

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

Complaint no. : 1609 of 2023
Complaint filed on: 19.04.2023
Date of Pronouncement: 25.04.2025

Rajendra Kumar

R/O: No. 204, 9th Main, 3rd Stage, Beml Layout,
Rajeshwari Nagar, Bangalore, Karnataka- 560098

Complainant

Versus

M/s Experion Developers Private Limited

Through its Directors

F-9, 1st Floor, Manish Plaza 1, Plot No.7,
MLU, Sector 10, Dwarka, New Delhi-110075

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Shubham Kaushik (Advocate)

Complainant

Sh. Saurabh Gaba (Advocate)

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 provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

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A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, 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 the project	"The Westerlies" in Sector 108, Gurgaon.
2.	Nature of the project	Residential Plotted Colony
3.	Project area	100.48125 acres
4.	RERA Registered/ not registered	103 of 2017 dated 24.08.2017 valid up to 23.08.2019
5.	DTCP License No.	57 of 2013 dated 11.07.2013
6.	Plot no.	A4/02 (Page no. 60 of complaint)
7.	Unit admeasuring	300 sq. mtr. 358.80 sq. yds. (Page no. 60 of complaint)
8.	Date of plot buyer agreement	14.08.2014 (Page no. 21 of complaint)
9.	Possession clause	Article IX- Completion of the Project <i>Subject to the terms and conditions of this Agreement, the Developer estimates the internal development works of the Project in accordance with the conditions of the License and Applicable Laws within 4 years from the date of receipt of the last of all the Project Approvals for the commencement of the development</i>

		<i>of the Project from the Competent Authorities or within such other timelines as may be directed by the DGTCP. The Buyer further agrees and understands that the Developer shall be entitled to a further period of 6 months after the expiry of the said commitment period.</i>
10.	Due date of delivery of possession	14.02.2019 [Due date of possession is calculated from the date of BBA]
11.	Total sale consideration	Rs.2,29,38,307/- (As per applicant ledger at page 24.03.2017 of the complaint)
12.	Total amount paid by the complainant	Rs.94,07,158/- (As per applicant ledger at page 24.03.2017 of the complaint)
13.	Part completion certificate	31.07.2017 (Page no. 41 of the reply)
14.	Offer of possession	Not offered
15.	Reminder letters	29.12.2015, 21.01.2016, 20.04.2016, 05.05.2016, 03.06.2016, 27.06.2016
16.	Final reminder notices	20.05.2016 and 11.11.2016
17.	Cancellation letter	27.04.2017 (Page no. 156 of the reply)

B. Facts of the complaint:

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

- That the complainant, in December 2013, booked a plot in the project named "THE WESTERLIES" of the respondent at Sector 108, Gurgaon, Haryana by making a payment of ₹ 11,00,000/- as

booking amount. Thereafter, the plot buyer agreement was executed inter se parties on 14.08.2014. That agreement contained various one-sided and arbitrary clauses, yet the complainant could not negotiate on any of the terms, since the respondent had already collected significant amount of money from the complainant. That the complainant was allotted plot admeasuring 358.80 sq. yards bearing no. A4/02 in the said project.

- ii. That till 12.12.2016, the complainant had paid an amount of ₹ 94,07,158/-. Due to economic recession and subsequent loss of income, the complainant was not able to make further payments to the respondent. The current Covid-19 pandemic has only further added to the financial duress on the complainant who is in urgent need to the funds to meet day to day expenses.
- iii. That the respondent issued a cancellation letter dated 27.04.2017 to the complainant arbitrarily stating that the booking of the plot was cancelled due to the default in payment of the due amount since 21.12.2015 and further arbitrarily stated that the amount forfeited stands at ₹ 62,49,103/-.
- iv. That the respondent has attempted to defraud the complainant by falsely representing facts in the arbitrary cancellation letter dated 27.04.2017. The respondent has stated that there has been a default in payment of installments since 21.12.2015 whereas the Applicant Ledger dated 24.03.2017 maintained by the respondent clearly shows that the installments were paid by the complainant till 12.12.2016 and the ledger further also states that the total interest amount due is ₹ 16,92,249/-. That this delay interest amount coupled with earnest money of 15% of total value of plot

and brokerage/commission charges constitute the total amount forfeited on cancellation. The forfeiture amount of ₹ 62,49,103/- mentioned by the respondent in its cancellation letter is above and beyond the actual forfeiture amount when calculated in accordance with the true facts and dates of default in the present dispute.

