

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

Complaint no. : 2245 of 2024
Order pronounced on : 14.05.2025

Sanjiv Anand
R/o:- 8-B, Floor-1st, Block-5,
Ashok Vihar, Phase-III.

Complainant

Versus

M/s. Experion developers Pvt. Ltd.
Address:- F-9, Floor-1st, Manish Plaza-1, Plot no. 7,
MLU Sector-10, Dwarka, New Delhi-110075.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Ajay Singh Tanwar (Advocate)
Harshit Batra (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 allottee 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:

S.No.	Particulars	Details
1.	Name of project	The Heartsong
2.	Location of project	Sector-108, Gurugram.
3.	Nature of project	Group Housing
4.	RERA registered	Registered Vide registration no. 306 of 2017
5.	DTCP License	License no. 38 of 2010 Dated 14.05.2010.
6.	Allotment letter	05.04.2013 (As on page no. 49 of reply)
7.	Unit no	B5/0202 (As on page no. 49 of reply)
8.	Unit Area	1758 sq.ft. [sale Area] (As on page no. 49 of reply)
9.	Buyer's Agreement	Not executed

		[Note: Sent for execution by respondent on 01.07.2013 as on page no. 72 of reply)
10.	Possession clause	Not available
11.	Due date of possession	05.04.2016 [Calculated 36 months from date of allotment]
12.	Sale Consideration	Rs.1,28,12,050/- (As per payment plan on page no. 70 of reply)
13.	Amount paid	Rs. 12,50,000/- [Note: The same has been inadvertently recorded as Rs. 18,36,802/- in the p.o.d dated 02.04.2024]
14.	Cancellation notice	28.11.2013 [Note: Due to the default on account of non-payment of an installment amounting to Rs.23,51,145/- . on the complainant's request, the unit was reinstated however, vide email dated 05.03.2014, it was communicated to the complainant that due to the delay on the account of the complainant in making payment, no request for refund/merger/transfer of funds could be considered for the already cancelled unit]
15.	Final cancellation letter	28.02.2017

16.	Occupation certificate	02.05.2018 (As per the details available on the Authority's website)
17.	Conveyance deed in favour of third party	27.01.2023 (As on page no. 114 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

- I. That the complainant booked two units in the residential Group Housing Complex i.e., 'The Heartsong' being developed by the respondent on a piece of 15.025 acres of land in Sector 108, Village Dharampur, Tehsil & District, Gurugram.
 - i. Firstly by paying an amount of Rs.7,00,000/- vide cheque no. 026861 dated 28.03.2013 drawn on IDBI Bank towards booking of **Apartment No. B5/0202** and
 - ii. Secondly by paying an amount of Rs.7,00,000/- vide cheque no. 323217 dated 04.05.2013 drawn on Punjab National Bank towards booking of **apartment no. B4/102**.
- II. That the respondent issued Provisional Allotment Letters dated 05.04.2013 for the unit B5/0202 and 13.05.2013 for the unit B4/0102 to the complainant providing the details of the project for a basic sale consideration of Rs.1,15,14,900/- each, which excluded EDC, IDC, Car Parking Charges, etc. The total sale consideration inclusive of all charges except applicable taxes was Rs.1,28,12,050/- for each unit.
- III. The said units were booked by the complainant wherein an application amount of Rs.7,00,000/- each has been treated as a 'Booking Amount' and thereby allotted the captioned units by the respondent under the 'Construction-Linked Plan'. That the 'Indicative Terms & Conditions in respect of the apartment and the project contained several one-sided,

unilateral, and unfilled blank 'Clauses' favoring the respondent. The complainant had no other option but to sign this document under the undue influence since he had already given the booking amount much before the issuance of the 'Provisional Allotment Letters'.

