

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

**Complaint no:** 693 of 2024  
**Date of Filing:** 27.02.2024  
**Date of First Hearing:** 24.04.2024  
**Date of decision:** 30.07.2025

**Harjit Singh Hooda**

**R/o :** House no. 1013A, Sector 1,  
Rohtak, Haryana- 124001

**Complainant**

**Versus**

**M/s VSR Infratech Private Limited**

**Registered address:** A-24, Hill View  
Apartments, Vasant Vihar, New Delhi-  
110057

**Office address:** Plot No. 14, Ground  
Floor, Sector-44, Industrial Area,  
Gurugram-122003

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**Appearance:**

Mr. Harshit Batra (Advocate)

Ms. Shriya Takkar (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 as provided

under the provision of the Act or the rules and regulations made there under or to the allottees as per the memorandum of understanding executed *inter se*.

#### A. Project and unit related details.

2. The particulars of the project, the details of 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	"68 Avenue", Sector- 68, Gurugram
2.	Project area	3.23 acres
3.	Nature of the project	Commercial (Service Apartment)
4.	DTCP license no. and validity status	4 of 2012 dated 23.01.2012
5.	Name of licensee	Yad Ram and two others
6.	RERA Registered/ not registered	<b>Registered</b> 119 of 2017 dated 28.08.2017 Valid upto 30.06.2018
7.	Unit No.	SA4-28, 4 <sup>th</sup> floor, tower A (Page 32 of the complaint)
8.	Unit area admeasuring (super area)	652.510 sq. ft. (Page 32 of the complaint)
9.	Date of Allotment	07.07.2012 (Page 27 of complaint)
10.	Date of execution of buyer's agreement	22.05.2013 (Page no. 30 of complaint)
11.	Possession clause	<b>Clause 31</b> <i>"The Company will, based on its present plans and estimates, contemplates to offer possession of Said Unit to the Allottee(s) within 36 months of signing of this Agreement or within 36 months from the date of start of construction of the said Building, whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/in action. If the completion of the said Building is delayed by reason of non- availability of steel and/or cement or other building materials, or</i>

		<p>water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the Company, lock out or departmental delay or civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or any other reason beyond the control of the Company, the Company shall be entitled to extension of time for delivery of possession of the said premises. The Company is a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances beyond the control of the Company' so warrant, the Company may suspend the Scheme for such period as it might consider expedient. In case the Company is unable to complete the project on account of any law passed by the legislature or any other government agency, in that event the Company if so advised, shall be entitled to challenge the validity, applicability and/or efficacy of such legislation, rule, order and/or bye law .....</p>
12.	Due date of possession	<p>22.08.2016            (Calculated to be 36 months from the date of execution of agreement along with unqualified grace period of 3 months)</p>
13.	Basic Sale consideration	<p>Rs. 45,67,570/-            (Page 33 of the complaint)</p>
14.	Amount paid by the complainants	<p>Rs.59,76,775.42/-            (Rs. 54,77,350.42/- + Rs.4,99,425/-)            (Page 60-86 of complaint)</p>
15.	Occupation certificate	<p>02.08.2019            (Page 91 of the complaint)</p>
16.	Offer of possession	<p>30.08.2018            (Page 51 of Reply)</p>
17.	No dues certificate issued by respondent to complainant	<p>13.03.2020            (Page 101 of complaint)</p>
18.	MOU (Lease clause)	<p>19.03.2020- Not executed            (Page 102 of complaint)</p>
19.	Lease Deed executed between the respondent	<p>28.03.2023            (Page no. 8 of written submissions filed by the respondent dated 11.12.2024)</p>

and M/s BNM Hotels and Resorts Pvt. Ltd.	
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**B. Facts of the complaint:**