- v. That an email dated 11.07.2016 was sent by the complainant wherein it was mentioned that the complainant needs some time to make the payments wherein two options were given to the respondent stating that either he can make the payment of ₹ 45-50 lakhs by the end of August 2016 and the rest he'll pay in December 2016 after selling the existing property. Other option which was given was to cancel the agreement and refund the invested money back to the complainant. It is further submitted that the respondent didn't pay any heed to the request of the complainant and had adamantly in an illegal manner proceed according to their whims and fancies in order to defraud the complainant.
- vi. That an email dated 03.05.2017 had been sent to the respondent regarding clearing all the dues till December 2017 and not to cancel the allotment of the plot. The respondent had replied to the said mail on 15.05.2017 that restoration of allotment may be considered subject to clearance of the outstanding amount along with interest. The complainant had complied with the said request and had somehow managed to arrange for the funds for plot in question and had issued 6 cheques in total amounting to Rs. 1,29,000,00/- dated 22.06.2017 in favor of the respondent to clear the outstanding dues but the respondent had clearly rejected to accept those cheque issued in its favor as the respondent had already forfeited the amount already given by the complainant. The

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complainant's bonafide intention can be very well seen from the fact the complainant had arranged for the funds within one month of email dated 15.05.2017 sent by the respondent but still the respondent has blatantly refused to accept those cheque dated 22.06.2017 of Rs. 1,29,000,00/- as respondent had clear cut malafide to grab the amount of the complainant.

- vii. That the complainant had requested to the respondent to restore the allotment of the plot in question various times by emails but all in vain. The complainant had issued four more cheques undated amounting to Rs. 62,00,000/- in September 2017 so as to clear all the outstanding amount by the complainant which were also sent to the respondent but left all vain as the respondent had denied to accept the same.
- viii. That the complainant seeks interference of this Authority so as to seek justice as the respondent in a whimsical manner had cancelled the allotment of the said premise arbitrary to sell it to someone else even after the complainant had tried to make the additional payment of Rs. 1,29,00,000/- through cheques but the respondent rejected to accept the same and is enjoying the hard-earned money of the complainant and had neither given the possession of the plot nor has refunded the amount of Rs. 94,07,158/- being deposited by the complainant. The cause of action is continuing till date as the hard-earned money of the complainant is still with the respondent even though five years has passed since the promised date of possession, therefore this complaint is within the limitation period.

C. Relief sought by the complainant:

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

- i. Direct the respondent to refund the amount of ₹ 94,07,158/- deposited by the complainants and pay interest @ 18% per annum on deposited amount with effect from the promised date of possession, till the date of order from the Hon'ble Authority for the offer of possession.
- ii. Direct respondent to pay a sum of ₹ 1,00,000/- to complainant as reimbursement of legal expenses.

D. Reply by respondent:

5. The answering respondent by way of written reply made the following submissions:

- i. That the complainant has failed to bring out any deficiency on the part of the respondent and has filed the instant complaint with the mala fide intention to wriggle out of his contractual obligations by raking up frivolous issues by concocting a baseless story. It is further submitted that the instant complaint is found to be frivolous and vexatious and as such deserves to be dismissed along with exemplary costs.
- ii. That a perusal of Section 3 of the Act clearly shows that the provisions of this Act or the rules and regulations made thereunder shall apply to such projects that are registered under the provisions of the Act. It is significant to point out that the matter with respect to applicability to provisions of the Act was under consideration of the Hon'ble Supreme Court in a bunch of matters. In M/s Newtech Promoters and Developers Pvt. Ltd. And State of UP & others, 2022(1)RCR(Civil)289, the Hon'ble Supreme Court has held that the applicability of provision of RERA Act is retroactive in nature and does not

affect the project that are already complete or to which completion certificate has been granted.

- iii. Further in pursuance of the powers under the Act, State of Haryana notified the Haryana Real Estate (Regulation and Development) Rules, 2017. Said rules provide the definition of an ongoing project. It also specifies the exclusions therefrom. Any project excluded from the purview of ongoing projects as per the said Rules is not required to be registered under the Act in Haryana. The project herein falls within the excluded category since it was complete and the application for a part completion certificate was made prior to the enforcement of the said Rules in Haryana.
- iv. Hence, it is submitted that on the basis of conjoint reading of the interpretation given by the Hon'ble Supreme Court with regard to applicability of the Act and the definition of ongoing projects provided under the rules, it can be fairly held that once the projects are already complete in terms of the Act/Rules, they cannot be brought under the purview of the Act by extending the jurisdiction on account of liberal construction of words. The scope of the Act is restricted to the projects that are registered under the Act or the projects that falls within the ambit of the ongoing projects.
- v. It is submitted that the grant of completion certificate relates back to the date of application and the respondent cannot be held accountable for time taken in grant of completion certificate since at time of making the application itself, relevant phase of the project was complete.

