint had stated that he had availed a loan of Rs. 50,00,000/- from the HDFC Limited Bank (Respondent No. 2) however the Bank failed to disburse the said amount in favour of the respondent no. 1 due to which the complainant failed to provide the due

instalments in a timely manner. That such allegations have been levelled against the bank and not the respondent no. 1, and do not in any manner affect the obligation of the complainant towards the respondent no. 1 in respect to the payment of outstanding dues.

- h. That as per Clause 22 of the agreement dated 11.08.2023, it is categorically agreed between the complainant and the respondent no. 1 that all the payments towards the purchase of the unit shall be paid by the allottee/complainant regardless of the fact that the complainant had taken any loan from any financial institution.
- i. That, in case the complainant had taken any loan from any financial institution, it is solemnly the responsibility of the complainant to pay the relevant instalments due under the agreement, and the same could not be shifted to any third party/financing institution.
- j. That it is submitted that the timely remittance of due instalments by the complainant was the essence of the agreement and one of the material conditions under the agreement. It was categorically agreed between the Complainant and Respondent No. 1 that if the complainant fails to abide by the terms and conditions of the agreement, the respondent no. 1 has the right to charge interest upon the due instalments, and upon further non-compliance, terminate the unit of the complainant. The obligation of remittance of timely payments comes not only from the Agreement but also from the RERA Act.
- k. That, however, the complainant has failed to make payment of the total sales consideration of the unit and take possession of the unit.
- l. That the respondent no. 1 offered the possession of the unit before the due date of possession i.e. 16.08.2023. The complainant had to make the payment of the dues as per the offer of possession letter till 18.09.2023.

- m. That the *bonafide* of the respondent no. 1 is imperative to note here that even in delaying the payment of due installments, respondent no. 1 had again provided an opportunity to the complainant and sent a reminder dated 19.09.2023 for the payment of balance amount of Rs. 68,55,734/- but the complainant once again failed to remit the same and had only made a payment of Rs. 13,00,000/- on 19.09.2023 and 12.10.2023.
- n. That being aggrieved by the acts of the complainant, the respondent no. 1 was constrained to issue the last and final opportunity letter dated 20.11.2023 for the balance payment of Rs. 52,05,734/-. It was categorically noted in the letter dated 20.11.2023 that if the complainant failed to make payment of the due instalments, the same shall be treated as the termination/cancellation of the allotment of the unit.
- o. That upon the non-payment of the due instalments by the complainant, the complainant was considered under an event of default as per clause 6.1 of the Agreement and Para 3 of the letter dated 20.11.2023, and upon the failure of the complainant to rectify her default, the respondent no. 1 was left with no other option but to terminate the unit of the complainant in accordance with clause 6 and 28.2 of the agreement, as reiterated above. Hence, therefore, the unit of the complainant was lawfully terminated vide termination letter dated 26.12.2023 after providing sufficient opportunities to the complainant in form of various reminders and last and final opportunity letter.
- p. That in such events of cancellation, the respondent no. 1 is entitled to forfeit the amounts for the booking amount, any interest due, pre-equated monthly installment interest, and commission / brokerage, if any, in terms of clause 7.2 of the agreement.



- q. That the right of the respondent no. 1 to validly cancel/terminate the unit and forfeit the said amounts arise not only from the agreement but also from the Model RERA Agreement which also recognizes the default of the allottee and the forfeiture of the interest on the delayed payments upon cancellation of the unit in case of default of the allottee.
- r. That it is further submitted that the respondent no. 1 in their utter *bonafide* had only deducted 10% of the sales consideration of the unit and is ready to refund the balance sales consideration of Rs. 96,14,795/-
- s. That it is evident from the above-mentioned submissions, the complainant stood in the event of default for not making payment in a timely manner, not taking possession of the unit, non- execution of the conveyance deed, and non-payment of statutory dues. Accordingly, the Respondent No. 1 had the right to terminate the unit as per the agreed terms and conditions under the agreement. That multiple opportunities were given to the complainant to rectify her default through the multiple reminder notices and last and final opportunity letter for payment of outstanding amount; however, the complainant again willingly and voluntarily chose to not rectify the same, and consequently, the respondent No. 1 was constrained to terminate the allotment of the unit of the complainant hence, the termination is bound to be upheld.
- 7. The respondent no. 2 has contested the complaint on the following grounds**
- i. That that it is humbly submitted that the mandate of Real Estate (Regulatory and Development) Act of 2016 is to protect the interest of home-buyers from the delays and defaults on part of the errant developers. The subject matter of the present complaint has arisen due to the alleged default on part of respondent No. 1 in timely construction and

handover of the project. However, the complainant has decided to wrongly implead HDFC Bank Ltd. as respondent no. 2. the complainant has chosen to ignore the fact that the relationship of HDFC Bank Ltd. and the complainant has arisen out a loan agreement which has no correlation whatsoever with the builder. In the humble submission of the answering respondent, this hon'ble authority lacks jurisdiction to issue any directions or orders to any other person or entity who is not a *promoter, real estate agent or allottee* and Respondent no. 2 being the lender, does not fall under any of the aforementioned categories. The instant complaint is liable to be dismissed on account of mis-joinder of parties. The domain of services provided by the respondent no. 2 is completely separate and independent of respondent no. 1 and hence the complainant ought to be dismissed as against respondent no.2 on account of lack of jurisdiction.