- IV. That the second unit no. B-4/0102 was cancelled on 19.09.2013 and its 'Booking Amount' of Rs.5,86,802/- (after deducting an amount of Rs.1,13,198/- from Rs7,00,000/-) was transferred to the ledger account of the first unit, namely B-5/0202. That despite regular persuasion and follow-up by the complainant, the respondent failed to execute the 'Builder Buyer Agreement' for the unit no. B-5/0202. In the meanwhile at the demand of the respondent, the complainant was forced to pay another Rs.5,00,000/-. The complainant was further forced to pay an additional amount of Rs.50,000/- on the pretext of transferring the 'Booking Amount' of Rs.7,00,000/- paid by the complainant for his second unit, after deducting an amount of Rs.1,13,198/-. Thus on account of the captioned unit no. B5/0202 the following amount has been paid by the complainant, which have been duly acknowledged by the respondent:

(i) Booking Amount vide Cheque No. 026861 dated 28.03.2013: Rs.7,00,000/-
(Receipt No. 01268/13-14 dated 02.04.2013)

(ii) Further Amount vide Cheque No. 026863 dated 14.05.13 : Rs.5,00,000/-
(Receipt No. 01561/13-14 dated 15.05.2013)

(iii) Additional Amount vide Cheque No. 61577 dated 20.06.14 : Rs .50,000/-
(Receipt No. 03455/14-15 dated 20.06.2014)

(iv) Transfer of 'Booking Amount' of Unit B4/0102 : Rs 5,86,802/-

Total

Rs.18,36,802/-

- V. That the complainant approached several financial institutions to avail Housing Loan facility against the proposed unit B-5/0202. However, the

complainant was unable to avail it from any of the banks/financial institution because neither the Builder Buyer Agreement was executed nor there was any construction progress at the site.

- VI. That the complainant received a 'Payment Request Letter' dated - 10.06.2013 from the respondent for the payment of the due installment of Rs.22,32,090/-, which was contested by the complainant since in the absence of BBA and no construction progress, he was not able to fulfill the unwarranted and illegal demand of installment payment.
- VII. That the respondent without fulfilling its obligations to execute BBA and to keep pace with project construction activity adopted an illegal and malicious intention to issue a Cancellation Notice dated 28.11.2013 for default in payment of due installment amounting to Rs.23,51,145/- and finally cancelled the provisional allotment of the unit-B-5/0202 vide its 'Intimation of Cancellation' letter dated 28.02.2017.
- VIII. That according to 'Indicative Terms & Conditions in respect of the apartment and the project as well as respondent's communication dated 05.04.2013, the booking amount on application has been Rs.7,00,000/- only. Thus even on cancellation of the unit, the forfeiture amount cannot exceed Rs.7,00,000/- paid as a booking amount in the present case.
- IX. That on contesting the cancellation notice dated 28.11.2013, the respondent assured the complainant that they would refund the advanced money of Rs.18,36,802/-, once the cancelled unit is allotted to another new allottee and also advised the complainant to look for another customer to whom the unit may be allotted.
- X. That in the year 2023, the complainant got to know that the respondent has allotted the unit to one, Roshan Lal & Others vide Conveyance Deed Vasika No. 13096 dated 27.01.2023 in the Sub-Registrar Office, Kadipur

Tehsil, without refunding the amount of Rs.18,36,802/-, to the complainant.

- XI. That the complainant even told the respondent that it could deduct some administration charges (which he did in case of Unit No. B-4/0202) and refund the remaining amount but the respondent's team paid no attention to this request also.
- XII. That the complainant tried all his possible options to find new customer for this unit by talking to various property dealers, but due to COVID and other market issues, could not find another buyer on his own. He has put in all these efforts, even though he was going to his office 5 days a week.
- XIII. That the complainant kept on meeting the respondent's team management and kept on sharing all this status and data with Senior Managers (CRM Head and Vice Presidents, Ms.Namita Mehta &Vrun Oberoi.) but the respondent's team did not do anything about it and kept on forcing him to find another buyer for his unit.
- XIV. That after the complainant came to know in 2023 that the captioned flat B-5/0202 had been re-sold to another customer, he approached the respondent again and requested to refund his amount of Rs.18,36,802/-, saying that now it is crystal clear that there is no loss to the respondent on account of this unit, and till now the given amount of Rs.18,36,802/-, would have anyways grown 2-3 times, the respondent again refused to give the refund and asked him not to contact them again.
- XV. That the complainant was always trying to resolve the case peacefully, by always discussing the matter with the respondent's team and under the undue influence of the threat of not going to the Court/RERA with a fear of losing a huge amount of Rs.18,36,802/-,. This is the primary

