

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

Complaint no.: 2548 of 2023
Date of filing of complaint: 28.06.2023
Date of first hearing: 15.11.2023
Date of decision: 14.05.2025

1. Rajinder Sethi

2. Abhishek Sethi

Regd. Office: - 3/20, Old Rajinder
Nagar, New Delhi- 110060

Complainants

Versus

M/s SS Group Private Limited.

Regd. Office at: - SS House, Plot
No. 77, Sector-44, Gurugram-
122003

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Sumit Sharma (Advocate)

Mr. Rahul Bhardwaj (Advocate)

Complainants

Respondent

ORDER

1. The present complaint has been filed by the complainant-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 provision of the Act or the Rules and regulations made thereunder or to the allottee 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	"The Coralwood and Almeria", Sector 84, Village Sihi, Gurugram.
2.	Project area	15.275 Acres
3.	Nature of the project	Group Housing complex
4.	DTCP license no. and validity status	59 of 2008 dated 19.03.2008 valid upto 18.03.2025
5.	Name of licensee	North Star apartment Pvt. Ltd.
6.	RERA Registered/ not registered	381 of 2017 dated 12.12.2017 valid upto 31.12.2019
7.	Unit no.	8A, 1 st floor (Page no. 20 of complaint)
8.	Unit area admeasuring	2000 Sq. Ft. super area (Page no. 20 of complaint)
9.	Flat Buyer's Agreement	14.08.2012 (Page no. 19 of complaint)
10.	Possession clause	8. Possession "8.1: Time of handing over the possession 8.1 (a) Subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc. as prescribed by the developer, the developer proposes to handover the possession of the flat within a period of thirty six months from the date of signing of this agreement. However, this period will automatically stand extended for the time taken in getting the building plans sanctioned. The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six months or such extended period, for applying and obtaining occupation certificate in respect of the Group Housing Complex."

		(Emphasis supplied) (Page no. 24 of complaint)
11.	Due date of possession	14.02.2016 (Calculated to be 36 months from the date of execution of BBA plus a grace period of 90 days for applying and obtaining occupation certificate) Note: Inadvertently mentioned as 14.08.2015 in proceedings dated 19.03.2025
12.	Offer for fit out possession along with demand of Rs. 96,82,500/-	24.09.2018 (Page no. 101 of reply)
13.	Final Notice	10.04.2021 "By failure to make payments of due amount within the time as stipulated and further failure to take over the flat for occupation and use within the time stipulated, you have committed breach of the terms of the Flat Buyer's Agreement dated 14.08.2012 and the same shall be construed as default under Clause 15 of the said Flat Buyer's Agreement. Therefore, the company has elected to cancel the aforesaid agreement. However, as per the terms of the said Flat Buyer's Agreement you are given an opportunity to cure/rectify aforesaid event of default(s) within a period of 30 days from the date of this notice, failing to which the said agreement and allotment shall automatically stand cancelled without any further notice." (Page no. 103 of reply)
14.	Cancellation letter	17.08.2021 (Page no. 104 of reply)
15.	Total sale consideration	Rs. 1,14,32,000/- (Page no. 17 of complaint)
16.	Amount paid by the complainants	Rs. 61,80,000/- (Applicant ledger dated 10.05.2025 placed on record by respondent on 12.05.2025)
17.	Occupation certificate	17.10.2018

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- That upon the representation by the respondent and advertisement done on their behalf, the complainants purchased a residential unit no. 08A,

admeasuring approx.-2000 sq. ft. super area (3BHK) located on 1st floor in Block-BLD-8A in the project i.e. "The Almeria" along with an exclusive car parking, located at Sector-84, Gurugram, Haryana floated by the respondent. That the possession of the said unit shall be handed over to the complainants herein within 36 months (3 years) from the date of execution of agreement dated 14.08.2012 and with all amenities as promised by the respondent. The complainants herein are the original buyer of the said booked/allotted flat. The complainants had booked the said unit in the year of 2012 (20.16.2012). The respondent, its officials and authorized channel partners assured the complainants at the time of booking (20.06.2012) that the possession of the booked unit would definitely be delivered to them within 3 years from the date of booking but the respondent did not honour its own promises to deliver the possession of booked unit on time despite the fact that the complainants honoured each and every periodical demand of payment raised by the respondent.

