

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

Complaint no.:
Date of decision:

309 of 2024
21.05.2025

Atul Gupta & Sons (HUF)
Through its Authorized signatory Atul Gupta
R/o:- 705/F-9, Ward-6, Mehrauli, New Delhi.

Complainant

Versus

1. M/s Classic Infrsolutions Pvt Ltd.
Registered Office at: Floor-11th, Para Twin Towers,
Tower-B, Golf Course Road, Sector-54, Gurugram.

**Respondent
no.1**

2. M/s. Hammid Real Estates Pvt. Ltd.
Registered office at: 1221-A, Devika Towers, Floor-
12th, Nehru Place, New Delhi-110019.

**Respondent
no.2**

CORAM:

Shri Ashok Sangwan

APPEARANCE:

Rahul Yadav (Advocate)

Yugantar Chauhan (Advocate)

Harshit Batra (Advocate)

Member

Complainant

Respondent
no.1

Respondent
no.2

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 29 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 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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name & Location of the project	Paras Irene -Sector-70-A, Gurugram.
2.	Project area	27.4713 acres
3.	Nature of project	Group Housing
4.	RERA registered	Not registered
5.	DTCP License	License no. 16 of 2009 Dated- 01.06.2009
6.	Unit no.	Unit no.-1, Floor-9, Twoer-N-06. (As on page no. 17 of complaint)
7.	Unit area	2150sq.ft. [Super-Area] (As on page no. 17 of complaint)
8.	Date of execution of buyer's	15.09.2012



agreement		(As on page of 14 of complaint)
9.	Possession clause	<p>Clause 3 Possession</p> <p>3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/restrictions from any courts/authorities and subject to the purchaser(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 having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to handover the possession of the Apartment to the Purchaser(s) within a period of 42 (Forty Two) months with an additional grace period of 6 (six) Months from the date of execution of this Agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later, subject to Force Majeure.</p> <p>[Emphasis supplied] (As on page no. 25 of complaint)</p>
10.	Due date of possession	15.09.2016 [Calculated 42 months plus 6 months from the date of execution of agreement]
11.	Total sales consideration	Rs.1,35,46,750/-

		(As on page no. 45 of complaint)
12.	Amount paid by the complainant	Rs.51,49,198/-
13.	Occupation certificate	23.06.2017 (As per Annexure 2 submitted by the respondent no.1 with the written submissions)
14.	Offer of possession	Not offered
15.	Cancellation letter	03.08.2016 (As per Annexure-1 submitted by the respondent no.1 with the written submissions)

B. Facts of the complaint:

3. The complainant made the following submissions in the complaint.
- I. That the respondents by way of various advertisements, advertised about their project named "Paras Irene", situated in Sector-70-A, Gurugram, whereby promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondents in the aforementioned advertisements, the complainants booked an apartment bearing no. 01, 9th Floor, Tower N-06 admeasuring 2150 sq. ft. for a total sale consideration of Rs.1,35,46,750/- including BSP, car parking, IFMS, Club Membership, EDC, IDC, PLC, Car Parking, etc.
- II. That the complainant paid a sum of Rs. 16,66,000/- vide cheque no. 091939 dated 07.07.2012 drawn on Canara Bank for a sum of Rs.8,33,000/- and another cheque bearing no. 365551 dated 07.07.2012 drawn on Indian Overseas Bank for a sum of

Rs.8,33,000/-to the respondent at the time of booking and the respondent issued a receipt of the same on 09.07.2012.

- III. That pursuant to the above-mentioned payments, an Apartment Buyers Agreement was executed a between the complainants and respondent on 15.09.2012. As per the clause no 3.1 of the Agreement dated 15.09.2012, the possession of the apartment was to be handed over within a period of 42 months with an additional grace period of 6 months from the date of execution of the Agreement and thus, the due date of possession was 14.09.2016.
- IV. That subsequently, the complainants paid a sum of Rs. 51,49,198/- on 26.06.2021 till 27.12.2014 as reflected in the demand letter dated 27.12.2014 issued by the respondents. That as per the Payment Plan opted by the complainants, the complainants were required to pay as per the stage of construction done by the respondents.
- V. That the respondents have raised demand's without completing the stage of construction and the same was objected by the complainants as the payment plan chosen by the complainants was a construction linked payment plan and the demands were in contravention of the payment plan and thus, the complainants stopped the payment as the details and progress of the project was never shared by the respondents to the complainants.
- VI. That the complainant confronted the illegal demand with the respondent but the same was of no use. That complainants had been approaching the respondents since long for handing over the possession of the Apartment but the respondents remained silent and have lastly orally informed the complainants in the month of July

2023 that the booking have been cancelled and the amount paid by the complainants have been forfeited by the respondents.

