

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

Complaint no. :	1027 of 2024
Order reserved on:	18.04.2025
Order pronounced on:	23.07.2025

Megha Dewan

**R/O:** 9992, Dewan Bhawan, Street No. 2, Sarai  
Rohilla, New Rohtak Road, New Delhi-110005**Complainant**

Versus

M/s Ashiana Dwellings Pvt. Ltd.

**Office:** 3H, Plaza M6, Dist. Center Jasola, New  
Delhi-110025**Respondent****CORAM:**

Shri Ashok Sangwan

**Member****APPEARANCE:**

Sh. Sugandh Rathor

Sh. S.M Ansari

Advocate for the complainant

Advocate for the 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 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Ashiana Mulberry Phase 1", Sector- 2, Gurugram
2.	Nature of project	Residential Group Housing Colony
3.	RERA registered/not registered	Registered 44 of 2017 dated 11.08.2017 valid upto 30.06.2020
4.	DTPC License no.	16 of 2014 dated 10.06.2014 Valid upto 09.06.2026
5.	Unit no.	B-097 9 <sup>th</sup> floor Tower 2 [pg. 31 of complaint]
6.	Unit area admeasuring	Super Built Up Area 136.10 1465 sq. ft. [pg. 31 of complaint]
7.	Date of builder buyer agreement	17.11.2015 [pg. 29 of complaint]
8.	Possession Clause	11.2 The Company, based on its present plans and estimates and subject to Force Majeure and all just exceptions and conditions beyond control of the Company and subject to the Allottee making timely payments, shall endeavor to complete the construction work of the said Apartment/ Building thereof <b>within a period of 39 months from the date of this Agreement or start of construction after grant of Environment Clearance by MoEF whichever is later and a grace period of 6 (six) months ("Completion Date")</b> and shall thereafter apply for grant of the Occupancy Certificate and on



		receipt of the same will offer possession of theof the said apartment to the allottee.
9.	Due date of possession	17.08.2019 [Due date calculated from date of agreement i.e., 17.11.2015 as date of construction after ec is not mentioned plus grace period of six months is allowed being unqualified]
10.	Total sale consideration	₹ 82,00,295/- [as per payment plan at pg. 70 of complaint] ₹ 90,33,678/- [as per SOA annexed with offer of possession at pg. 30 of reply]
11.	Amount paid by the complainant	₹ 70,10,652/- [as per SOA annexed with offer of possession at pg. 30 of reply]
12.	Reminder letter	25.01.2018 , 14.02.2018 , 20.03.2018 (Page 43-48 of reply)
13.	Occupation certificate	02.11.2022 (Page 51 of reply)
14.	Offer of possession	03.11.2022 (page 28 of reply)
15.	Reminder for outstanding payment	29.04.2023 , 21.08.2023 (Page 49-50 of reply)
16.	Cancellation letter	04.09.2023 , 30.10.2023 (Page 99 and 85 of complaint)
17.	Third party rights created by respondent (BBA executed)	30.12.2023 (Page 56 of complainant)



18.	Refund made by respondent	20.01.2024
19.	Refund returned by complainant to respondent	25.01.2024
20.	Possession handed over to third party	18.04.2024 (page 110 of reply)

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
- I. That relying on various representations and assurances given by the respondent the complainant booked a unit in the project by paying a booking amount towards the booking of the said unit bearing no. B-907, tower-T2, 9th floor, in sector 2, Sohna, District Gurugram having super built up area measuring 136.10 sq. ft. and built up area 109 sq. ft. to the respondent dated 17.11.2015 and the same was acknowledged by the respondent.
  - II. That the respondent confirm the booking of the unit to the complainant providing the details of the project, confirming the booking of the unit dated 17.11.2015, allotting a unit no. B-907, tower-T2, 9th Floor, measuring super built up area measuring 136.10 sq. ft. and built up area 109 sq. ft. in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs.82,00,295/- which includes basic price, car parking charges, and development charges, PLC, IFMS, IBRF, club membership charges and other specifications of the allotted unit.
  - III. That a buyer's agreement was executed between the complainant and Respondents on 17.11.2015. The agreement has been executed after coming into the force of the RERA Act, 2016 and the project is registered