b) That the respondent through its officials and authorized channel partners made aware the complainants about the said project and its luxuries features with all basic amenities. The respondent also claimed that the said project was one of best residential projects launched by the respondent. That the complainants proceeded with the booking formalities against the residential flat in the project launched by the respondent in the year of 2012 (25.06.2012) and deposited Rs. 10,25,000/-.

c) That thereafter respondent issued a letter dated 25.06.2012 in the name of complainants with the subject line of "Allotment of Unit in "Almeria" Residential Complex Sector-84" and allotted a unit no. 8A-FF, 3BHK+S in BLD-8A having an approximate super area of 2000 sq. ft.. The price of the said allotted unit was also mentioned in that allotment letter as (Rs.5125/-+Rs. 285/-+Rs. 271/-+Rs.35/-) Basic price, PLC, EDC and IDC respectively. ✓

- d) That thereafter the respondent issued an agreement in the name of complainants and the parties went ahead and signed the buyer's agreement on 14.08.2012 in which all terms and conditions were mentioned with regard to the total consideration of the flat/unit, area specifications, and other terms with regard to the allotted residential unit no. 8A-FF, 3BHK+S in BLD-8A having an approximate super area of 2000 sq. ft. at Sector 84, Gurugram, Haryana.
- e) That the contents of agreement dated 14.08.2012 with regard to the possession date, whereby it was mentioned that the possession of the allotted unit would be delivered within 36 months (3 Years) from the signing date of agreement (Clause 8.1 (a)), despite knowing the fact that the respondent and its officials blew promises to develop/construct and deliver the said project within three years from the booking date i.e. 14.08.2015 and respondent also assured the complainants that the construction work is going in full swing and the possession of the booked flat would definitely be delivered by 14.08.2015.
- f) That the complainants herein chose the construction linked plan and also obeyed the respective payment demands towards installments as raised by the respondent. It is pertinent to mention here that the complainants raised their apprehensions with regards to the on time completion of the said project to the respondent and its officials, but no positive reply has been received to the complainants and reason being complainants visited the site place and it came as a utter surprise to the complainants that even excavation work has not been started on the site and complainants had paid the installment against the foundation work slab of construction as the complainants had opted the construction linked plan at the time of booking.
- g) That the respondent was very well aware of the fact that the completion of the said project would be delayed from the promised time mentioned in the

agreement dated 14.08.2012 . The respondent was also in knowledge of the fact that there will be at least 4-5 years of delay in delivery of the peaceful possession of the allotted unit from the promised date at the time of booking or that the respondent might abandon the whole project. The said project got delayed because of the negligence of the respondent only, even then, the respondent kept on sending payment demands to the complainants and kept the complainants in the dark as to the date of completion of the project.

- h) That the complainants herein had paid a total of Rs. 59,30,000/- out of total consideration of Rs. 1,02,50,000/- against the said allotted unit to the respondent.
- i) That the respondent as per the application for registration dated 17.01.2020 submitted by respondent into Hon'ble RERA Authority, Gurugram it is an admitted fact that the construction activities began only on 04.02.2015 for the said project and completion date of said project was 27.08.2020. It is evident from the said registration application dated 17.01.2020 that the respondent not only failed to complete the said project within the time frame as mention in the agreement dated 14.08.2012 but also did not start the construction work till 2015 (the year in which the respondent was contractually liable to handover the peaceful possession of the allotted unit), however the respondent collected/accepted 58% of the total consideration from the complainants on the pretext of construction linked payment plan.
- j) That the complainants had a right under Sub Rule 9.2 of Rule 9 of HRERA Rules, 2017 to stop the payment, if the respondent failed to do construction as per construction linked plan. Thus, the respondent be directed to provide possession along with delay penalty to the complainants along with interest due to their arbitrary and illegal conditions against the allotted unit. ✓

C. Relief sought by the complainants:

4. The complainant has sought following relief:
 - I. Direct the respondent to provide possession of the unit.
 - II. Direct the respondent to pay delay interest charges for the period of delay in favour of the complainants.
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 by way of reply as well as written submissions dated 16.04.2025: -
 - a) That the present petition, so preferred under the Real Estate Regulation and Development Act 2016, is not maintainable as the complainants have failed to disclose any maintainable cause of action under the said provisions of the Act as alleged. Section 19 of the Act, 2016 clearly prescribes the rights and duties of the allottees under Section 19(6). Further, the present complaint does not pertain to the compensation and interest for the delay in completion of the project under Section 18 of the Act, 2016 as the project has already been completed and the respondent no. 1 has already received the occupational certificate from the competent authority and is required to be filed before the Civil Court as the agreement is civil in nature and not before this Authority. This Authority does not have the jurisdiction to entertain the present complaint as it has been wrongly filed and shall be filed with the appropriate authority for the proper adjudication.
 - b) That the complainants after checking the veracity of the project approached the respondent and expressed an interest in booking a unit in the residential project developed by the respondent known as "Coralwood and Almeria" situated in Sector 84, Gurugram, Haryana. Prior to making the booking, the complainants conducted extensive and independent enquiries with regard to

