

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

Complaint no.:
Date of decision:

5111 of 2023
28.05.2025

1. Vijay Kapoor
 2. Poonam Kapoor
- Both R/o:-** 101, DDA Market, Har Gobind Enclave,
Opposite Shanti Mukand Hospital,
Vikas Nagar Extension, New Delhi-110092.

Complainants

Versus

M/s Adani M2K Projects LLP,
Registered Office at: Plot No. 83,
Adani House, Sector-32, Institutional Area,
Gurugram, Haryana-122001.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Harshit Batra (Advocate)
Lokesh Bhola (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 of the project	Oyster Grande
2.	Location of the project	Sector-102/102-A, Gurugram.
3.	Nature of the project	Residential
4.	DTCP license no.	307 of 2017 dated 10.08.2017
5.	Registered/not registered	Registered Vide registration no. 37 of 2017 Dated-10.08.2017
6.	Allotment letter	31.12.2012 (As on page no. 37 of reply)
7.	Unit no.	H-1402, floor-14 th (As on page no. 37 of reply)
8.	Area of the unit	2187 sq.ft. [Apartment Area] 3198sq.ft. [Super-Area]

			(As on page no. 37 of reply)
9.	Apartment Agreement	Buyer's	27.05.2014 (As on page no. 38 of reply)
10.	Possession clause		Article 5 Possession of Apartment Clause A) POSSESSION: <i>Within 48 months from the date of execution of this agreement or from the date of commencement of construction, whichever is later with a grace period of 6 months.</i> <i>[Emphasis supplied]</i>
11.	Due date of possession		27.11.2018 [Calculated 48 months from the date of execution of agreement + 6 months grace period]
12.	Total sale consideration		Rs.1,90,66,100/- (As on page no. 37 of complaint)
13.	Total amount paid by the complainant		Rs.98,04,481/- (As on page no. 37 of complaint)
14.	Reminders		19.05.2015 01.08.2015 05.09.2015
15.	Final reminder		15.09.2015
16.	Cancellation letter		05.08.2016 (As on page no. 36 of complaint)

17.	Occupation certificate	12.02.2019 [For Tower-J and H] (As on page no. 108 of reply)
18.	Offer of possession	Not on record.
19.	Allotment letter in favor of Third party	03.10.2022

B. Facts of the complaint:

3. The complainants made the following submissions in the complaint.

- I. That the complainants are the law-abiding and hardworking citizen of country who had booked a residential unit in the real estate project of the respondent known as "Oyster Grande" located at Sector-102/102A, Gurugram, Haryana.
- II. That the respondent M/s. Adani M2K Projects LLP is a company duly incorporated and registered under the Companies Act, 2013 and is responsible for the construction and development of the said project.
- III. That around 2012, the respondent was blazoning itself as one of the supreme real estate developers in the market and predominantly advertised and assured of its fine development status, speedy procurement of the necessary licenses and permissions required from the competent authority for its group housing development, timely delivery of possession without any delays and the stellar quality of its developments.
- IV. That the respondent was principally selling the idea of a supreme living in the future surrounded with a number of amenities like Club House, Swimming Pool, Cafeteria, Rainwater Harvesting etc.

and harped on the aspirations of the complainant to get such a dream home.

- V. That respondent assured the complainants that the unit shall be delivered to the complainants in the next 3 years from the date of booking. Believing upon the said assurances and representations of the respondent, the complainant booked a unit in the project of the respondent through Application Form dated 23.10.2012 by paying a booking amount of Rs.15,00,000/- on 23.10.2012.
- VI. That the complainant was subsequently allotted a unit bearing no.- 1402 on 14th Floor in Building-H vide Allotment Letter dated 09.07.2013.
- VII. That since the booking of the unit, the respondent miserably failed in living up to his assurances and has resultantly, caused breach of trust, breach of contract, and has undergone unfair trade practices by taking exorbitant amount of money from the complainant, over and above the agreed terms and conditions.
- VIII. That the payment plan was structured to cull out exorbitant amount of money from the complainant by mere booking of a unit. An amount of Rs.99,02,526/- was collected at the starting stage of construction only. The complainant contested against the said plan, however, it was made very clear by the respondent that the booking can only be made through such a plan or not. It is pertinent to mention here that even after various follow ups and reminders by the complainants, the respondent was unable to execute the Builder Buyer Agreement (hereafter referred to as "Agreement") till date.