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- vi. It is further submitted that the part completion certificate has also already been granted to the respondent by the competent authority on 31.07.2017.
- vii. Furthermore, Section 31 of the Act specifically states that a complaint can be filed with the Authority for violation or contravention of the provisions of this act or the rules and regulations made thereunder. Hence, applicability of the Act upon the project is essential for the complaint to be maintainable before this Hon'ble Authority.
- viii. That the respondent had been constrained to cancel the allotment of the complainant due to persistent failure by the complainant to fulfil his contractual obligations to make timely payments despite multiple opportunities granted to the complainant to rectify the same. The allotment of the complainant was canceled vide cancellation letter 27.04.2017 as per the terms of the agreement executed between the parties. Thus, the cancellation being prior to the enactment of the Act, the provisions of the Act are not applicable to the present complaint and the complaint deserves to be dismissed outright. It is submitted, without prejudice, that even as per the provisions of the Act, the respondent is entitled to cancel the allotment of the complainant as per the terms of the agreement.
- ix. That the present complaint is hopelessly barred by limitation. It is submitted that the respondent has served the cancellation notice upon the complainant on 27.04.2017 and the present complaint has been filed by the complainant in March 2023 i.e.

after a delay of approximately 6 years and as such it is clearly barred by the statute of limitation. Therefore, the instant complaint merits dismissal on this ground alone.

- x. That this Authority while dealing with the identical issue in Complaint No. RERA-GRG-242-2018 titled Smt. "Mira Mahbubani vs Ms IREO Grace Realtech Put. Ltd." has already settled this legal issue and has held that:

"24...After the cancellation of the said unit on 11.2.2015, the complainant failed to take up the matter with the respondent and now after a lapse of more than three years, the complainant has filed the present complaint which is not maintainable being barred by limitation. Complaint stands dismissed being barred by limitation."

- xi. That the complainant has concealed a material fact from this Authority and has not approached this Authority with clean hands. It is submitted that the complainant herein has concealed the fact that a complaint in respect of the same facts and circumstances has been duly adjudicated by the Hon'ble District Commission, Dwarka vide Complaint case no. CC/69/2021 titled **RAJENDRA KUMAR VS. EXPERION DEVELOPERS PRIVATE LIMITED**. It is submitted that therefore, the complainant is barred from filing the present complaint by the principal of *Res Judicata*.

- xii. It is submitted that the Hon'ble Supreme Court has in its judgment titled Ireo **Grace Realtech Pvt. Ltd. vs Abhishek Khanna & Ors. Civil Appeal No. 5785 of 2019** has held that where there are two concurrent remedies and the aggrieved chooses to exercise one, he loses the right to exercise the other

for the same cause of action. The relevant portion of the judgment of the Hon'ble High Court is reproduced below:

"20.9 An allottee may elect or opt for one out of the remedies provided by law for redressal of its injury or grievance. An election of remedies arises when two concurrent remedies are available, and the aggrieved party chooses to exercise one, in which event he loses the right to simultaneously exercise the other for the same cause of action."

- xiii. It is submitted that bare perusal of the instant complaint and email dated 11.07.2016 would reveal that the complainant did not have the financial means to make the balance payment and is now raising frivolous issues as an afterthought in order to arbitrarily seek refund by concealing its own defaults without forfeiture of the amounts that the respondent is entitled to forfeit in case of default by the complainant as per the agreed terms of the agreement executed between the parties.
- xiv. It is submitted that the complainant has failed to place on record relevant documents/communications exchanged between the parties hereto whereby it is evident that ample opportunities were given by the respondent to the complainant to pay the outstanding amount and comply with the terms and conditions of the booking application form as well as the plot buyer agreement. It is submitted that the allotment of the complainant was canceled by the respondent in accordance with the agreed terms of the plot buyer agreement.
- xv. It is submitted that the complainant booked the subject unit in the said project for a total sale consideration of ₹ 2,29,30,129/. The complainant signed and submitted a booking application

form dated 25.12.2013 after having carefully read and understood all the terms of allotment contained therein and in pursuance thereof, paid an amount of Rs.11,00,000/- towards the booking amount for the said plot. The application form contained detailed terms of allotment including the obligation of the complainant to make timely payments, the consequences of default, and the definition of earnest money to be forfeited in the event of failure to rectify the default. The complainant after going through and understanding the terms and conditions incorporated under the application form decided to purchase the unit in the project of the respondent.