reason that complainant took so much time before initiating police and legal proceedings.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- i. Direct the respondent to refund a sum of Rs.11,36,802/- after forfeiting the booking amount of Rs.7,00,000/- along with prescribed rate of interest from the date of payment till the date of actual refund.

D. Reply by respondent:

5. The respondent has made following submissions in its reply:

- I. That the complainant being a speculative investor and having an interest in the real estate project of the respondent known under the name and style of "The Heartsong", being developed at Sector 108, Gurugram, Haryana approached the respondent seeking allotment of a unit in the project. The complainant applied for the booking of one unit on 16.03.2013, in the said project and a provisional allotment letter dated 05.04.2013 was issued in favour of the complainant for the unit bearing no. B5/202 tentatively admeasuring 1758 sq. ft. (hereinafter referred to as the "Unit 1").
- II. That thereafter on 04.05.2013, the complainant applied for booking of another unit by executing an application form, which was also accepted by the respondent and upon such acceptance, a provisional allotment letter dated 13.05.2013 was issued for the unit bearing no. B4/102 tentatively admeasuring 1758 sq. ft. (hereinafter referred to as the "Unit 2").
- III. That the Buyer's Agreement towards unit no. 1 was sent to the complainant on 01.07.2013, and thereafter, multiple reminders were sent for the execution of the same on 23.01.2015 and 15.05.2015.

However, the complainant miserably failed to come forward and fulfil the necessary formalities.

- IV. That as per the agreed terms, the respondent duly raised the Payment Demand Letters and in cases of non-payment, reminders, and notices were issued to the complainant. However, despite having received the same, the complainant always stood in the event of default, which eventually led to cancellation of the allotment of both the units.
- V. That as per the submissions of the complainant, the present complaint under reply has only been filed for unit 1, i.e. B5/202. However, the refund for payments made towards the unit 2 has also been sought by the complainant. At this stage, it is of essence to note that a single complaint for multiple units cannot be adjudicated by this Authority. That without prejudice to the rights of the respondent, the defaults of the complainant qua the unit 2 have also been noted.
- VI. That the defaults of the complainant were persistent, which existed despite the fact that the reminders and notices were raised by the respondent and due and sufficient opportunities were given by the respondent to the complainant, to fulfil his obligations.

Milestone	Payment Request letters	Reminders	Payment
<i>On Booking</i>	-	-	Rs. 7,00,000
<i>Within 30 days of Booking / Application</i>	13.05.2013	Reminder dated 28.06.2013	No payment made
<i>Within 60 days of Booking / Application</i>	14.05.2013	Reminder dated 13.06.2013 Reminder dated 06.08.2013	No payment made
<i>On start of excavation or within 90 days of Booking/ Application</i>	06.06.2013	Reminder dated 14.08.2013 Reminder II dated 10.09.2013	No payment made

- VII. That in respect to the unit 2, despite having made numerous reminders, the complainant did not make any payment and hence, the respondent sent the Final Notice dated 23.08.2013 requesting the complainant to remit the outstanding dues along with interest. However, the complainant failed to oblige with the same and hence, the allotment of unit 2 was finally terminated on 19.09.2013.
- VIII. That as per the agreed terms of the Application Form, the respondent had the right to terminate the unit 2 and forfeit the earnest money including brokerage, delayed interest and other non-refundable amounts, in terms with clauses 6 and 20 of the Application Forms, which are reiterated hereunder:

Clause 6: Upon allotment of the Apartment, if the Applicant fails to deposit the amounts payable against the Apartment and/or to execute the Agreement within the time period as may be prescribed, then the Company shall be entitled, at its sole discretion, to cancel the provisional allotment of the Apartment and forfeit the Earnest Money subject to the terms and conditions then prevalent and call for such additional amounts if the Booking Amount falls short of the Earnest Money.