C. Relief sought by the complainant:

4. The complainant has filed the present compliant for seeking following reliefs:
 - i. Direct the respondent to refund the amount paid by the complainant to the respondent along with interest as per the Act, 2016 from the respective dates of payment.
 - ii. Direct the respondent to pay litigation charges amounting to Rs.1,00,000/-.
5. On the date of hearing, the Authority explained to the respondents /promoters about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
6. Vide proceedings dated 24.04.2024, the proxy counsel of respondent no.1 submitted that the reply has been filed in the registry of the Authority on 18.04.2024 and no reply has been received on behalf of respondent no.2. Thereafter, on proceedings dated 03.07.2024, further it has been recorded that the reply on behalf of respondent no.1 has been received on 18.04.2024 and the respondent no.2 was directed to file reply within 15 days in the registry with an advance copy to the complainant subject to payment of cost of Rs.5,000/- and the defence of respondent no.2 was struck off. Vide proceedings dated 23.04.2025, the Authority observed that no reply has been submitted by the respondent no.1 in the registry on 18.04.2024. The respondent no.1 was directed to file the proof of filing of reply within a period of one week. The same has not been submitted by

the respondent no.1 till date. Thus, the defence of the respondent no.1 is hereby struck off.

D. Written Submissions filed by respondent no. 1:

7. The respondent no.1 has contested the present complaint on the following grounds:
 - I. That the respondent no.1 launched a project by the name of "Paras Irine" in Sector 70A, Gurugram. The complainant being impressed with the project approached the respondent to book a unit in the said project. The parties entered into a Builder Buyer Agreement dated 15.09.2012 for a basic sale consideration of Rs.1,35,46,750/-. The complainant had opted for stage wise construction plan wherein the respondent no.1 would demand instalment as per the stage of construction.
 - II. That the respondent no.1, as per Clause 3.1 of the BBA, was bound to handover possession within 42 months with an additional grace period of 6 months and further additional grace period of 90 days from the date of execution of the agreement subject to the complainant complying with all the terms and conditions of the BBA.
 - III. That the complainant defaulted in making payments to the respondent no.1 and only paid an amount of Rs.51,49,198/- to the respondent no.1. Due to the defaults of the complainant, the respondent no.1 was left with no other alternative and was constrained to issue a "Cancellation Letter" to the complainant.
 - IV. That despite the defaults of the complainant and other challenges, the respondent no.1 obtained the Occupation Certificate from the concerned authorities.

- V. That the complainant is a defaulter and the defaulter is not to be rewarded. The complainant admittedly last made a payment to the respondent no.1 in the year 2014. It is also an admitted position that the complainant did not make the complete payment of its dues.
- VI. That the complainant was liable to pay the Basic Consideration Amount of Rs.1,35,46,750/-, however, the complainant has only made payment in tune to Rs.51,49,198/-.
- VII. That the complainant is duty bound to make timely payments to the respondent no.1 which would enable the respondent no.1 to timely deliver possession of the flat. It is submitted that due to the defaults of the complainant, the respondent no.1 has suffered.
- VIII. That the present complaint is not maintainable on the ground of limitation and solely on this ground alone the present complaint is bound to be dismissed. It is submitted that due to the recurring defaults of the complainant, the respondent no.1 was constrained to issue a pre cancellation letter dated 25.11.2013. Despite the said pre cancellation letter, the complainant kept defaulting in making payments. Thus the respondent was left with no other alternative and was constrained to issue a cancellation letter dated 03.08.2016. As per the Cancellation Letter dated 03.08.2016, the complainant was offered a sum of Rs.12,26,251/-. However, the complainant never came forward to collect the said monies from the respondent.
- IX. That the said offer was made to the complainant in the year 2016. Thus, it is not a continuous cause of action as the respondent already made the offer of refund to the complainant. The limitation for the present cause of action expired in 2019 itself when the complainant did not come forward to accept or dispute the offer