- IX. That the respondent, on every meeting and follow ups by the complainants assured the execution of the BBA but failed to fulfil the same till date. It is pertinent to mention here that even after a substantial payment of Rs.99,02,526/-, the respondent failed to execute the BBA and provide the lawful possession of the unit till date.
- X. That, at this stage, it is imperative to mention here that the complainants opted for the "Construction Linked Payment Plan" in order to pay the installments/outstanding dues as per the construction of the unit so as to be aware with time.
- XI. That the complainants, till date paid an amount of Rs.99,02,526/- as per the demands raised by the respondent. That when the complainants went to the construction site in order to check the status of the construction, the complainants were shocked to observe that the basic construction of the unit is yet to be complete. The construction work was going on in a very slow pace and the demands were being raised by the respondent without the milestone being attained.
- XII. That being shocked and aggrieved by the acts of the respondent, the complainants contacted the respondent in order to know the actual date of completion of the project and due date of possession and also requested for the execution of the Agreement. The respondent didn't give any heed to the requests of the complainants.
- XIII. That since the respondent failed to execute the BBA till date, in such circumstances, a reasonable time period has been taken into consideration as per the order of the Supreme Court in the case titled as "*Fortune Infrastructure vs Trevor D'Lima & Ors*" which

considered a time period of 3 years to be the reasonable time from the date of the Agreement. That since no agreement has been executed between the parties till date, the period of 3 years shall be taken into consideration from date of booking of the unit.

- XIV. That hence, as noted above, the due date comes out to be 23.10.2015. Due to non-execution of the BBA till date and non-completion of the unit as per the demands raised by the respondent, the complainant contacted the representatives of the respondent and visited the site of the project in order to know the actual status of the construction of the project but to no avail. The construction of the project was going on in a very slow pace and the demands were being raised without reaching the milestone of construction.
- XV. That hence, in the present case, the complainants shall have the right to the refund of the entire amount along with the prescribed rate of interest. That the complainants, as per the stated payment plan, had provided for outstanding payments to the respondent as per the demands raised by the respondent in lieu of the above captioned unit. The complainant in order to buy the unit has paid a substantial amount of Rs.99,02,5261/-. The possession of the unit shall be provided to them on time, i.e., 23.10.2015 but the respondent miserably failed in providing the same and the delay of almost 9 years had occurred.
- XVI. That the complainants have fulfilled all the demands raised by the respondent till the commutated due date, i.e., 23.10.2015 and the payments were stopped when the complainants got the

knowledge that the construction at the site was not as per the demands raised by the respondent.

XVII. That during the booking of the said unit in question, the respondent and his Authorized Representatives assured the complainants that the unit shall be delivered to them within a span of three years from the date of booking but the respondent miserably failed to comply with their own assurances and representations.

XVIII. At this stage, it is imperative to mention here that as per the details in the "A to H form" submitted by the respondent in the Authority. The construction of the project, started on 10.08.2017 whereas, the demands raised by the respondent as per the construction was started way back before on 03.02.2014. Hence, the demands raised by the respondent were illegal and invalid.

XIX. At this stage, it is imperative to mention here that in spite of giving timely possession of the unit to the complainants, the respondent illegally and arbitrary sent a Cancellation Letter to the complainant dated 05.08.2016 for non-payments of the outstanding dues.

XX. That as per the Cancellation Letter dated 05.08.2016, the respondent very cunningly cancelled the unit of the complainant due to delay in payment but failed to consider the fact that the present construction of the unit was not as per the plan opted by the complainant.

XXI. It is pertinent to mention here that as per the attached calculation with the Cancellation Letter dated 05.08.2016, the alleged amount to be refunded to the complainant after deducting

the earnest money and other illegal charges comes out to be Rs.57,98,252/- but the respondent miserably failed to refund the same which makes it crystal clear that the respondent is not interested in refunding the amount paid by the complainant. Also, while calculating the total amount paid by the complainant, the respondent failed to consider the amount paid by the complainant towards TDS and had only stated Rs.98,04,481 to be the paid up amount.

XXII. That the non-payments of outstanding dues by the complainants was due to the fact that the construction of the unit was not as per the demands raised by the respondents due to which the complainant stopped the payment of the demands raised by the respondent.