Clause 20: TIMELY PAYMENTS

The timely payment of the entire amounts due and payable by the Applicant to the Company is an integral part of this Agreement. In the event the Applicant defaults in payment of any amount(s) due and payable per this Agreement or otherwise beyond a period of 60(sixty) days from the due date(s) for each of such payments, the Company shall have the right to terminate this Agreement and cancel the allotment of the Apartment and refund the amounts received against the Apartment without interest and only after re-allotment of the Apartment after deduction of the Earnest Money, accrued interest, brokerage/commission, if any and other charges of non-refundable nature. The Applicant shall be liable to pay simple interest at the rate of 18% per annum for such period for each payment delayed beyond the due date till the date of receipt. The Company shall adjust all amounts received from the Applicant first towards the interest on overdue payments, thereafter towards any overdue payments or any outstanding demand and finally, the balance if any, shall be adjusted towards the current dues for which the payment is tendered.

- IX. That the earnest money, as per the agreed terms of the booking exceeded the amount paid by the complainant. Hence, in terms with

the aforementioned clause 6 of the Application Forms, the respondent was entitled to call for excess payments, details of which were noted under the termination letter.

- X. That throughout this time, the complainant was in continuous default in making the due payments for unit 1, i.e., B5/202, despite having received multiple reminders. The details of the payment request letters, payment receipts, reminders, and notices qua Unit 1 are hereunder:

MILESTONE	PAYMENT REQUEST LETTER	REMINDERS/ NOTICES	PAYMENT/ AMOUNT PAID
On Booking/ Application			Rs. 7,00,000 on 28.03.2013
Within 30 days of Booking/Application	05.04.2013		Rs. 50,00,000/- on 14.05.2013
Within 60 days of Booking/Application		12.06.2013	Rs. 50,000/- on 20.06.2014
On start of excavation or within 90 days of Booking/Application whichever is later	10.06.2013	02.07.2013 16.07.2013 31.07.2013 Final Notice dated 16.08.2013	No Payment Made

- XI. That around September 2013, upon cancellation of unit 2, the complainant approached the respondent and conveyed his financial inability leading to failure to make the payment towards both the units, and hence, requested the respondent to consider the transfer of the amount paid from unit 2 to unit 1. The Complainant also wrote an email in this respect on 04.10.2013.
- XII. That although unit 2 was already terminated and the complainant had paid only a mere sum of Rs.7,00,000/- which was forfeited in terms of the Application Form. However, the respondent company being a

customer-oriented company considered the request of the complainant and proposed to transfer a sum of Rs.5,86,802/- (after forfeiting only delayed interest of Rs.1,13,198 in terms with the Application Form) and sent the requisite documents needed for such transfer, vide email dated 22.10.2013. It was clarified by the respondent that such a request can only be accepted in case of remittance of complete outstanding dues towards unit 1, i.e., B5/202. It was also clarified that in the circumstance the same is not done, the proposal of such a merger shall be withdrawn.

- XIII. That it was known and understood between the parties that the merger request would only be effected if the payment towards unit 1 is made by 26.11.2013, as evident from email dated 22.11.2013. However, the complainant failed to make the due payments and since the default of the complainant quo unit 1 pre-existed, the respondent had the right to terminate the unit in case of default of the complainant and hence, after having given various opportunities to the complainant, the allotment of the unit was terminated on 28.11.2013, as per the agreed terms of the respective Application Form.
- XIV. That thereafter, only upon the complainant's request, the unit no. B5/202 was reinstated, however, it was clarified that due to the delay by the complainant in making the payment of dues and giving the documents, no request for refund/merger/transfer of funds could be considered for the already cancelled unit no. B4/102. This confirmation was also sent via email dated 05.03.2014.
- XV. That thereafter, the commercial obligation between the parties remained only qua the unit 1, i.e., B5/202 and hence, the obligation of the complainant to make the due payments for the unit no, B5/202

remained. The respondent issued demand letters, reminders and notices in cases of non-payments, as per the stages of the construction.