- with the Hon'ble Authority but the agreement that has been executed is not as per the prescribed format provided under the RERA Act, 2016 and HARERA Rules, 2017.
- IV. That as per the demands raised by the respondent based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs. 70,10,652/- towards the said unit against total sale consideration of Rs. 82,00,295/-.
- V. That on 03.11.2022 a letter from the respondent was received whereby the respondent had stated that they had received the occupation certificate dated 02.11.2022 from the directorate of Town and Country Planning Chandigarh. It was to the utter shock and dismay for the complainant that the respondent initially promised to hand over the possession of apartment or in the alternative the complainant has the remedy for a compensation of Rs. 5 per sq. ft. per month for delay in handing over of possession beyond the stipulated date as may be extended by the mutual consent of the parties delay beyond the final extended completion date computed at Rs. 5 per sq. ft. per month.
- VI. That the conduct of the respondent has put the complainant into such a situation of loss, and mental agony as the complainant has bought the apartment for her residential purpose. After exhausting herself with every remedy the complainant issued legal notice through her counsel for the compensation of Rs.2,58,060/- within 7 days of the receipt of the notice and intimating the respondent as when she can take possession on 03.03.2023 to which there was no reply by the respondent till date.
- VII. That on 04.09.2023 the respondent sent a letter of cancellation of the unit whereby the respondent had raised illegal demand of





Rs 25,21,019/- and also unilaterally cancelled the allotment of the unit as well. The said letter was duly replied by the complainant on 14.09.2023 and even asked the respondent to reply to legal notice dated 03.03.2023 which till date no reply has been given by them.

- VIII. That despite letter dated 04.09.2022 sent by the respondent to complainant, the complainant herein was astonished that the respondent had deposited the amount of Rs. 49,87,197/- without giving any intimation to the complainant.
- IX. That during the period the complainant went to the office of respondent several times and requested them to provide possession of the unit and delayed possession charges as per the ABA. The complainant even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- X. That the complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit. They have not only been deprived of the timely possession of the said unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the BBA.

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

4. The complainant has sought following relief(s).
- (i) Direct the respondent to handover the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay.
- (ii) Direct the respondent to issue fresh statement of account after adjustment of the delay possession charges.



- (iii) Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per the RERA from the due date of possession till date of actual physical possession.
  - (iv) Restrain the respondent from raising any fresh demand for payment under any head until possession which is not part of the payment plan as agreed at the time of booking.
  - (v) Not to force the complainant to sign any indemnity cum undertaking indemnifying the builder from anything legal as precondition for signing the conveyance deed.
  - (vi) Direct the respondent to provide exact layout plan of the said unit.
  - (vii) Direct the respondent to get the conveyance deed executed.
  - (viii) Direct the respondent not to ask monthly maintenance charges for a period of 12 months or more before giving actual possession of unit completed in all respects.
  - (ix) Direct the respondent not to charge anything which has not been agreed to between the parties like interest free maintenance security deposit, Fixed Deposit towards the HVAT, which in any case is not payable by the complainant.
  - (x) Direct the respondent to award amount in lieu of mental agony suffered, delayed possession, lawyer's fee.
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. Since the allotment of the complainant's unit has been already cancelled, the complaint filed by the complainant has become infructuous as the complainant herself has admitted the captioned complaint that the unit has been cancelled by way of letter dated 04.09.2023. Further, it is not the case of the complainant that the cancellation of the unit is illegal, since it is an admitted factual position. In the interest of the complainant, the respondent again sent a cancellation reminder letter dated 30.10.2023, however, none of the communications were fructified. In light of the aforesaid fact, the complaint deserves to be dismissed at the outset.
- II. Upon receiving the occupation certificate on 02.11.2022, the respondent had immediately sent the possession intimation letter on 03.11.2022 along with the customer ledger wherein the respondent had persuaded the complainant to take possession of her unit by making payment of the outstanding dues qua the allotment of unit. The said letter dated 03.11.2022 was followed by reminder letters dated 29.04.2023 and 21.08.2023. However, the complainant never came forward either to clear the outstanding dues or to take the possession. The respondent cannot be expected to wait till eternity for the allottees to take possession when it is the duty of the allottees to take possession of their respective unit within two months of receiving the occupation certificate. In the present case, since the complainant never came forward despite sending several reminders, the respondent had no other option but to cancel the allotment vide cancellation letter dated 04.09.2023 and 30.10.2023.
- III. That the complainant was under an obligation to adhere to the payment plan opted for. The complainant has repeatedly delayed and defaulted