- ii. That Also, the scope of functioning of the Respondent no. 2 falls outside the domain of the Authority. In addition to this the complainant has failed to disclose any separate cause of action against the respondent no. 2. On the grounds as stated, the Authority may be pleased to delete the respondent no. 2 from array of parties and/or dismiss the instant complaint as against respondent no.2.
- iii. That it is respectfully submitted that the answering Respondent no. 2 i.e. HDFC Bank Ltd is no way concerned with the present complaint except that it has sanctioned the Home Loan in terms and conditions of the Home Loan Agreement (Loan A/c No 701446374) and Tripartite Agreement dated 10.08.2023. However, for the sake of brevity, the answering respondent is filing this reply under item 4. (Brief Facts) and 5. (Relief Sought) since all other item nos. 1, 2, 3, 6, 7 and 8 are the matters of record, hence needs no reply from the answering respondent.

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

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E.II Subject-matter jurisdiction**

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....

(4) The promoter shall-

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

**Section 34-Functions of the Authority:**



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

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

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

**F.I. Direct the respondent to pay interest for every month of delay at prevailing rate of interest from 23.07.2021 till actual handing of the possession.**

**F.II. Direct the respondent to handover the possession of the unit, in a habitable state, after obtaining the Occupation Certificate from the concerned authorities.**

13. In the present matter the complainant was allotted unit no. T-21, 1904, 19<sup>th</sup> floor, Tower-T21 , admeasuring 106.538 sq. mtrs. in the project "Terra" Sector 37D by the respondent-builder for a sale consideration of Rs. 1,64,65,682/-. An allotment letter dated 24.05.2023 was issued by the respondent no. 1 in favour of the complainant. As per the payment plan forming part of Annexure A of the Allotment letter and later the agreement for sale as well , 10% of the total price was to be paid at the time of booking; 20% of the total price was to be paid within 30 days from the booking; 65% of the total price was to be paid within 90 days from the booking and remaining 5% of the total price was to be paid on offer of possession.
14. The respondent-promoter obtained occupation certificate on 24.08.2022 and offered possession of the unit on 16.08.2023 before the due date of possession i.e. 24.09.2023.
15. The complainant stated that she applied for loan with the respondent no. 02 and the loan to the tune of Rs. 50,00,000/- was accordingly sanctioned in

favour of the complainant. Thereafter, a TPA was executed on 10.08.2023 between the complainant, respondent no. 1 and the respondent no.2. It was decided that Respondent no.2 would, based on the requests and representations, and shall make the disbursement periodically to respondent no.1. It was also decided that the respondent no.2 had considered the requests with a clear understanding that the said payment would be disbursed on the basis of the request from the complainant. the vide Disbursement request letter dated 10.08.2023, the complainant requested respondent no.2 to disburse Rs. 50,00,000/- to Respondent no.1 towards the unit in question. February, 2024, the complainant enquired the same from respondent no.1, it was informed to her that the unit has already been terminated by respondent no.1 on account of non- payment vide termination letter dated 26.12.2023. It is important to mention herein that the complainant had never received any communication from either of the respondents that the amount has not been disbursed by respondent no.2 to respondent no.1 on account of failure of respondent no.1 to provide necessary documents to respondent no.2.

16. On the contrary, the respondent-promoter stated that the complainant had availed a loan of Rs. 50,00,000/- from the HDFC Limited Bank (Respondent No. 2) however the Bank failed to disburse the said amount in favour of the respondent no. 1 due to which the complainant failed to provide the due instalments in a timely manner. Upon the failure of the complainant to rectify her default, the respondent no. 1 was left with no other option but to terminate the unit of the complainant in accordance with clause 6 and 28.2 of the agreement, as reiterated above. Hence, therefore, the unit of the complainant was lawfully terminated vide termination letter dated

26.12.2023 after providing sufficient opportunities to the complainant in form of various reminders and last and final opportunity letter.

17. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that the complainant has paid an amount of Rs.59,45,000/- against the unit in question. The respondent/builder sent various reminders letter dated 18.08.2023, 19.09.2023 and 20.11.2023 asking the allottee to make payment of the amount due but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 26.12.2023. Further, 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 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 1969(2) SCC 554*** and where in it was **held that** a reasonable amount by way of earnest money be deducted on cancellation and the amount so deducted should not be by way of damages to attract the provisions of section 74 of the Indian Contract Act, 1972. The same view was followed later on in a number of cases by the various courts. Even keeping in view, the principles laid down those cases, a regulation in the year 2018 was framed known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, 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. 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 no.1 is directed to refund the paid-up amount of Rs.59,45,000/- after deducting the earnest money which shall not exceed the 10% of the sale consideration 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 cancellation letter i.e. 26.12.2023 till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G. Directions of the authority**

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

- a. The respondent no.1 is directed to refund the paid-up amount i.e. Rs.59,45,000/- to the complainant after deducting 10% of the sale

consideration being earnest money along with interest at the rate of 11.10% p.a. on such balance amount from the date of cancellation i.e. 26.12.2023 till its realization.

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

20. Complaint stands disposed of.

21. File be consigned to registry.

(Ashok Sangwan)  
Member

V.1  
(Vijay Kumar Goyal)  
Member

(Arun Kumar)  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.05.2025

**HARERA**  
GURUGRAM