the project and it was only after the complainants were fully satisfied about all aspects of the project, that the complainants took an independent and informed decision, un-influenced in any manner by the respondent, to book the unit in question.

- c) That thereafter the complainants vide an application form dated 20.06.2012 showed a keen interest in purchasing the unit with the respondent to which the complainants were provisionally allotted a unit bearing no. 8A-FF, 1st Floor, located in the Building - 08A. Pursuant to the said registration, an allotment letter was issued to the complainants dated 25.06.2012 wherein, the complainants were allotted unit no. 8A-FF, 1st Floor, located in the Building-8A admeasuring 2000 sq. ft. The complainants opted for a construction-linked payment plan for remittance of the sale consideration for the unit in question and further represented to the respondent that he shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainants and proceeded to allot the unit in question in their favour.
- d) That, the allotment letter being the preliminary and the initial draft contained the basic and primary understanding between both the parties, to be followed by the unit buyer's agreement to be executed between the parties. Thereafter, immediately on 14.08.2012, the buyer's agreement was executed between the parties which contained the final understandings between the parties stipulating all the rights and obligations.
- e) That the total sale consideration of the unit booked by the complainants was Rs. 1,14,32,000/-. However, the sale consideration amount was extensive of the registration charges, stamp duty charges, service tax and other charges which were to be paid by the complainants at the applicable stage. The complainants defaulted in making payments towards the agreed sale

consideration of the unit from the very inception, i.e., after signing the allotment letter.

- f) That, the complainants have failed to pay the amount demanded against the remaining sale consideration amounting to Rs. 60,22,895/- (excluding interest as on 30.03.2019). Initially on account of non-payment of the outstanding amount, the respondent sent numerous demand letters to the complainants. The respondent as per the terms and conditions of the said buyer's agreement, the first demand letter dated 22.11.2012 was issued to the complainants.
- g) That from 2012 to 2016, i.e., before the cancellation of the unit, the respondent sent numerous demand letters dated 22.11.2012, 20.12.2012, 22.01.2013, 15.03.2013, 26.04.2013, 19.05.2014, 13.12.2016. Moreover, along with the demand/reminder Letters that were sent by the respondent from time to time, the respondent also apprised the complainants through several e-mails dated 24.08.2013, 19.10.2013, 13.11.2013, 22.08.2014, 19.05.2017, 16.12.2016, 15.04.2017 and 26.04.2017 of their continuous defaults and outstanding towards the purchase of the unit to which the complainants turned their deaf ear and never paid any heed in clearing the dues.
- h) That as per the terms and conditions "time being the essence" the total sale consideration to be paid according to the construction-linked payment plan. The last payment towards the agreed sale consideration was made dated 12.09.2013 amounting to Rs. 12,00,000/- and since then no payment.
- i) That fit-out possession letter is also a sign of project attaining finality because possessions are only offered in the final stages of a project. To the respondent's dismay, the complainants did not pay any heed to the offer of possession. The complainants neither accepted the offer of possession nor acknowledged it. The complainants being an investor, was more concerned

about the yields he can receive from the unit than care about how the unit would look from inside upon completion.

- j) That financial loss due to such wilful defaulters. The respondent therefore as a last reminder sent Final Notice dated 10.04.2021 to the complainants followed by the Notice for cancellation of the unit dated 17.08.2021. The Respondent vide final Notice for cancellation gave one-month time period to clear the dues, to which the complainants paid no heed was still adamant in its approach. In view of such circumstances that respondent was constrained as per the terms and conditions of the unit buyer's agreement to cancel the unit vide cancellation Letter dated 17.08.2021. An amount of Rs.60,22,895/- excluding interest is payable till date.
- k) That the construction of the project was stopped on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority. Vide order dated 20.07.2016 NGT placed sudden ban on the entry of diesel trucks more than ten years old and said that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban it took some time for mobilization of the work by various agencies employed with the respondent.
- l) That DTCP, Haryana vide its notification no. 27 of 2021 dated 25.06.2021, gave a relaxation of 6 months to all the builders in view of the hurdles faced by them due to Covid-19.
- m) That the project at present date the project stands completed and has received the occupational certificate (OC) from the competent authority dated 17.10.2018 and importantly the said unit was cancelled after numerous reminders. Therefore, it will be difficult for the respondent to pay any interest on the delayed possession at this stage. At this point, when the

project already stands completed, any relief cannot be given to the complainants as it will be detrimental to the interest of the respondent as well as all the other investors who have invested in the project.