to adhere to the payment plan as opted willfully by the complainant. It is submitted that in terms of the agreement and possession intimation letter dated 03.11.2022, the complainant was under an obligation to pay Rs. 22,58,739.03/- for the purpose of handing over peaceful and vacant possession, hence the averments made by the complainant are fallacious and bear no salt. Therefore, the complainant was liable to pay such balance dues.

- IV. That the complainant had out of her own free will and volition approached the respondent, applied and booked a unit bearing number B-907, in Tower-T2 having super built-up area of 1465 sq. ft. in the respondent's project "Ashiana Mulberry Phase-I" situated at Sector-02, Sohna, Gurugram, Haryana. The complainant opted for performance linked payment plan in order to make the payments of all the instalments.
- V. Thereafter, an apartment buyer agreement dated 17.11.2015 was executed between the complainant and the respondent herein. The agreement also contained the schedule of payment plan, which the complainant was under an obligation to adhere to under schedule "B" at page no. 43 of the agreement.
- VI. The complainant was fully aware of the fact that timely payment of the installments and outstanding dues is the essence of the contract, which duly finds mention in clause 3.4 and 3.5 of the agreement that delayed and defaulted payments shall attract adverse consequences.
- VII. Additionally, as per clause 11.2 of the agreement, the respondent assured to handover the possession of unit by 15.08.2019 (including 6 months grace period) from the date of the agreement subject to receipt of occupancy certificate within 60 days from the date of application.



However, it was also specifically stated in the said clause that the respondent shall be entitled to an extension of time for delivery of possession of the Unit in case of force majeure conditions.

- VIII. The total sale consideration of the said unit was Rs. 90,07,755/-, out of which the respondent has received a sum of Rs. 68,36,222.35/- towards consideration.
- IX. That despite receiving various reminders, invoices, demand letter(s), intimation letters 25.01.2018, 14.02.2018 and 20.03.2018 through email and otherwise sent by the respondent demanding the outstanding payments, the complainant failed to adhere to the said payment plan opted and violated clause 11.9 of the agreement. Therefore, the complainant is still liable to pay the outstanding amount of Rs. 22,58,739.03/- (including other possession related charges of Rs. 3,01,208/-) towards the allotment of unit.
- X. That even after the delay caused by various allottees including the complainant herein, in making the payment towards their respective units and various orders of the EPCA, HSPCB and the Apex Court imposing ban on the construction activities on various occasions, even after that the respondent finished the construction work of phase-I of the said project and has received the occupation certificate on 02.11.2022 from the Director General, Town & Country Planning Department, Chandigarh.
- XI. That the respondent had sent a final demand notice cum possession intimation letter dated 03.11.2022 along with the customer ledger wherein the respondent had persuaded the complainant to take possession of her unit by making full payment of the outstanding dues. The said letter dated 03.11.2022 was followed by reminder letters



dated 29.04.2023 and 21.08.2023. However, the complainant instead of clearing the outstanding dues or take the possession filed the captioned complaint with the ulterior motive to defame the respondent and earn wrongfully from the respondent.