XXIII. That the complainants visited the offices of the respondent in order to know the actual reason and legality of the Cancellation Letter but to no avail. The respondent never provided a valid reason for such cancellation and forced the complainants to accept the cancellation as the respondent had already transferred the property to any other allottee and had created third party rights.

XXIV. That being aggrieved by the acts of the respondent, the complainant also wrote various emails to the respondent in order to have the refund of their hard earned money along with interest but the respondent turned a deaf ear and did not respond to the requests of the complainants.

C. Relief sought by the complainants:

4. The complainants have filed the present compliant for seeking following reliefs:

- i. Direct the respondent to refund the total amount paid by the complainants to the respondent along with interest from the date of deposit till the realization of the amount.
5. On the date of hearing, the Authority explained to the respondent /promoter 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.

D. Reply by respondent:

6. The respondent has contested the present complaint on the following grounds:
- I. That the present complaint is barred by limitation as the unit was booked by the complainants in the year 2012 and that the Builder Buyer Agreement was executed between the parties on 27.05.2014. Due to the constant defaults of the complainants, the unit was cancelled vide cancellation letter dated 05.08.2016. The present complaint has been filed by the complainants in October, 2023. It is submitted that the complainants after approximately 7 years to reap benefits out of the pocket of the respondent, which clearly establishes that the present complaint is an afterthought.
 - II. That the complainants have approached the Authority with malafide intention as the complainants are well aware about the statutory period of limitation of 3 years with respect to filing of complaint which per se commences in 2016, therefore in that event the complainant begin to run out of limitation period in the year 2019 itself. Thus, in pursuance of the limitation laws, the complaint shall be dismissed on this basis alone.



- III. That in 2012, the complainants approached the respondent and applied for an apartment in the respondent's project named "Oyster Grande," situated in Sector-102/102A in Gurugram, Haryana. On 31.12.2012, the complainants were provisionally allotted Apartment bearing no.H-1402, Tower H, 14th Floor, Type 4 BHK + Powder Room + Servant Room, bearing tentative apartment area of 2187 sq. ft. An Apartment Buyer's Agreement was executed between the complainants and the respondent on 27.05.2014 for a total sale consideration of Rs.1,90,66,100/-.
- IV. As per Article 5(A) of the said Agreement and Clause 39 of the Application Form the respondent endeavoured to complete the construction of the said apartment within 48 months from the date of execution of the Agreement or from the commencement of construction, whichever is later, with a grace period of 6 months. The completion time is subject to force majeure events.
- V. As per Article 3(E) of the Agreement and Clause 16 of the Application Form timely payment of the sale consideration was n essential, as any default could disrupt the respondent's financial cycle and cause irretrievable losses, constituting a breach of the Agreement. The respondent is not obligated to send payment reminders. Furthermore, as per Article 3 and Clause15, the respondent is entitled to cancel/terminate the allotment of the Apartment in case the allottee/complainant fails to pay any installment or any other charges within 60 days of the due date of the said installment.
- VI. That the complainant habitually defaulted on timely payments, compelling the respondent to issue several demand notices for



outstanding installments. The respondent issued multiple notices for payment of outstanding dues on 19.05.2015, 01.08.2015, 05.09.2015, however despite receiving the said notices, the complainants failed to pay the outstanding dues.

- VII. That the complainants failed to make timely payment for the outstanding dues despite receiving the abovementioned notice. Constrained by the actions of the complainant, the respondent issued a final reminder letter dated 15.09.2015, wherein the respondent finally called upon the complainants to pay all the outstanding dues by 30.09.2015, failing which the apartment will stand cancelled.
- VIII. That the complainant had not made complete payment towards the said apartment despite the fact that the respondent had issued various reminder letters/final opportunity letters to the complainant for making the balance payment. It is pertinent to mention here that the complainants have till date paid an amount of Rs.98,04,481/- towards the consideration of the said Apartment that is only 51% of the total sale consideration.
- IX. That the last payment made by the complainants was on 22.01.2015, of an amount of Rs.20,00,000/- which is evident from the Ledger as stated in the Final Notice letter, dated 15.09.2014 and the receipts issued by the respondent. Since, the complainants failed to reply to any of the afore-mentioned reminder letters, the respondent was constrained to issue a Cancellation Letter on 05.08.2016 to the complainant, thereby cancelling the provisional allotment of the Apartment.