n) That the respondent through the buyer's agreement clearly stipulated to the complainant that "time being the essence", the allottees are entitled and duty bound as per section 19 of the Act to pay the charges on or before the due date or as and when demanded by the respondent as the case may be.

7. All other averments made in the complaint were denied in toto.

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 on the basis of these undisputed documents and submissions 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, 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 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 complainant at a later stage.

F. Findings on the objections raised by the respondent.

F.I Objection regarding maintainability of complaint on account of complainants being the investors.

13. The respondent took a stand that the complainants are the investors and not the consumers and therefore, they are not entitled to protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are the buyers and have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

14. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between the parties, it is crystal clear that the complainants are the allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

F.II Objections regarding force majeure.

15. The respondent-promoter has raised the contention that the construction of the unit of the complainants has been delayed due to force majeure circumstances such as orders passed by the Hon'ble NGT, Environment Protection Control Authority, and Hon'ble Supreme Court. The pleas of the respondent advanced in this regard are devoid of merit. The orders passed were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Furthermore, the respondent should have foreseen such situations. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons.
16. The respondent-promoter also raised the contention that, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region and the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period and other similar orders during the winter period 2017-2019. A complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labours left the site and they went to their native villages and look out for work in other states, the resumption of work at site becomes a slow process and a

steady pace of construction realized after long period of it. It is pertinent to mention here that buyer's agreement was executed between the parties on 29.07.2015 and as per the terms and conditions of the said agreement the due date of handing over of possession comes 29.07.2019 which is way before the abovementioned orders. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

17. Further, the respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and IAs 3696-3697/2020*** dated 29.05.2020 which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

18. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 14.02.2016. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself.

G. Relief sought by the complainants.

G.I Direct the respondent to provide possession of the unit.

G.II Direct the respondent to pay delay interest charges for the period of delay in favour of the complainants.

19. Both the above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of other relief and the same being interconnected.
20. In the present case, the complainants booked a unit in the project of the respondent namely "Coralwood and Almeria" situated at Sector- 84, Village Sihi, Gurugram vide application form dated 20.06.2012. A builder buyer agreement was executed between the complainants and the respondents on 14.08.2012, wherein unit no. 8A, 1st floor, admeasuring 2000 sq. ft. was allotted to them.
21. Further, perusal of case file reveals that the possession of the unit was to be offered within a period of 36 months from the date of execution of builder buyer agreement being 14.08.2012 subject to further grace period of 90 days for applying and obtaining occupation certificate. Therefore, the due date of handing over possession comes out to be 14.02.2016. The complainants have paid an amount of Rs.61,80,000/- against the sale consideration of Rs.1,14,32,000/- and are ready and willing to retain the allotted unit in question.
22. Further, the respondent raised a plea that the unit allotted to the complainants had already been cancelled by the respondents vide notice of termination dated 17.08.2021 on account failure of the complainants to make payment of the outstanding dues. To corroborate further, the respondent placed on record various reminders and notice of termination sent by the respondent to the complainants to make payment of the outstanding dues. Now, the question before the authority is whether the cancellation is valid or not, in the eyes of law?