- XII. Since the complainant failed to respond to the reminder letters, take possession and clear the outstanding dues, the respondent was constrained to cancel the allotment of unit vide letter of cancellation dated 04.09.2023 and thereafter reminder notice of cancellation dated 30.10.2023 in terms of clause 11.10 of the agreement.
- XIII. In accordance with the terms outlined in the agreement, as the next tenable course of action, the respondent promptly initiated the refund process, notifying the complainant on 23.01.2024 of the reimbursement of the deposited amount. The sum of Rs. 49,87,197/- had been transferred to the complainant's bank account on 20.01.2024. However, to the utter surprise of the respondent on 25.01.2024 the complainant without any justification proceeded to refund the entire deposited amount back to the respondent.
- XIV. That the unit has already been sold to Mr. Asis Bandyopadhyay and Mrs. Banti Bandyopadhyay on 28.11.2023 i.e. much prior to filing of the captioned complaint which was filed on 20.03.2024. Consequently, the agreement for sale was registered on 30.12.2023, the possession intimation letter was sent to the new allottees on 16.02.2024 and the possession was handed over on 21.04.2024. Accordingly the captioned complaint is liable to be dismissed at the outset.
- XV. That as per clause 11.2 of agreement, respondent never promised the complainant to handover the possession of the unit till 16.02.2019 plus grace period of 6 months from the date of execution of agreement. The





said clause clearly states that the respondent shall handover the possession subject to application made for grant of occupation certificate and on receipt of the same shall offer possession of the said unit.

- XVI. Further, clause 11.3 of the agreement enumerates the "force majeure" clause wherein it has been laid down that completion date shall automatically be deemed to be extended if the delay in completion of construction of the project has occurred due to force majeure or circumstances beyond the control of the respondent.
- XVII. Pursuant thereto, as per the terms of the agreement and the RERA registration, subject to timely payment by the Allottees as well as subject to force majeure, the construction of the unit was to be completed by 16.02.2019 unless there is delay due to "force majeure", court order etc. The construction of the project was stopped several times during the year 2017, 2018, 2019 and 2020 by the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India. It is most respectfully submitted that due to the increase in the level of pollution in the NCR region, the Hon'ble Supreme Court vide its order dated 14.11.2019 passed in the matter of "MC Mehta Vs Union of India & Others" bearing Writ Petition (c) No. 13029/1985 imposed complete ban on construction and excavation work across the National Capital Region from 04.11.2019, which was ultimately lifted on 14.02.2020. Ban on construction caused irreparable damage to the delivery timelines and the real estate developers' finances as the respondent was not able to undertake any construction work during the aforesaid period and the same was beyond the control of the respondent. Furthermore, the impact of Covid-19 pandemic has been felt

throughout the globe and more particularly by Real Estate industry. The pandemic completely disrupted the supply chain of the respondent therefore the delay if any, is not attributable to the respondent herein.

XVIII. That in order to curb down the air pollution the Environment & Pollution (Prevention & Control) Authority, for National Capital Region, has reviewed the urgent action that needs to be taken for the implementation of the Graded Response Action Plan (GRAP) vide it's notification dated EPCA-R/2020/L-38 dated 08.10.2020 and has imposed ban on the use of Diesel Generator set with effect from 15.10.2020, which has further led to delay in the construction being raised.

XIX. That the respondent has always kept the complainant updated with respect to the development of surrounding area as well as of construction of the project. The respondent further repetitively apprised the complainant of the factors which have a visible adverse impact on the real estate industry.

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 complainant at a later stage.

## **F. Findings on the relief sought by the complainant:**

- (i) Direct the respondent to handover the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay.
- (ii) Direct the respondent to issue fresh statement of account after adjustment of the delay possession charges.



- (iii) Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per the RERA from the due date of possession till date of actual physical possession.
  - (iv) Restrain the respondent from raising any fresh demand for payment under any head until possession which is not part of the payment plan as agreed at the time of booking.
  - (v) Not to force the complainant to sign any indemnity cum undertaking indemnifying the builder from anything legal as precondition for signing the conveyance deed.
  - (vi) Direct the respondent to provide exact layout plan of the said unit.
  - (vii) Direct the respondent to get the conveyance deed executed.
  - (viii) Direct the respondent not to ask monthly maintenance charges for a period of 12 months or more before giving actual possession of unit completed in all respects.
  - (ix) Direct the respondent not to charge anything which has not been agreed to between the parties like interest free maintenance security deposit, Fixed Deposit towards the HVAT, which in any case is not payable by the complainant.
12. The above mentioned reliefs are interrelated to each other. Accordingly, the same are being taken up together for adjudication.
13. In the present complaint, the complainant booked a unit in the project of respondent namely, Ashiana Mulberry Phase 1, situated at sector 2, Gurugram. The complainant was allotted a unit bearing no. B-097, 9<sup>th</sup> floor in Tower 2 admeasuring 1465 sq. ft. The builder buyer's agreement was executed between the complainant and the respondent