- X. That the respondent had provided the detailed calculation of the refundable amount vide Cancellation letter, dated 05.08.2016, which is as follows:

	FINAL CALCULATION	Amount (INR)
A	<i>Earnest Money + Brokerage Paid (With GST)</i>	26,60,796/-
B	<i>Interest on Delayed Payment (with GST)</i>	5,52,238/-
C	<i>HVAT Security Deposit</i>	74,219/-
D	<i>Paid S.Tax Deducted</i>	7,18,976/-
E	<i>Paid GST Deducted (NA)</i>	
A to E	<i>Final Deductible</i>	40,06,229/-
	<i>Paid By Client</i>	98,04,481/-
	<i>Payable to Client</i>	57,98,252/-

- XI. That the complainant till date of cancellation has only paid an amount of Rs.98,04,481/- out of the total sale consideration of Rs.1,90,66,100/- of the said Apartment. It is pertinent to mention here that out of the amount of Rs.14,75,826/-, an amount of Rs.1,71,587/- and Rs.2,47,225/- was paid by the respondent towards non-refundable taxes paid to the government and brokerage respectively. Therefore, the respondent has only received an amount of Rs.10,57,014/- towards the consideration of the said unit.
- XII. That the respondent has collected taxes on behalf of the Government and the same have already been paid to the Government. Hence the respondent has not received the amount



of Rs.1,71,587/- since it is paid to the Government for the taxes on the said unit.

- XIII. That the respondent has lawfully allotted and sold the said Apartment to a third party after the said was cancelled due to non-payment of installments by the complainants.
- XIV. Further, as per Article 5 of the said Agreement and Clause 39 of the Application Form, the construction of the said Apartment shall be completed within 54 months from the date of execution of said Agreement or from the date of commencement of construction, whichever is later. Therefore, as per the aforementioned terms the said Apartment was to be completed by 27.11.2018.
- XV. That the respondent had completed the said project in all its aspect and applied for Occupational Certificate on 18.10.2017. The Occupation Certificate for the said project was granted on 12.02.2019. As per Clause 39 of the Application Form and Article 5 of the said Agreement, the date of making an application to the concerned authorities for the issuance of the occupancy certificate for the said project shall be considered the date of completion of the Apartment. Accordingly, the date of completion of the Apartment was 20.07.2017, which is 16 months before the due date of completion of the said project as specified in the Agreement.
- XVI. That the complainant as per its own whims and fancies had stopped making any payment after 22.01.2015, therefore the respondent was well within the rights to cancel the said

Apartment and to forfeit the amounts as per the terms and conditions of the said Agreement.

XVII. That the complainant has alleged that IFMS, Sinking Fund and Holding charges are arbitrary, which is again an afterthought since the complainant has duly agreed to pay aforesaid charges to the respondent in the said Agreement. It is submitted that as per Section 19(6) of the Real Estate (Regulation and Development) Act, 2016, the allottee is liable to make payments in the manner as specified in the said Agreement and shall pay the same within the time. However, it is pertinent to mention here that the complainants have wilfully failed to comply with the same as can be seen from the Final Notice Letter, dated 15.09.2015.

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

E. Jurisdiction of the authority:

8. The Authority 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;

9. 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.
10. 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."

11. 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 respondent

F.I Objection regarding complaint being barred by limitation.

12. The respondent objected that the unit was cancelled vide Cancellation letter dated 05.08.2016 and the present complaint has been filed on 09.11.2023, which is more than 7 years after the said cancellation. Therefore, the present complaint is barred by limitation and therefore should be dismissed on this ground alone.
13. 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 principles of natural justice. The Authority observes that while the complainants did file the complaint after a delay of 7 years from the date of cancellation, the amount paid by the complainants still lies

with the respondent and the respondent despite cancelling the unit failed to refund the amount paid by the complainants till date. Thus, the cause of action in respect of refund of the balance amount is still subsisting in favour of the complainants. Thus, this objection of the respondent is hereby rejected.

G. Findings on the reliefs sought by the complainants

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

14. In the present complaint, the complainants intends to withdraw from the project and are seeking return of the amount paid by them 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)

15. The complainants submitted an application for the provisional allotment of an apartment in the project of the respondent namely

"Oyester Grande," located at Sector-112, Gurugram. An allotment letter was issued in favor of the complainants on 31.12.2012, and they were allotted an apartment bearing no. H-1402 on the 14th Floor, with a carpet area of 2187 sq. ft., for a sale consideration of Rs.1,90,66,100/-.