23. Perusal of statement of accounts dated 10.05.2025 submitted by the respondent on 12.05.2025 reveals that the complainants made last payment towards the allotment of the said unit on 12.09.2013. The respondent has issued reminder/demand letter dated 19.05.2014 to the complainants, even by way of e-mail dated 19.10.2013, 13.11.2013 and requested to pay the outstanding dues. A final cancellation notice dated 10.04.2021 was sent to the complainants giving an opportunity to make outstanding payments amounting to Rs.96,82,500/- with interest within 30 days failing which the agreement and allotment will stand cancelled. But the complainants did not pay any heed to the notices. Thereafter, a final cancellation letter dated 17.08.2021 was issued cancelling the subject unit and forfeiting the entire amount paid by the complainants.
24. The authority has gone through the payment plan (Annexure I) of the buyer's agreement executed between the parties. Further, on considering the documents available on record as well as submissions made by both the parties, it can be ascertained that the complainants have only paid an amount of Rs.61,80,000/- against the subject unit. The respondent has sent demand/reminder letters dated 19.05.2014, and e-mails dated 19.10.2013 and 13.11.2013 to make payment of the outstanding amount. The authority is of considered view that the respondent is right in raising demands as per payment plan agreed between the parties. However, the complainants continued with their default and again failed to make payment even after pre-cancellation letter dated 10.04.2021 leading to cancellation of unit vide letter dated 17.08.2021.
25. As per clause 1.2(f) read with clause 6 of the buyer's agreement executed between the parties, the respondent has a right to cancel the unit and forfeit the earnest money where an allotment of the unit is cancelled due to default of complainant to make timely payments as per the agreed payment plan. Clause ✓

1.2(f) and Clause 6 of the buyer's agreement are reproduced under for ready reference:

"f) Earnest Money

The Flat Buyer(s) has entered into this Agreement on the condition that out of the amount(s) paid/payable by him/her/them towards the SALE PRICE, the Developer shall treat 10% of the SALE PRICE as earnest money (hereinafter referred to as the "Earnest Money") to ensure fulfilment, by the Flat Buyer(s) of the terms and conditions as contained in the application and this Agreement.

The Flat Buyer(s) hereby authorize the Developer to forfeit out of the amounts paid/payable by him/her, the EARNEST MONEY as aforementioned together with the processing fee, any interest paid, due or payable, any other amount of a non-refundable nature in the event of the failure of the Flat Buyer(s) to perform his/her/their obligations or fulfil all/any of the terms and conditions set out in this Agreement executed by the Flat Buyer(s) or in the event of failure of the Flat Buyer(s) to sign and return this Agreement in its original form to the Developer within thirty (30) days from the date of its dispatch by the Developer.

The Flat Buyer(s) agrees that the conditions for forfeiture of EARNEST MONEY shall remain valid and effective till the execution and registration of the conveyance deed for the said FLAT and that the Flat Buyer(s) hereby authorizes the Developer to effect such forfeiture without any notice to the Flat Buyer(s) and the Flat Buyer(s) has / have agreed to this condition to indicate his/her/their commitment to faithfully fulfil all the terms and conditions contained in his/her/their application and this Agreement."

"6. TIME IS THE ESSENCE

.....In case of delay of 60 days in making payment by the Flat Buyer(s) to the Developer as per the Schedule of Payments as stated in Annexure I, the Developer shall have the right to terminate the Agreement and forfeit the EARNEST MONEY as detailed herein above. The Developer shall also be entitled to charge interest @18% p.a. from the due date of Instalment, as per the Schedule of payments, till the date of payment....."

26. Further, Section 19(6) and Section 19(7) of the Act of 2016 casts an obligation on the allottees to make necessary payments in a timely manner. The respondent has given sufficient opportunities to the complainants and finally cancelled the allotted unit of the complainant vide letter dated 17.08.2021. Hence, cancellation of the unit in view of the terms and conditions of the buyer's agreement dated 14.08.2012 is held to be valid.

27. Now, the second issue for consideration arises as to whether after cancellation the balance amount after deduction of earnest money of the basic sale consideration of the unit has been sent to the claimants or not. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928*** and ***Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as ***Jayant Singhal and Anr. VS. M3M India Limited*** decided on 26.07.2022, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

28. 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 can't retain more than 10% of sale consideration as earnest money on cancellation. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the basis sale consideration and return the remaining amount along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of termination/cancellation i.e., 17.08.2021 till the actual date of refund of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017 ibid.

H.Directions of the authority.

29. 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. Cancellation is valid. No case of delay possession charges is made out. The respondent is directed to refund the paid-up amount of Rs.61,80,000/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration along with interest at the prescribed rate, i.e., 11.10% per annum from the date of cancellation, i.e., 17.08.2021 till the actual date of refund of the amount within the timelines provided in Rule 16 of the Rules, 2017, ibid. The amount already paid by the respondent to the complainants, if any may be adjusted from the refundable amount and shall return the balance amount to the complainants.
- 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.

30. Complaint stands disposed of.

31. File be consigned to the registry.

Dated: 14.05.2025

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory
Authority, Gurugram



HARERA
GURUGRAM