

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

Complaint no.: 3561 of 2024
Date of complaint: 02.08.2024
Date of Order: 22.05.2025

1. Sh. Mohit Vashisht
2. Sh. Bodh Raj Sharma
3. Priyanka Vashisht
Legal Representatives of the allottee
Late. Smt. Shobha Sharma
R/o:- A2/604, Tulip Orange, Sector-69,
Gurugram-122010

Complainants

Versus

TULIP INFRATECH PVT. LTD.
Regd. Office at:- Unit No.501-511, 5th floor,
76 G, Sector 18, Gurugram,
Haryana-122015

Respondent

CORAM:

Sh. Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Yash Pratap Singh (Advocate)
Sh. Sudesh Ranjan Singh (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details.

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Project name and location	"Tulip Yellow, Sector-69-70, Gurugram
2.	Project area	7.4583 acres
3.	Nature of the project	Group housing colony
4.	Name of licensee	Mukul Yadav and others
5.	RERA registration details	Registered Vide registration no. 70 of 2019 dated 14.11.2019 valid up to 31.12.2027
6.	Unit no.	303, tower/building no. A2 (page 31 of complaint)
7.	Unit area admeasuring	1034.302 sq. ft. (super area) (page 31 of complaint)
8.	Allotment Letter in the name of original allottee i.e. Ms. Shobha Sharma	10.01.2020 (page 21 of reply Annexure R2)
9.	Date of execution of agreement	Unexecuted
10.	Possession clause	NA
11.	Demand Notice/Reminder	17.03.2020, 22.05.2020, 17.06.2020, 09.10.2020, 18.03.2021, 03.04.2021, 15.03.2022, 02.07.2022 (page 22-32 of reply Annexure R3)
12.	Pre cancellation Notice	29.05.2024 (alleged by respondent but not placed on record)
13.	Total sale consideration	Rs.91,16,400/- (as alleged by complaint page 25 of complaint)
14.	Amount paid by the complainant	Rs.17,53,416/- (as alleged by complainant page 25 of complaint)
15.	Death certificate of original allottee	04.07.2020 (page 62 of complaint)

16.	Refund cheque issued by respondent in favor of Mohit Vashist and Bodh Raj Sharma	Rs.4,17,480/- each (page 33-34 of reply Annexure R4)
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B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the respondent in the year 2019-20 through his employees/representative and various advertisements represented that they were developing a Group Housing Project being "Tulip Yellow" in Sector 69, Gurgaon wherein they would provide best construction quality and timely possession. Based on and relying the representations made by the respondent, through its employees/representative and various advertisements, Smt. Shobha Sharma (Now Deceased) decided to invest in the said project.
- II. That relying on the representations made by the respondent and various advertisements, on 10.01.2020 Smt. Shobha Sharma (now deceased) applied for allotment of a residential apartment admeasuring 1704 sq. ft. along with 1 parking space in the basement in the said project. Thereafter, the respondent allotted a residential unit being A2-303 on the 3rd floor along with one parking space (basement).
- III. On 10.01.2020 Smt. Shobha Sharma paid the booking amount of Rs. 4,76,190/- plus GST against the total price of the said unit to the respondent. Thereafter, on 20.02.2020 the respondent shared the apartment buyer's agreement to be signed by Smt. Shobha Sharma and to be executed by the both the parties. However, due to the ill health of Smt. Shobha Sharama who had terminal illness and was diagnosed with stage 4 cancer, she was unable to sign the apartment buyer's agreement with the respondent in relation to the said Unit.