16. The Apartment Buyer's Agreement was executed between the complainants and the respondent on 27.05.2014. As per clause 5 of the Agreement dated 27.05.2014, the respondent undertook to handover possession of the unit within 48 months from the date of execution of the agreement or from the date of start of construction whichever is later, alongwith a six months grace period. As the date of start of construction is not available, the due date of possession is calculated from the date of execution of the Agreement. Accordingly, the due date for handing over possession of the unit is calculated 48 months from 27.05.2014 plus six months i.e., the due date of handing over of possession comes out to be 27.11.2018. The complainants have paid a sum of Rs. 98,04,481/- out of the sale consideration of Rs.1,90,66,100/-. The complainants had opted for "Construction Linked Payment Plan" as annexed on page no. 93 of the complaint. The respondent has submitted that due to non-payment of outstanding dues on behalf of the complainants as per the payment plan, the unit of the complainants was cancelled vide cancellation letter dated 05.08.2016. The respondent issued demand letter to the complainants for payment of outstanding dues on 19.05.2015, 01.08.2015, 05.09.2015 and final notice dated 19.09.2015, wherein the complainants were directed to pay the outstanding dues alongwith delay payment interest by 30.09.2015. The complainants failed to

make the payments and thus, the unit was cancelled on 05.08.2016. The last payment was made by the complainants on 22.01.2015 as per the final notice dated 15.09.2015. The occupation certificate in respect of the unit has been obtained by the respondent on 12.02.2019. The unit has been allotted to a third party (Mr. Deepak Sharma and Ms. Sarita Sharma) on 03.10.2020.

17. After considering the documents on record and the submissions made by the parties, the Authority observes that the respondent had cancelled the unit allotted to the complainants after issuing proper reminders and final notices and due to the failure of the complainants to clear the outstanding dues, the unit was cancelled. The complainants have stated in the written submissions and also the rejoinder that the respondent failed to provide the proof of dispatch of the reminders, final notice and the cancellation letter and the same are fabricated and the cancellation is illegal. The respondent has annexed the postal receipt of dispatch of the said notice on page no. 104 of reply. Thus, the complainants can not say that they never received any intimation whatsoever from the respondent. The Cancellation of the complainants unit by the respondent dated 05.08.2016 is upheld.
18. The Occupation Certificate was obtained by the respondent from the competent authorities on 12.02.2019. The complainants have failed to put on record any communication in respect to the subject unit with the respondent till date, regarding the cancellation or request for refund. Even if the complainants did not receive any reminders, final notice was received by them, thereafter also there is no communication/objections from the complainants side on record.

19. In the present case, the unit was allotted to the complainants through an allotment letter dated 31.12.2012, with the due date for possession being 27.11.2018. The unit was cancelled by the respondent on account of non-payment of outstanding dues by the complainants on 05.08.2016 and the cancellation is valid.
20. 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"

21. In the present case, the cancellation of the unit occurred as a consequence of the complainants' failure to make the requisite payments. It is pertinent to note that more than seven years have elapsed since the cancellation of the unit, and over four years have passed since the Occupation Certificate was issued by the competent authority. Although the complainants are 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 was issued in 2016 itself.

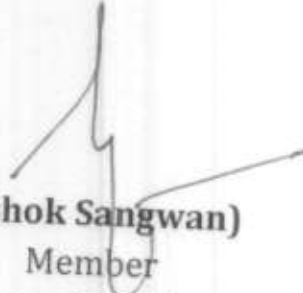
22. The complainants failed to assert their rights in a timely manner and remained inactive for an extended period before filing the present complaint. Such inaction cannot result in the imposition of an undue financial burden on the respondent, especially when the cancellation arose due to non-payment of outstanding dues by the complainants.
23. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is liable to refund the paid-up amount of Rs.98,04,481/- after deducting 10% of the sale consideration of Rs.1,90,66,100/- 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 the complaint i.e., 09.11.2023 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

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 respondent/promoter is directed to refund the paid-up amount of Rs.98,04,481/-, 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 09.11.2023 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: 28.05.2025


(Ashok Sangwan)

Member
Haryana Real Estate
Regulatory Authority,
Gurugram