- dated 03.08.2016. The complainant has deliberately after a long period of time approached this Authority with a mala fide intention to usurp monies from the respondent in form of interest.
- X. That in terms of Clause 2.21 of the BBA, the respondent along with earnest money can deduct other non-refundable charges as well. It is submitted that the term non-refundable charges has been defined in Clause 2 wherein it includes interest on delayed payments.
- XI. That the complainant has alleged that it had confronted the respondent about its alleged illegal demands for the complainant's unit. It is submitted that there is nothing on record to show when the complainant had confronted the respondent about its allegedly illegal demands. The complainant has annexed only one demand letter dated 27.12.2014 and has not explained as to how the said demand letter is illegal.
- XII. That the complainant has not annexed any proof or written communication wherein he has informed the respondent about the alleged lack of progress in the project. It is submitted that the said averment is merely bald and without any basis as the respondent had obtained Occupation Certificate of the said project on 23.06.2017.
- XIII. That the complainant has alleged that only in the year July 2023 the respondent informed him orally that his unit has been cancelled. It is submitted that same is false, fictitious and misleading. The respondent had already informed the complainant about cancellation of its unit in the year 2016. It is submitted that any person of ordinary prudence would not wait till 2023 to inquire about the status of its unit, considering that the complainant had

paid around Rs.50 lakhs and when the possession was due around the year 2016. The complaint does not mention as to what communication or steps were taken by the complainant between 2016 to 2023 regarding his unit. It is submitted that the same is not mentioned as the complainant is a defaulter and he was aware that his unit has been cancelled in the year 2016 itself.

E. Application by respondent no.2 under Order 1 Rule 10 , Section-151 of CPC, 1908.

8. The respondent no.2 i.e., M/s. Hammid Real Estates pvt ltd has filed an application stating the following:

- I. That the respondent no. 2, i.e., M/s. Haamid Real Estates Pvt. Ltd., is a company incorporated under provisions of the Indian Companies Act, 1956. That the present application is being filed without prejudice to any rights that the answering respondent may have on the merits of the matter. That the answering respondent became aware of the present matter from the perusal of the week's cause list and upon noting its name, the fact of pendency of the present case came within the knowledge of the respondent. That it is most vehemently submitted that no notice or copy of the complaint has been served upon the respondent, till date.
- II. That as per the cause list, the present complaint has been filed in respect of the project, "Paras Irene", making M/s.Classic Infrasolutions Pvt. Ltd. as respondent no.1 1 and M/s. Haamid Real Estates Pvt. Ltd. as respondent no. 2.
- III. That the applicant/respondent no. 2 has been wrongly impleaded as a party, as it has no role, responsibility, or involvement in the development of the said project. That it is also unclear whether any

relief has been sought by the complainant against the answering respondent or not.

- IV. That no Builder Buyer Agreement (BBA) was ever executed between the complainant and respondent no. 2. Furthermore, no transaction of any nature has taken place between them. That the respondent no. 2 has no privity of contract or any legal or financial relationship with the complainant. In light of this, the inclusion of respondent no. 2 as party to the present proceedings is wholly unwarranted and unjustified.
- V. That it is pertinent to note that the respondent no. 2 had entered into "Development Agreements" with respondent no. 1 whereby respondent no. 1 acquired exclusive development rights for the said project. That it is pertinent to note that second party to the Development Agreement, i.e. respondent no.1 has explicitly undertaken to Indemnify the first party, i.e. respondent no.2 against all losses arising out of any proceedings, legal disputes, claims brought by any third party/customer etc. The relevant clause of the Development Agreement is reiterated as below:

"That the Second party shall indemnify the First Party/ License Holder i.e., Haamid Real Estate Pvt. Ltd. against all losses arising out of any proceedings, legal disputes, claims etc. brought by any third party/customer etc. Also, Second party shall secure and maintain sanctity of the said license and provide all due support to the First party/ license holder in any manner whatsoever.