- XVI. That no payment was made by the complainant since 2013, and the complainant stood in the event of default, which amounted to material breach of the terms of the booking. That in such circumstances, the respondent had a right to cancel the allotment of the unit and forfeit the earnest money, accrued interest, brokerage, along with other non-refundable amounts as per preliminary clause 26, and Clause 20 of the Application Form.
- XVII. That in accordance thereto, the unit was finally terminated on 28.02.2017. That as per the agreed terms and conditions of the Booking Form, the aforementioned amounts had to be deducted. At this stage, it is pertinent to note that the total sale consideration of the unit 1 was Rs.1,28,12,050/- inclusive of basic sale price, car parking charges, EDC, IDC, Community Building Furnishing charges and security deposit, and IFMS. That the earnest money, as per the aforementioned clause 26 (calculated on BSP and Car parking only) comes out to Rs.17,79,735 and the entire forfeiture amount in terms of clause 20, comes to Rs.64,43,095, as evident from the termination letter. That said amount was rightly and legally forfeited by the respondent. That it was also informed to the complainant that with effect from 28.02.2017, no right, title, interest or lien of the complainant existed in the unit. That after the termination and forfeiture in terms of the agreed terms and conditions, third party rights have also been created by the respondent. That no cause of action persists after the termination of the unit, forfeiture of the amount paid, and creation of third party rights

6. 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 those undisputed documents and written submissions made by the complainant.

E. Jurisdiction of the authority:

7. 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

8. 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

9. 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)(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;

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. 2020-2021 (1) RCR (c) 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 relief sought by the complainant:

F.1 Direct the respondent to refund a sum of Rs.11,36,802/- paid by the complainant after forfeiting a booking amount of Rs.7,00,000/- along with the prescribed rate of interest from the due date of payment till the date of actual refund.

13. In the present complaint, the complainant 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. In the present complaint, the complainant initially applied for the allotment of a unit in the project titled "The Heartsong," located in Sector-108, Gurugram. The application form for the allotment was submitted on 16.03.2013, pursuant to which a provisional allotment

letter dated 05.04.2013 was issued in favour of the complainant, allotting Unit No. B5/202, measuring 1758 sq. ft. Subsequently, the complainant proceeded to book an additional unit within the same project, for which a second provisional allotment letter was issued on 13.05.2013, allotting Unit No. B4/102, also measuring 1758 sq. ft., in favour of the complainant.

15. That no Buyer's Agreement has been executed between the complainant and the respondent to date. The respondent, vide letter dated 01.07.2013 (annexed at page 72 of the reply), forwarded two copies of the Buyer's Agreement to the complainant for execution, specifically in relation to Unit No. B5/0202, with a request to execute the same to facilitate the allotment process. Thereafter, the respondent issued a 'Final Reminder Notice' on 23.01.2015 (annexed at page 74 of the reply), calling upon the complainant to submit the duly signed Apartment Buyer's Agreement. A subsequent 'Final Reminder Notice' was again issued by the respondent on 15.05.2015 for the same purpose. However, the complainant failed to respond or take any steps toward execution of the Agreement. In view of the complainant's continued inaction, it may be inferred that the complainant was not inclined to proceed with the execution of the said Agreement.
16. The record reflects that the complainant made a payment of Rs.7,00,000/- towards the booking/application for Unit No. B4/0102, which was duly acknowledged by the respondent through a receipt dated 08.05.2013. Subsequently, the respondent raised a demand of Rs.4,94,188/- on 13.05.2013 under the milestone "Within 30 days of booking/application" for the said unit. Thereafter, several reminders for the said payment were issued by the respondent on 14.05.2013, 13.06.2013, and again on

28.06.2013. Despite the passage of time and the progression to the next milestone, i.e., "Within 60 days of booking/application," the complainant failed to make the requisite payment.