3. The complainants have made the following submissions: -

- a) That the complainant made payment of Rs. 9,42,000/- towards registration and allotment in the project. Thereafter, on 07.07.2012 the complainant was duly allotted unit no. SA4-28, 4th floor, having super area measuring 652.510 sq. ft. for a total sale consideration of Rs. 50,01,489/- which included the charges of EDC and IDC as mentioned in clause 2 (c) of the agreement.
- b) That it was only after having received an amount of Rs. 18,76,360.46/-, the buyer's agreement was executed on 22.05.2013. As per clause 31 of the said agreement respondent was obliged to complete the development of the said project and deliver the possession of the said space (Service Apartment) within 36 months from the date of execution of the agreement along with grace period of 3 months. Thus, the respondent ought to have delivered a valid possession by 22.08.2016.
- c) That along with the said agreement, respondent cleverly got the complainant to sign another letter mentioning about the Running, Operating, Leasing and Managing Smart Office Services Apartments (SOSA)/ Services Apartments (SA), which contained extremely arbitrary and one-sided terms. The respondent took unconditional consent from the complainant to handover the unit to any maintenance agency and that the company will have a complete discretion in choosing the maintenance agency. The respondent also illegally retained the right to choose lessee for long term lease for period of 15 years and the same cannot be terminated. The respondent assured the complainant that profits generated from the operation of the unit shall be accounted on a monthly

basis and the complainant will receive assured regular rentals. On the pretext of false promises and assurances, the respondent coerced the complainant to sign the SBA and the complainant having already made substantial payment of Rs. 18,76,360/- before the execution of the SBA had no choice but to sign the dotted lines.

- d) The clause 21 of the SBA stipulates payment of interest @18% p.a. on delayed payment. However, the entire agreement nowhere provides for any kind of compensation to the complainant in case of delay in delivery of possession by the respondent. Clause 31 of the agreement stipulates that in case respondent is unable to complete the project on time they shall not be liable for any interest or compensation.
- e) That the respondent has arbitrarily and illegally imposed forfeiture of 15% of basic sale price in case of default of by the complainant as per clause 19 of the agreement. Such deduction is illegal as the Authority has time and again held that in case on cancellation/termination only 10% of the earnest money shall be deducted and rest of the amount be refunded. No compensation has been provided to the complainants till date despite being the delay of many years in the project.
- f) That the complainant diligently kept on paying the sale consideration as and when so demanded. That by 24.07.2017, even before any offer of possession the complainant had paid an amount of Rs. 49,27,350.42/- towards sale consideration and other charges. The complainant made the payment of almost entire sale consideration of Rs. 54,77,350.42/- but till date has not received a valid offer of possession.
- g) That the respondent offered an illegal possession without having the occupation certificate for that floor on 30.08.2018. The complainant

wrote various e-mails to the respondent to share the copy of the occupation certificate of the complainant's unit, but he received no reply.

- h) That the occupation certificate of the project was received by the respondent on 02.08.2019 and 15.01.2019 for the 3rd floor onwards and Ground to second floor respectively. The respondent illegally offered possession to the complainant on 30.08.2018 and raised various arbitrary demands.
- i) Thus, there is a delay of more than 8 years, and the respondent has failed to offer a valid possession and compensation for the delay in possession. The entire aim of a retired professional to earn the basic income has been miserably violated by the respondent, due to its inordinate delay.
- j) That the respondent had also violated Section 11(4)(b) of the Act. The respondent received the occupation certificate for the 3<sup>rd</sup> floor and above in the project on 02.08.2019 but before even obtaining the occupation certificate they issued an illegal offer of possession on 30.08.2018. The Haryana Building Code, 2017, restrains any person from occupying any part of the building or new building without receipt of the occupancy certificate.
- k) That along with delay in delivery of the possession the respondent have raised various illegal charges as evident from the Annexure 1 to the unlawful offer of possession dated 30.08.2018 and reminder letter dated 05.12.2023 issued by the respondent :
- (i) Contingency Rs. 1,30,502/-
  - (ii) Fitout charges Rs. 9,98,430/-
  - (iii) GST Charges of Rs. 1,96,496/- and Rs. 76,148/- (already paid)
  - (iv) Interest/Late Payment charges Rs. 59,352/-
- l) That the total sale consideration of the unit is Rs. 50,01,489/- and the complainant has already made total payment of Rs. 54,77,350.42/-. The

respondent is arbitrarily imposing separate charges for the fit out for Rs. 9,98,430/- which is equivalent to 20% of the TSC and hence, is completely unreasonable. When the complainant has already made payment of the TSC along with the other charges, the fit-out charges are completely invalid. The due date of possession is 22.08.2016. Thus, any charge of GST is completely invalid as the GST came in the year 2017 and it is due to the default of the respondent that they have delayed the project. The contingency charge is completely arbitrary as the same is charged without any due explanation and just another sham way of the builder to take money from the innocent buyers. That further, the respondent has imposed late payment charges Rs. 59,352/- whereas the respondent themselves has gravely delayed in completion of the project.