- IV. That on 04.07.2020 Smt. Shobha Sharma made a payment of Rs.11,93,729/- plus GST as second instalment towards the said Unit. Smt. Shobha Sharma died intestate on 10.09.2022 leaving behind complainant no.1 (Son), complainant no.2 (Husband) and complainant no.3 (Daughter) as the only surviving legal heirs.
- V. The complainant no.1 through physical meetings at the office of the respondent with officials of the respondent and through emails and WhatsApp communications with the officials of the respondent, upraised the respondent that the original allottee of the said Unit i.e. Smt. Shobha Sharma had expired on 10.09.2022 and further requested the respondent to initiate the process of transfer of allotment of the said unit in the name of the complainant no.1 (Son) and his father Sh. Bodh Raj Sharma (Husband), complainant No.2 herein as new joint allottees of the said unit, who were the surviving legal heirs of the deceased original allottee i.e. Smt. Shobha Sharma. It was also upraised to the respondent that there was one sister of the complainant no.1 namely Smt. Priyanka Vashisht (Daughter of Late Smt. Shobha Sharma), complainant No. 3 herein, who had no objection against the said transfer of allotment.
- VI. That in November, 2022 complainant no.1 along with his father Mr. Bodh Raj Sharma, complainant no.2 herein, believing to become the new allottees of the said unit by stepping into the shoes of the original allottee i.e. Late Smt. Shobha Sharama applied for a bank loan with HDFC bank, to pay the dues against the said unit to the respondent. The bank sanctioned a loan of Rs.40,00,000/- to the complainant no. 1 and 2 against the said unit in the said project.
- VII. That on 18.03.2023 one Smt. Rinki an official of the respondent sent an email to the complainant no.1 herein acknowledging to transfer the allotment of the said unit in the name of the complainant no.1 and his father



Mr. Bodh Raj Sharam, complainant no.2 herein and sent details of the documents to be submitted by the complainant no. 1 and 2 to transfer the allotment of the said unit.

VIII. That the complainant no.1 submitted all the relevant documents with the respondent as per the instructions of the respondent including signed application by all the legal heirs, original legal heir certificate or surviving member certificate, Original Death Certificate, Registered NOC/ Affidavits and Indemnity, Self-Attested copy of PAN and Adhar and 4 passport size photographs of all legal heirs, Original signature verification from bank of all legal heirs, no objection certificate by the sister Smt. Priyanka Vashisht. These documents were submitted in original with the respondent who, despite repeated requests by the complainant no.1, the respondent failed to acknowledge the receipt of the same. The complainant no.1 does not possess the copy of certain documents which include Signed application by all the legal heirs, Registered NOC/ Affidavits and Indemnity, Original signature verification from bank of all legal heirs.

IX. That between the period March, 2023 to September, 2023, the complainant no. 1 wrote various emails to the respondent requesting to change the ownership of the said unit since the original allottee i.e. Smt. Shobha Sharma had expired on 10.09.2022. The complainant no.1 also upraised the respondent the he along with his father Sh. Bodh Raj Sharma, complainant no. 2 herein (Surviving Legal Heirs of the Deceased Allottee Smt. Shobha Sharma) had gotten the loan sanctioned from the bank against the said unit and are willing to pay the pending dues against the said unit and requested the respondent to change the ownership of the said Unit and execute a fresh apartment buyer's agreement as the same is required by the bank to disburse the amount. However, to the utter shock and dismay of the



complainant nos. 1 and 2 the respondent kept on giving false assurances and have failed to the transfer the allotment of the said unit till date.

- X. That on 27.10.2023 the complainant no.1 received a statement of account against the said unit from the respondent wherein he was shocked to be upraised that respondent had levied a huge delayed interest of Rs.23,60,000/- against the said unit and demanded the same to be remitted by the complainant no.1 and 2 and only after the complainant No.1 and 2 shall remit the arbitrary delayed interest imposed by the respondent that the respondent shall transfer the allotment of the said unit and execute fresh apartment buyer's agreement. complainant no. 1 and 2 was/is not in default and had been ready to pay the dues against the said unit, however it was the respondent who has/had been in fault by not transferring the allotment of the said Unit and thereby not executing a fresh apartment buyer's agreement despite repeated request by the complainant no.1. The complainant no. 1 and 2 to pay the dues against the said unit is evident from the fact that the complainant nos. 1 and 2 had gotten a loan sanctioned from the bank towards the said unit and had repeated requested the respondent to transfer the allotment of the said unit so that the dues against the said unit can be disbursed by the bank. Thus, it is prima facie evident that the respondent has acted with malafide intent and there has been no delay by the complainant in paying the dues the against the said Unit.
- XI. That demand of outstanding dues made by the respondent against the said unit is unlawful and is in violation of Section 13(1) of the Act, 2016 wherein the respondent is barred from accepting a sum more than ten per cent of the cost of the apartment as an advance payment or an application fee from the complainant without first entering into a written agreement for sale with the complainant.