- xvi. That the complainant unequivocally agreed to make timely payments as per the payment plan opted by the complainant as incorporated under schedule IV of the Plot Buyer Agreement and also provided in the Application Form. Pursuant to the above, the complainant was allotted plot bearing no. A4/02 vide allotment letter dated 07.01.2014. On 14.08.2014, a Plot Buyer Agreement was executed between the parties hereto.
- xvii. It is further submitted that as per Article IX of the Agreement, the tentative date of offer of possession of the unit was 48 + 6 months from the date of issuance of receipt of the last of all the project approvals for the commencement of development of the project from the competent authority or within such other timelines as may be directed by the Director-General Town and Country Planning, Haryana. It is submitted that the part completion certificate for the phase in which the plot of the complainant is located was granted by the competent

authority on 31.07.2017 i.e. much prior to the due date of possession. Therefore, the respondent has fulfilled its obligations under the terms of the Agreement, however, the respondent was constrained to cancel the allotment of the complainant due to his persistent defaults despite multiple opportunities being granted to the complainant to rectify the same.

- xviii. It is submitted that the complainant has paid till date an amount of Rs.94,07,158/- toward the total consideration of Rs.2,29,30,129/- (exclusive of tax and charges) i.e. only 44% of the total sale consideration was paid by the complainant. It is pertinent to mention that the complainant from the inception has committed material events of default and has failed to honour its obligation to make timely payments of the balance consideration. Therefore, the respondent was constrained to issue cancellation letter and retained an amount equivalent to the Earnest Money, interest on delayed payments and brokerage/ commission as per the terms of the Plot Buyer Agreement.
- xix. That due to persistent defaults on part of the complainant to make timely payments, the respondent was constrained time and again to issue letters/reminder notices (dated 29.12.2015, 21.01.2016, 20.04.2016, 05.05.2016, 03.06.2016 and 27.06.2016) upon the complainant herein calling upon the complainant to pay the amount/installments due and payable by the complainant in terms of the plot buyer agreement executed between parties hereto and the payment plan opted by the complainant.

- xx. That the respondent vide its letter dated 04.02.2016 also issued a final reminder notice calling upon the complainant to remit the outstanding amount due. The complainant was called upon to pay the amount of Rs.47,53,488/- along with delayed interest of Rs.1,05,350/- due and payable as on 04.02.2016. Pursuant thereto, in view of the continuing default of the complainant to make the due payments, the respondent was constrained to issue further final reminder notices dated 20.05.2016 and 11.11.2016 calling upon the complainant to remit the outstanding amount due and payable by the complainant in terms of the plot buyer agreement executed between the parties hereto and the payment plan opted by the complainant. This was, however, to no avail. Thus, the respondent was constrained to issue Cancellation Letter/Notice dated 27.04.2017 (bifurcating the amount forfeited as per the terms of the Plot Buyer Agreement and the amount refundable by the respondent to the complainant) and terminated the plot in terms of the Agreement executed between the parties hereto.
- xxi. That the complainant, thereafter, in order to avoid deductions as per the agreement requested an extension due to its financial incapability to make the payment of the balance consideration. It is pertinent to mention that the respondent being a customer centric organization acceded to the request of the complainant and granted one more opportunity to make the balance payment alongwith the interest as per the agreement. However, the complainant being a willful defaulter again started making unjustified demands of interest waiver

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and failed to honour his promises of making payment of the balance consideration.

- xxii. It is submitted that in the present case, the parties clearly agreed and understood that Earnest Money shall amount to 15% of the Basic Sale Price Rate multiplied by Plot Area plus Preferential Location Charges $\{(BSP \text{ Rate} \times \text{Plot Area})\} + \text{PLC}$ and it was in the nature of a security in order to ensure due performance of obligations by the Complainant.
- xxiii. It may not be out of place to state here that non-payment by the Complainant resulted in considerable financial hardship on the Respondents who had to ensure the progress of the construction without any interim agreed contribution from the Complainant.
- xxiv. It is submitted that the aforesaid defaults of the Complainant have exposed the Respondent to huge losses as the Respondent has lost the opportunity to sell the said plot to some other person in the open market, (at the time when Complainant booked the plot) who would have adhered with the terms of the contract and paid the entire sale consideration in time.
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 denied on the basis of these undisputed documents and submissions made by the parties.