- m) That with the offer of possession the respondent raised illegal demand of Rs. 13,82,334 /-. The complainant protested to such illegal demands and thereafter the respondent raised multiple fresh demands amounting to Rs. 17,59,666.09/-; Rs. 8,07,695.94/-; Rs. 9,74,006/- on different occasion and finally demanded Rs. 7,97,828.94/-.
- n) That after multiple meetings and revision of fresh dues the complainant finally made the payment of Rs.5,50,000/-. The respondent in acknowledgement of that had issued no dues certificate in favor of the complainant dated 13.03.2020 via which they acknowledged the last payment of Rs.5,50,000/- made by the complainant which duly contained the note that payment of Stamp duty, Administration Charges and IFMS are not included herein. Despite the said certificate the respondent illegally sent reminder letter dated 05.12.2023 demanding Rs. 19,31,252/- on account of various unlawful charges.

- o) That the respondent out of nowhere also sent a completely one-sided and arbitrary memorandum of understanding dated 19.03.2020 which has not been signed by the complainant. The arbitrary terms of the said MOU clearly shows the intention of the respondent to misguide and take the advantage of the innocent buyers. The arbitrariness and unfairness of the MOU can be derived from the clauses of the MOU. As per clause 5 of the MOU the respondent unilaterally takes the agreement from the complainant to indemnify the respondent against all the cost, liabilities and any other expenses if there is a breach of the obligations of the MOU. Such unreasonable terms were completely unacceptable to the complainant, hence refused to sign.
- p) That the respondent shared a term sheet between the respondent and Alcott Town Planners Private Limited (OYO) dated 16.08.2018 wherein the parties decided to take on rent Tower A (in which unit of complainant belongs) and lease rental of Rs. 9,46,000/- per month for the entire area was decided. Thereafter, despite repeated requests by the complainant, respondent did not share the lease deed and failed to pay the lease rental of the unit to the complainant.
- q) Thereafter, the respondent sent another letter dated 15.09.2023 introducing a new lessee on the complainant's unit. As per the terms of that letter the complainant's unit was leased out @Rs. 30/- per sq. ft. and the respondent undertook the obligation that it shall pay lease rental to the complainant w.e.f. 01.09.2023. The complainant has not received any lease rental for his unit from the date of this lease till present day.
- r) That as per the clause 32 of the agreement the complainant is entitled to receive the physical possession of the unit. The act and conduct of respondent are contrary to the settled terms and conditions.

- s) That in view of the above facts, it is requested to direct the respondent to handover valid physical possession of the unit along with delay possession charges and direct the respondent to pay the arrears of the lease rental of the unit since 2018.

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

4. The complainants have sought following relief(s)

- I. Direct the respondent to pay delay possession charges on the entire amount paid by the complainant at the prescribed rate of interest @MCLR + 2% from the due date of possession till actual date of realization of the amount.
  - II. Direct the respondent to give valid physical possession to the complainant.
  - III. Quash illegal charges and demands mentioned as follows:
    - (i) Contingency Rs.1,30,502/-
    - (ii) Fit out charges Rs.9,98,430/-
    - (iii) GST Charges of Rs.1,96,496/- and Rs.76,148/- (already paid)
    - (iv) Interest/Late Payment charges Rs.59,352/-
  - IV. Direct the respondent to share lease agreements executed on complainant's unit.
  - V. Direct the respondent to pay the due lease rentals from date of completion as assured and to keep paying the same till 15 years as agreed between the parties.
5. An application dated 11.04.2025 has been filed by the complainant seeking amendment in relief sought from delay possession charges along with interest, valid physical possession and quashing of illegal charges and demands made by respondent to that of refund with interest along with refund of charges amounting to Rs.4,99,425/- paid towards property tax, stamp duty, registration, IFMS and administration charges. It was further stated that the complainant sought relief of refund before as well by way of e-mail's dated 08.04.2019 and 15.05.2019. The said application was allowed

by the Authority during the course of proceedings dated 14.05.2025. Therefore, the above-mentioned relief(s) sought by the complainant becomes redundant and now the Authority would only deliberate upon the following relief(s):

- I. Direct the respondent to refund with interest along with refund of charges amounting to Rs.4,99,425/- paid towards property tax, stamp duty, registration, IFMS and administration charges.
6. 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.**