on 17.11.2015 for the total sale consideration of was Rs. 82,00,295/- and the complainant has made a payment of Rs. 70,10,652/- against the same in all. As per clause 11.2 of the agreement, the respondent was required to hand over possession of the unit within a period of 39 months from the date of execution of agreement or start of construction after grant of environment clearance whichever is later. Further there shall be grace period of 6 months. The date of start of construction after grant of environment clearance is not available on records so the due date is calculated from the date of execution of agreement i.e., 17.11.2015. Therefore, the due date of possession comes out to be 17.08.2019 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 02.11.2022 and thereafter, has offered the possession on 03.11.2022.

14. The complainant in the present complaint is seeking delay possession charges as well as possession of the unit along with other reliefs. The complainant has pleaded that the respondent has delayed in handing over of possession as per buyer's agreement dated 17.11.2015.
15. The plea of the respondent is otherwise and stated that the demand were raised as per payment plan annexed with builder buyer's agreement dated 17.11.2015 and the complainant has made payment of Rs. 70,10,652/- out of total sale consideration of Rs. 90,33,678/-. The respondent has received the occupation certificate on 02.11.2022 and subsequently offered the possession of the unit on 03.11.2022 along with a demand letter however, the complainant has failed to pay the said demand. The respondent issued

reminder letters dated 29.04.2023, 21.08.2023 but despite repeated follow ups the complainant failed to act further and comply with their contractual obligations the unit of the complainant was terminated vide letter dated 04.09.2023 and thereafter respondent again on 30.10.2023 sent a letter for cancellation of unit.

Now the question before the authority is whether the cancellation issued vide letter dated 30.10.2023 is valid or not.

16. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that the builder buyer agreement was executed between the complainant and respondent on 17.11.2015. The sale consideration of the unit was Rs. 82,00,295/- and the complainant has made a payment of Rs. 70,10,652/- against the same in all. As per the payment plan annexed as Schedule B in the agreement dated 17.11.2015 at page 71 of the complaint, the complainant was required to make final payment on the possession. The complainant 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 02.11.2022, which conclusively establishes that construction of the project has been duly completed.
17. 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.



18. 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 builder buyer agreement dated 17.11.2015. The respondent issued reminders dated 29.04.2023, 21.08.2023 for making payment for outstanding dues as per payment plan and further issued cancellation letter dated 04.09.2023. Despite issuance of aforesaid reminders, the complainant has failed to take possession and clearing the outstanding dues. Therefore, the respondent finally cancelled the unit vide letter dated 30.10.2023.
19. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainant is hereby declined as the complainant-allottee 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.
20. 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 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."*

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. So, the respondent/builder is directed to refund the amount received from the complainant 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. In the present complaint the respondent after cancellation of the unit has refunded the paid up



amount on 20.01.2024 to the complainant. But thereafter the complainant on 25.01.2024 transferred back the amount to the respondent. So, the authority is of the view that interest should be granted from the date of termination/cancellation 30.10.2023 till the date the respondent has already refunded the said amount i.e., 20.01.2024.

**(x) Direct the respondent to award amount in lieu of mental agony suffered, delayed possession, lawyer's fee.**

22. The complainant in the aforesaid relief is 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 complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

#### **G. Directions of the authority**

23. 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. 70,10,652/- after deducting 10% of the sale consideration



along with an interest @11.10% on the refundable amount, from the termination/cancellation 30.10.2023 till the date the respondent has already refunded the said amount i.e., 20.01.2024.

- 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.
24. Complaint as well as applications, if any, stands disposed off accordingly.
25. File be consigned to registry.



(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.07.2025

**HARERA**  
**GURUGRAM**