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) The promoter shall-

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

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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 complainant 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. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been 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."

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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.I Direct the respondent to refund the amount of ₹ 94,07,158/- deposited by the complainants and pay interest @ 18% per annum on deposited amount with effect from the promised date of possession, till the date of order from the Hon'ble Authority for the offer of possession.

F.II Direct respondent to pay a sum of ₹ 1,00,000/- to complainant as reimbursement of legal expenses.

13. The In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by it 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."

14. The complainant was allotted Unit No. A4/02 in Tower A, admeasuring 300 sq. meters, in the project "The Westerlies", located in Sector 108, Gurgaon, by the respondent/builder, for a sale price of ₹2,29,38,307/-. The complainant paid a sum of ₹94,07,158/-, which constitutes approximately 41% of the total sale consideration. A Builder-Buyer Agreement dated 14.08.2014 was executed between the parties with respect to the said unit, wherein the due date for completion of the project was stipulated as 14.02.2019.
15. The respondent obtained the part completion certificate from the competent authority on 31.07.2017. Thereafter, the complainant was requested to clear the outstanding dues and take possession of the unit. However, the complainant failed to pay the remaining amount due against the allotted unit.
16. The respondent issued several reminders dated 05.05.2016, 03.06.2016, and 27.06.2016, and subsequently issued final demand notices on 20.05.2016 and 11.11.2016. Despite these repeated communications, the complainant did not clear the dues. It is pertinent to note that the part completion certificate for the allotted unit was granted on 31.07.2017. From the aforementioned facts, it is evident that the complainant paid ₹94,07,158/- against the total sale consideration of ₹2,29,38,307/- as per the agreement dated 14.08.2014, but failed to comply with the terms and conditions of the builder-buyer agreement.
17. In view of the foregoing, the respondent's cancellation of the allotment of the unit on 27.04.2017 is found to be in accordance

with the terms of the agreement and is, therefore, valid in the eyes of law.

18. However, the deductions of earnest money shall be made accordance with the applicable laws and as per the law of the land laid down by the Hon'ble apex court of the land in cases of **Maula Bux VS. Union of India, (1970) 1 SCR 928** and **Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136**, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage.* National Consumer Disputes Redressal Commissions in **CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited** (decided on 29.06.2020) and **Mr. Saurav Sanyal VS. M/s IREO Private Limited** (decided on 12.04.2022) and followed in **CC/2766/2017** in case titled as **Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022**, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the

Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

19. Keeping in view the aforesaid factual and legal provisions, the respondent/promoter is directed to refund the paid-up amount of Rs. 94,07,158/- after deducting 10% of the sale consideration of Rs. 2,29,38,307/- 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 cancellation i.e., 27.04.2017 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the Authority

20. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the paid-up amount of Rs. 94,07,158/- after deducting 10% of the sale consideration of Rs. 2,29,38,307/- 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

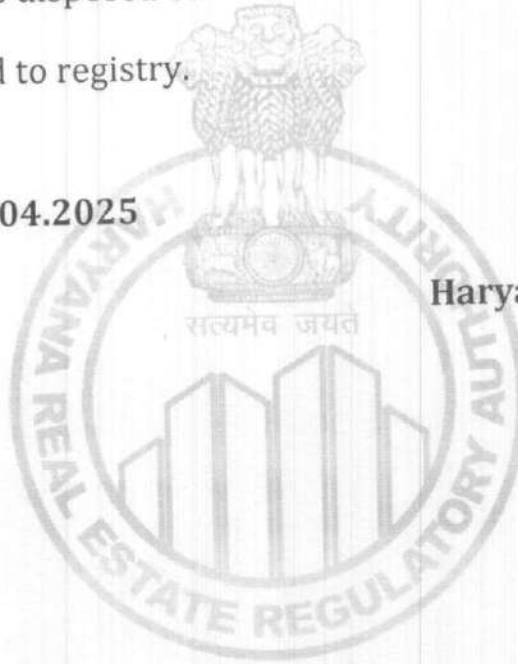
on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 27.04.2017 till its realization.


- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

21. Complaint stands disposed of.

22. File be consigned to registry.

Dated: 25.04.2025




(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory
Authority, Gurugram

HARERA
GURUGRAM