7. The respondent contested the complaint on the following grounds vide its reply dated 10.07.2024 and written submissions dated 23.07.2025: -
  - a) The Complainant post receipt of Occupation Certificate dated 02.08.2019, visited the Complex and only after being completely satisfied with the construction and development undertaken by the respondent, on his own free will and discretion deposited an amount toward outstanding dues of Rs.5,50,000/- on 07.03.2020 post acceptance of discounts and delay compensation granted by the respondent in favour of the complainant.
  - b) The said conduct unequivocally indicates the complainant's acceptance of the demand for fit out raised vide letter dated 30.08.2018. Therefore, at this belated stage, the complainant is estopped from raising objections or making allegations pertaining to the said charges, having already acquiesced to the same by his conduct.
  - c) That a no dues letter dated 13.03.2020 was also issued by the management of the respondent but the same was recalled by the respondent vide letter dated 30.03.2024: demand cum withdrawal of no dues letter since it was issued by the respondent due to an inadvertent

error and the complainant was requested to deposit a sum of Rs.19,31,252/- towards pending outstanding dues payable by the complainant.

- d) That subsequent to that, the respondent was constrained to send reminder letter dated 27.05.2024 and 06.05.2024 to the complainant. Despite the repeated request and reminders, the complainant failed to make payment and clear the outstanding dues.
- e) The complainant rather than clearing the outstanding dues chose to file a complaint bearing no. 693 of 2024 before this Hon'ble Authority seeking possession of the service apartment along with delay possession charges and other reliefs.
- f) That this Hon'ble Authority by way of order dated on 13.11.2024 was pleased to pass the following orders in the said complaint:

*"In view of the above, the respondent are directed to execute the conveyance deed with the complainant on payment of registration/stamp duty and administrative charges upto Rs. 15,000/-as well as IFMS within a period of 45 days. The rest of issues shall be adjudicated consequently. Matter to come upon 15.01.2025 for further proceedings."*

- g) The complainant deposited the requisite amounts as per the directions passed by the Authority. The respondent vide email dated 07.12.2024 intimated the complainant regarding the process to be followed for execution of conveyance deed. The respondent vide email 08.01.2025 informed the complainant that they are ready and willing to get the conveyance deed registered. The complainant thereafter wrote e-mail dated 09.01.2025 wherein the complainant raised objections qua certain clauses of the conveyance deed allegedly not being as per RERA norms. Thereafter the complainant only on 03.02.2025, wrote a detailed email

pointing out his alleged objections to certain clauses of the conveyance deed. The respondent vide email dated 18.03.2025 sent a detailed reply/response to the alleged objections raised by the complainant. It is submitted that the complainant was duly informed that all the clauses of the conveyance deed were in accordance with the contractual understanding between the parties duly recorded in the Space Buyers Agreement dated 22.05.2013 and are as per RERA norms. From the averments made hereinabove, it is absolutely clear that the complainant had every intent to take possession of the service apartment in accordance with the agreed terms. The complainant is estopped by his own conduct from raising any issues at this stage. The alleged emails dated 08.04.2019 and 15.05.2019 are redundant and the contents of the same are denied and are of no consequence whatsoever at this stage. The complainant, by his own conduct has waived off the right to raise any issues at this stage. Thus, the complainants are estopped by their own conduct from seeking refund of the amount deposited.

- h) It is submitted that all the demands were raised by the respondent as per the payment plan opted by the complainant however, the complainant failed to make timely payments and was a defaulter. The reminder letters dated 16.08.2012, 15.09.2022, 17.10.2012, 28.11.2012, 05.01.2013, 5.06.2017, 07.07.2017, and 05.12.2023 were also issued to the complainant to clear his outstanding dues.
- i) That under Section 19 (6) RERA the complainant is responsible to make necessary payments in the manner and within time as specified in the agreement and in case of default the complainant is liable to pay interest for delay under Section 19(7) of RERA.