17. In view of continued non-compliance, the respondent issued several further reminders dated 06.07.2013, 06.08.2013, 14.08.2013, and 10.09.2013, followed by a final notice dated 23.08.2013. As there was no response from the complainant, the respondent proceeded to issue a 'Cancellation Letter' dated 19.09.2013 in respect of Unit No. B4/0102. In the said cancellation letter, it was stated that the complainant had paid a total sum of Rs.7,00,000/- in respect of the said unit. However, after deducting the earnest money amounting to Rs.17,79,735/- and interest on delayed payment amounting to Rs.86,250/-, no refundable amount remained due to the complainant, and the balance payable stood at nil.
18. The documents on record indicates that the complainant paid a sum of Rs.7,00,000/- towards the booking of Unit No. B5/0202, which was duly acknowledged by the respondent through a receipt dated 02.04.2013, annexed at page 97 of the reply. Subsequently, the respondent issued a demand letter dated 05.04.2013, raising a demand of Rs.4,87,071/- under the milestone "Within 30 days of booking/application." Another demand letter was issued on 15.05.2013, raising a further demand of Rs.5,00,000/-. Despite these communications, the complainant failed to comply with the payment schedule. The respondent also issued multiple reminders dated 10.06.2013, 12.06.2013, 20.06.2013, 02.07.2013, 16.07.2013, and 31.07.2013. However, no payments were made by the complainant beyond the initial booking amount, and the complainant did not respond to or act upon the demand letters issued by the respondent.

19. The complainant has failed to fulfil his contractual obligation of making timely payments as per the agreed terms. The respondent, in accordance with the payment schedule, duly raised demand letters and upon non-payment, issued appropriate reminders and notices to the complainant. Despite receipt of these communications, the complainant remained in default and did not take steps to remedy the breach.
20. Further on 04.10.2013, the complainant addressed an email to the respondent, wherein he cited financial incapacity as the reason for his inability to make further payments toward the allotted units. In the said communication, the complainant acknowledged having booked two units, indicating that one of the bookings was made as an investment. Due to prevailing market conditions, he expressed his intention to retain only one unit—specifically Unit No. B5/0202—and requested that the payments made by him be adjusted against the said unit. The complainant further sought confirmation from the respondent regarding the proposed merger of the payments into a single unit. The same is reproduced below:

*"Dear Mr. Audrey,
Pls refer our conversation on the merger option of the 2 units under my name.
Due to some financial issues, have not been able to make the pending payments for the 2 units, I had booked 2 units, with one being an investment option. But considering the current market situation, I do not feel that I can continue with the 2nd one and would like to release it.
Therefore, would request for merging the payments made by me against both the units-into payments for a single Unit. I would like to hold on to Unit against which I have made a payment of 12 lacs-i.e., B5/0202.
Request you to pls consider the merger option and provide an approval/confirmation on the same, so that we can handle the booking accordingly.
Regards
Sanjiv*

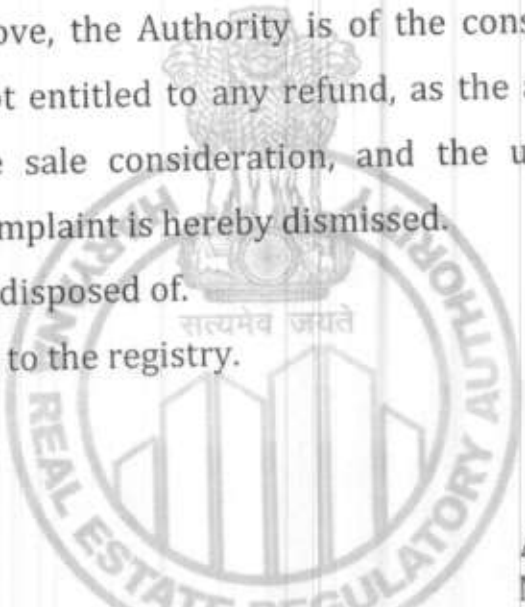
[Emphasis Supplied]