That the Second party shall comply with all obligations including payment of license fee, renewals thereof, EDC/IDC etc. and all statutory/ non-statutory obligations for its respective FSI area in the said license that may affect HREPL either directly or non-directly in fulfilling the obligations under the Act of 1975 and Rules

1976 till the grant of final completion certificate of the entire Group Housing Colony."

- VI. That 'indemnity' means free from loss. It is a well-settled principle of law that in a contract of Indemnity, the indemnifier undertakes to protect the indemnified from any loss, liability, or legal consequences arising from specific acts or omissions. Once such an indemnity is in place, the indemnified party is not liable for claims or proceedings covered under the indemnity clause. Indian Courts have consistently held that the purpose of an indemnity is to shift the burden of liability entirely onto the indemnifier, thereby absolving the indemnified party from any responsibility for acts committed or obligations assumed by the indemnifier.
- VII. That in the present case, respondent no. 2, being the indemnified party under the Development Agreement, cannot be held responsible for any obligations, defaults, or liabilities attributable to respondent no. 1.
- VIII. That the answering respondent is not involved in the actual development of the project. The answering respondent does not fall within the meaning of "*allottee, promoter, or real estate agent*" and hence, the present case is not maintainable against the said respondent.
- IX. That in the present circumstance, no cause of action arises against respondent no. 2 for any aspect of the present project and/or unit, and hence, the name of the respondent no 2 is bound to be deleted. Such deletion is supported under Order I Rule 10(2) of the Civil Procedure Code, 1908. Hence, in the interest of justice, equity and fairness, the name of the respondent no. 2 should be struck out from the array of parties.

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

E. Jurisdiction of the authority:

9. The Authority 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

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

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

Section 11(4)(a)

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

10. 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.

11. 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. 2021-2022 (1) RCR (Civil), 357* 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 laid down 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."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases 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 objections raised by the respondents

F.I Objection regarding complaint being barred by limitation.

13. The respondent no.1 i.e., M/s. Classic Infr solutions Pvt Ltd has raised an objection that the complaint is not maintainable on the ground of limitation and the present complaint is liable to be dismissed. Due to the recurring defaults of the complainant, the respondent no.1 was constrained to issue a pre cancellation letter dated 25.11.2013 and thereafter, cancellation letter dated 03.08.2016. Vide the said cancellation letter, the complainant was offered a sum of Rs.12,26,251/-, however, the complainant never came forward to collect the same nor ever showed any dispute with respect to the said calculations. There is no continuous, cause of action as the respondent no.1 had already made the offer for refund to the complainant. The limitation for the present cause of action expired in 2019 itself when the complainant did not come forward to accept or dispute the offer dated 03.08.2016.
14. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim that the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

15. The Authority observes that the cause of action is ongoing, as the respondent has not refunded the amount paid by the complainant till date. Although the complainant filed the present complaint on 23.01.2024, which is over eight years from the date of cancellation of the unit, the cause of action continues due to the respondent's retention of the complainant's payments without refund. Therefore, the present complaint is not barred by the limitation period.

F.II. Objection regarding wrongful impleadment of respondent no.2 and no privity of contract between the respondent no.2 and complainant.

16. The respondent no.2 i.e., M/s. Hammid Real Estates Pvt. Ltd. has filed an application for deletion of its name from the array of parties and submitted that respondent no.2 has been wrongfully impleaded in the array of parties and that there is no privity of contract between the respondent no.2 and the complainant.

17. The Authority observes that the Apartment Buyer Agreement dated 15.09.2012 was duly executed between the complainant and respondent no.1, with respondent no.2, M/s Hammid Real Estates private Limited, being a confirming party to the said agreement. The document establishing the legal relationship between the complainant and the respondents remains the Apartment Buyer Agreement dated 15.09.2012, to which respondent no.2 is a confirming party. Therefore, the objection raised by respondent no.2 regarding the absence of privity of contract with the complainant is without merit and is accordingly rejected.

G. Findings on the reliefs sought by the complainant:

G.I. Direct the respondent to refund the total amount paid by the complainant to the respondent along with interest from the date of deposit till the realization of the amount.

13. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

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

(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)

14. The complainant submitted an application for the provisional allotment of an apartment in the 1 project namely "Paras Irene," located at Sector-70-A, Gurugram. An Apartment Buyer Agreement was executed between the complainant and the respondents on 15.09.2012 in respect of apartment bearing no. 01 on 9th floor, in tower-N-06 admeasuring tentative super area of 2150 sq.ft. for a basic sale consideration of Rs.1,17,17,500/- within the respondent's project.

15. The Apartment Buyer's Agreement was executed between the complainant and the respondents on 15.09.2012. As per clause 3 of the Agreement dated 15.09.2012, the respondents undertook to offer possession of the unit within 42 months with an additional grace period of 6 (six) months from the date of execution of this Agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later. Accordingly, the due date for offering possession of the unit is calculated 42 months from the date of execution of the Agreement as the date of obtaining all the licenses is not available plus a grace period of six months is also granted to the respondent being unqualified. Thus, the due date of offering possession of the unit to the complainant comes out to be 15.09.2016.
16. The respondent submitted that the unit of the complainant was cancelled on 03.08.2016 due to non remittance of the outstanding dues by the complainant. The respondent has obtained the Occupation Certificate from the competent authority for the project on 23.06.2017. The complainant has paid a sum of Rs.51,49,198/- out of the sale consideration of Rs.1,35,46,750/-.
17. After considering the documents on record and the submissions made by the parties, the Authority observes that the respondent obtained the Occupation Certificate for the complainants' unit on 23.06.2017. The due date for possession, calculated as 42 months from the date of execution of the Agreement, plus a grace period of six months i.e., 15.09.2016. The complainant neither indicated any intention to withdraw from the project prior to the cancellation nor thereafter till the filing of the complaint and has also failed to place on record any documents wherein he has challenged the cancellation or protested against the non deliverance of the unit. Through the present

complaint, the complainant has sought the relief of refund of the amount paid.

18. 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.
19. In the present case, no such demand was made by the complainant prior to the issuance of the Occupation Certificate, and the cancellation of the unit occurred as a consequence of the complainant's failure to make the requisite payments. It is pertinent to note that more than eight years have elapsed since the cancellation of the unit, and over seven years have passed since the Occupation Certificate was issued by the competent authority. Although the complainant is entitled to a refund of the amount paid, it would be inequitable and unjust to direct the respondent to pay interest from the date of cancellation, particularly in light of the fact that the cancellation letter and refund calculations were issued in 2016 itself.
20. The complainant failed to assert his rights in a timely manner and remained inactive for an extended period before filing the present complaint. Such inaction cannot result in the imposition of an undue financial burden on the respondent, especially when the cancellation arose due to non-payment of outstanding dues by the complainant.

21. In this case, refund can only be granted after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides 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"

22. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is liable to refund the paid-up amount of Rs.51,49,198/- after deducting 10% of the sale consideration of Rs.1,35,46,750/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of filing of complaint i.e., 23.01.2024 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G.II Direct the respondent to pay litigation charges amounting to Rs.1,00,000/-.

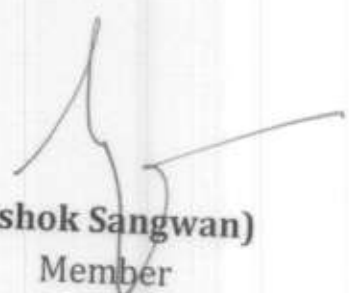
23. The complainant is seeking the above mentioned reliefs w.r.t compensation. The Hon'ble Supreme Court of India in Civil Appeals no. 674445-679 of 2021 titled as **M/s Newtech Promoters and Developers Ltd. V/s State of UP (Supra)** has held that an allottee is entitled to claim compensation and litigation charges under Section 12, 14, 18 and Section

19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation and litigation charges shall be adjudicated by the adjudicating officer having due regards to the factors mentioned in Section 72. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation

G. Directions of the Authority:

24. 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) of the Act.
- i. The respondents/promoters are directed to refund the paid-up amount of Rs.51,49,198/-, after deducting 10% of the sale consideration being earnest money along with interest on such balance amount at the rate of 11.10% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from 23.01.2024 till its actual realization.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
25. Complaint stands disposed of.
26. File be consigned to the registry.

Dated: 21.05.2025


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