- j) It is submitted that the complainants were requested vide letter dated 13.03.2020 to come forward and clear their pending dues of Rs. 20,33,801/- and take the symbolic possession of the unit. However, the complainants did not pay any heed to the same as a consequence of the same the respondent issued reminder -1 dated 06.05.2024 to clear their dues, but to no avail.
- k) That the complainant is not entitled to receive the physical possession of the unit, as the unit was booked and allotted for the purpose of leasing, and it was duly agreed between the parties at the time of signing the agreement. The clauses of the space buyer's agreement, the complainant was not entitled to the physical or constructive possession of the unit and was only entitled to the symbolic or paper possession.
- l) That as per clause 31 of the agreement dated 22.05.2013, the respondent was supposed to hand over the possession within a period of 36 months from the date of the signing of agreement or within 36 months from the date of start of construction of the said building whichever is later along with a grace period of 3 months. The agreement was executed between the parties on 22.05.2013 and the construction of the project started on 26.07.2012. As per clause 3 of the agreement, the respondent shall be entitled to extension of time for delivery of possession of the said premises if such performance is prevented or delayed due to conditions mentioned therein. That despite exercising diligence and continuous pursuance of project to be completed, the construction and development of the project was affected due to non-completion of Dwarka Expressway, stoppage of construction work due to passing of the NGT orders, demonetization, COVID 19 pandemic etc. It is also relevant to mention here that that in the year, 2012 on the directions of the Hon'ble Supreme

Court of India, the mining activities of minor minerals (which includes sand) were regulated.

- m) That all charges levied by the respondent were in strict accordance with the terms and conditions of the agreement dated 22.05.2013 duly executed between the parties. The complainant voluntarily and knowingly signed the same. The present allegations now raised by the complainant are baseless and appear to be an afterthought, intended solely to evade contractual obligations and to seek unwarranted monetary gains from the respondent. Such conduct on the part of the complainant amounts to an attempt to resile from a binding agreement, which is impermissible in law.
- n) That the complainant has falsely alleged that the respondent Company leased out the unit to OYO on or around 16.08.2018, despite not having obtained the Occupancy Certificate (OC). The said allegation is baseless, misconceived, and devoid of any documentary evidence. The document being relied upon by the complainant is merely a term sheet, which at best reflects an offer made by OYO to lease certain units of the project and the same was subject to terms and conditions contained thereinunder. The terms sheet was shared with all the allottees that exists in the said tower for their consent and approval in order to enable the respondent to take further recourse and execute the lease deed with the intending lessee however, the talks did not materialize and same was duly informed to the complainant. The LOI never culminated into lease deed. Accordingly, the unit was never leased out to OYO and any claim contrary is factually incorrect and misleading.
- o) That the complainant was duly informed vide letter dated 15.09.2023 about the unit being leased out to BNM Hotels and Resorts Private

Limited. The respondent was acting as a Facilitator and BNM Hotels and Resorts was liable to remit lease rental to the complainant.

- p) Furthermore, the lease rental has not been paid by the lessee, i.e. M/s BNM Hotels & Resorts Private Limited and the same is accruing upon them. It is clarified that the Lessee M/s. BNM Hotels and Resorts has not passed on the amount of the lease rentals to the respondent company. The complainant herein is seeking the payment of lease rental and the said relief can only be claimed from M/s. BNM Hotels and Resorts. Thus, M/s. BNM Hotels and Resorts is a necessary party to the present case. In all probability the lessor M/s. BNM Hostels and Resorts has not passed on the lease rentals due to execution of some documents with the complainant and the said issue needs to be resolved between the complainant and the lessee directly. The respondent is willing to corporate in this regard. The complainant is seeking recovery of lease rentals, however, such relief, if any, lies solely against M/s BNM Hotels & Resorts Private Limited, being the party responsible for payment.
- q) That as far as alleged objections qua clauses of the conveyance deed are concerned the same have been raised in accordance with the terms of the buyer's agreement.
- r) That without prejudice, as this Authority is inclined to allow the refund to the complainant, notwithstanding the facts and circumstances placed on record, the same may kindly be granted subject to lawful and permissible deductions, including but not limited to, earnest money, statutory dues, brokerage charges, and any other amounts already incurred or paid on behalf of the complainant by the respondent. The complainant is not entitled to any interest on the amount deposited. However, and without prejudice to the respondent's rights and

contentions, if any interest is to be considered, the same may only be granted from the date of filing of the application seeking amendment of the relief, i.e., 26.03.2025, and strictly after effecting the aforementioned deductions. The detailed break-up of such deductions is hereinbelow:

(i) Earnest money: Rs. 4,56,757/-

(ii) Statutory dues: Rs. 2,19,380/-

(iii) Brokerage: Rs. 3,65,406/-

8. 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 based on these undisputed documents and submission made by the parties.