21. In response to the complainant's email dated 04.10.2013, the respondent replied on 22.10.2013, requesting the complainant to submit the requisite documents as per the prescribed list, along with the original documents pertaining to Unit No. B4/102 (proposed to be merged). The respondent also called upon the complainant to clear the outstanding dues amounting to ₹18,00,000/- at the earliest and to provide a specific timeline for settling the said dues and completing the transaction. The respondent further stated that failure to comply with these requirements would result in the withdrawal of the proposed acceptance of the merger of the two units, and the matter would be dealt with in accordance with the terms and conditions of the original application form.
22. Subsequently, the respondent issued a "Cancellation Letter" dated 28.11.2013 in respect of Unit No. B5/0202. In the said letter, it was stated that the total amount paid by the complainant in respect of the said unit was Rs.12,00,000/-, out of which the earnest money amounting to Rs.17,79,735/- along with an additional amount of Rs.1,81,049/- was deducted. Accordingly, it was communicated that no refundable amount remained due to the complainant.
23. Thereafter, following repeated representations by the complainant, the respondent informed the complainant that Unit No. B4/0102 already stands cancelled and as such there existed no scope for the merger of a cancelled unit. The respondent further stated that an outstanding amount of Rs.35,80,635/- was due against Unit No. B5/0202. In this regard, a demand letter dated 23.12.2013 was issued to the complainant, followed by multiple reminders on 24.01.2014, 17.02.2014, and a 'Final Notice' dated 03.03.2014. Further reminders were issued on 26.06.2014, 20.08.2014, 20.10.2014, 03.11.2014, and 24.12.2014. Despite these

communications, no compliance was made by the complainant. Additional 'Final Notices' were also sent on 08.01.2015, 10.03.2015, and 28.04.2015.

24. In light of the complainant's persistent defaults spanning from 2013 to 2017, and despite being afforded multiple opportunities to make the payments, the respondent ultimately cancelled Unit No. B5/0202 on 28.02.2017. It is further noted that the said unit has since been conveyed to a third party.
25. After consideration of the documents on record and the submissions made by both parties, the Authority is of the view that the cancellation of both units allotted to the complainant was a consequence of the complainant's persistent defaults in making timely payments against the demands raised by the respondent. Despite being afforded multiple opportunities, the complainant neither came forward to execute the Buyer's Agreement nor cleared the outstanding dues. The respondent, under such circumstances, cannot be expected to keep the allotment open indefinitely.
26. From the date of booking in 2013, the complainant continuously failed to fulfil his contractual obligations. Following repeated notices and reminders, the respondent proceeded with the cancellation of the units. With respect to Unit No. B5/0202, it is on record that the complainant had made a payment of Rs.12,50,000/-, while the total sale consideration for the unit was Rs.1,28,12,050/-, i.e., less than 10% of the total consideration. Accordingly, upon cancellation, the said amount was forfeited by the respondent as earnest money, and no refund was found to be due.

27. The complainant has further contended that a sum of Rs. 7,00,000/- was paid in respect of Unit No. B4/0102 and the same was merged with the payments made for Unit No. B5/0202. However, no documentary evidence has been placed on record to substantiate that such a merger was ever accepted or agreed to by the respondent. On the contrary, email correspondence from the respondent explicitly denies the feasibility of merging a cancelled unit.
28. In view of the above, the Authority is of the considered view that the complainant is not entitled to any refund, as the amount paid was less than 10% of the sale consideration, and the unit was cancelled in 2017. Thus, the complaint is hereby dismissed.
29. Complaint stands disposed of.
30. File be consigned to the registry.



Ashok Sangwan
Member
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.05.2025

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