#### **E. Jurisdiction of the authority**

9. 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**

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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**

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per flat buyer's agreement. 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.*

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.
13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been held as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as*

*envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

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

**F.1 Direct the respondent to refund with interest along with refund of charges amounting to Rs.4,99,425/- paid towards property tax, stamp duty, registration, IFMS and administration charges.**

15. The factual matrix of the case reveals that the complainant applied for booking of a unit in the project "68 Avenue" and was allotted unit bearing no. SA4-28, 4<sup>th</sup> floor, tower A vide allotment letter dated 07.07.2012. The buyer's agreement was executed into between the parties on 22.05.2013. The basic sale consideration of the serviced apartment was Rs.45,67,570/-. Further, as per clause 31 of the buyer's agreement the possession of the unit was to be offered within 36 months from the date of the execution of the buyer's agreement with a further unqualified grace period of 3 months. Hence, the due date of possession comes out to be 22.08.2016, including unqualified grace period of 3 months.

16. Herein, the complainant intends to withdraw from the project and is seeking a refund as provided under the proviso to Section 18(1) of the Act. Section 18(1) proviso reads as under:

**"Section 18: - Return of amount and compensation**

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

**(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or**

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act*

*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)***

17. The Authority observes that right under section 18(1)/19(4) accrues to the allottee on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If the allottee has not exercised the right to withdraw from the project after the due date of possession is over till the occupation certificate was obtained by the respondent-promoter, it impliedly means that the allottee tacitly wished to continue with the project. The promoter has already invested in the project to complete it and obtained the occupation certificate w.r.t. the allotted unit. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in force as the promoter has to pay interest at the prescribed rate of every month of delay till the handing over of possession and allottees interest for the money he has paid to the promoter is protected accordingly and the same was upheld by in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs. State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private***

**Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020**  
**decided on 12.05.2022.** observed as under: -

***"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."***

18. However, in case the allottee wishes to withdraw from the project, the promoter is liable on demand to return the amount received by it with interest at the prescribed rate if it fails to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale. The words liable on demand need to be understood in the sense that the allottee has to make intentions clear to withdraw from the project and a positive action on his part to demand return of the amount with prescribed rate of interest if he has not made any such demand prior to receiving occupation certificate and unit is ready then he impliedly agreed to continue with the project i.e. he do not intend to withdraw from the project and this proviso to Section 18(1) automatically comes into operation and the allottees shall be paid interest at the prescribed rate for every month of delay by the promoter.

19. In the instant case, the occupation certificate for tower-A was received on 02.08.2019. However, the complainant has surrendered the unit by filing the

application for amendment of relief on 11.04.2025 i.e., after receipt of occupation certificate. Therefore, in this case, refund can only be granted after certain deductions. Though, it is contended on behalf of respondents that they are liable to forfeit amount towards earnest money, statutory taxes, brokerage etc. However, the Authority is of view that the respondents cannot retain more than 10% of the sale consideration and is bound to return the remaining. Even the Hon'ble Apex court of the land in cases of *Maula Bux Vs. Union of India (1973) 1 SCR 928*, *Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136*, and followed by the National Consumer Dispute Redressal Commission, New Delhi in *consumer case no. 2766/2017 titled as Jayant Singhal and Anr. Vs. M/s M3M India Ltd. decided on 26.07.2022* took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder and as such, there is hardly any actual damage. So, it was held that 10% of the sale price is reasonable amount to be forfeited in the name of earnest money. Thus, keeping in view the principles laid down by the Hon'ble Apex court in the above-mentioned two cases, the rules with regard to forfeiture of earnest money were framed by the authority known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 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."*

20. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondents-promoter is directed to refund the amount paid by the complainant after deducting 10% of the sale consideration being earnest money along with an interest @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 on the refundable amount, from the date of surrender i.e., from the date application for amendment of relief is filed on 11.04.2025 till its realization, within the timelines provided in Rule 16 of the Haryana Rules, 2017 *ibid*.

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

21. 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/ promoter is directed to refund the paid-up amount i.e., Rs.59,76,775.42/- (Rs. 54,77,350.42/- + Rs.4,99,425/-) after deduction of 10% of the sale consideration as earnest money along with interest at the rate of 11.10% p.a. as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of surrender i.e., from the date application for amendment of relief is filed on 11.04.2025 till its 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.


22. Complaint stands disposed of.

23. File be consigned to registry.

**Dated: 30.07.2025**



**HARERA**  
**GURUGRAM**

  
**Ashok Sangwan**  
(Member)  
Haryana Real Estate  
Regulatory Authority,  
Gurugram