- XII. That since November, 2023 the complainant no.1 has sent various emails to the respondent and had Whatsapp conversation with the officials of the respondent namely one Mr. Vinod, requesting to transfer the ownership in the name of the complainant No.1 and his father Sh. Bodh Raj Sharma, complainant no.2 herein, after the demise of the original allottee i.e. Late Smt. Shobha Sharma and execute fresh Apartment Buyer's Agreement. However, to the utter shock and dismay of the Complainant Nos. 1 and 2 the Respondent kept on giving false assurances towards transferring the allotment and have failed to transfer the allotment of the said Unit and execute fresh apartment buyers' agreement till date. It is stated that since the respondent has failed to transfer the allotment of the said unit in favour of the complainant No.1 and his father Sh. Bodh Raj Sharma i.e. the complainant no. 2 herein, the complainant is not able to pay the balance dues to the respondent despite having a loan sanctioned in their favour as the bank required allotment letter and apartment buyer's agreement to disburse the loan amount.
- XIII. That in February, 2024 upon verbal communication with the officials of the respondent, one Mr. Vinod and Mr. Ajaya Baluja asked the complainant no.1 to pay a sum of Rs. 10,00,000/- and sign an acceptance letter stating that the complainant no.1 won't take any legal action against respondent with respect to the said unit. That as per the request of the respondent, the complainant no.1 in February, 2024 submitted cheques of Rs. 10,00,000/- in favor of the respondent and signed acceptance letter with Mr. Vinod and Mr. Ajay Baluja. It is pertinent to note here that despite request by the complainant No.1 the respondent never acknowledged the receipt of aforementioned documents and neither the said cheques of Rs. 10,00,000/- was encased by the respondent.

- XIV. That the respondent on 24.04.2024 sent an arbitrary, illegal and mala fide pre-cancellation letter to the complainant Nos. 1 and 2 stating that the complainant no. 1 and 2 are in default by not paying the outstanding dues against the said Unit despite repeated reminders and gave the complainant no. 1 and 2 seven days' time to make the payment of outstanding dues, failing which the allotment of the said Unit shall be cancelled by the respondent.
- XV. That the respondent on 29.05.2024 sent a termination/cancellation letter to the complainant no. 1 and 2 stating that the allotment of the said unit stands cancelled owing to violation by the complainant nos. 1 and 2 by not paying the outstanding dues as per the payment plan after repeated reminders by the respondent.
- XVI. That aggrieved by the illegal and arbitrary action of the respondent, the complainants herein are filing the present complaint seeking restoration of cancellation of the allotment of the said unit for the following grounds among others, which are without prejudice to and in alternative to each other.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- I. Direct the respondent to restore the cancellation of the said Unit vide cancellation letter dated 29.05.2024.
 - II. Direct the respondent to transfer the allotment of the said unit in favour of the Complainant and his father Sh. Bodh Raj Sharma who are the surviving legal heirs of the original allottee i.e. Smt. Shobha Sharma who died intestate on 10.09.2022.
 - III. Direct the respondent to execute the apartment buyer's agreement as per law with respect to the said Unit.
 - IV. Direct the respondent to remove the exorbitant delayed interest imposed by them against the said unit.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D.Reply by the respondent.

6. The respondent has contested the complaint by filing reply on the following grounds: -

- i. That complainants are barred by Law of Estoppel to stake any alleged claims against the answering respondent in view of their own voluntarily acts, deeds and omissions kept the ostensible transaction in abeyance for almost three years in lieu of their voluntarily delayed executions, payments & actions etc.
- ii. That the respondent being a customer friendly concern furnished ample opportunities to the complainants on multifarious occasions, however, their approach towards the ostensible transaction was apathetic, reluctant and lethargic since its inception till the date of its termination.
- iii. That Smt. Shobha Sharma (Now Deceased) original allottee, vide letter dated 10.01.2020, was allotted unit bearing no. A-2/303, Tulip Yellow, Sector-63, Gurugram, Haryana. Despite selecting the payment plan of their own choice, the complaints defaulted in making timely payment. That vide Call Notice/Demand Notice/Reminder dated 17.03.2020, 22.05.2020, 17.06.2020, 09.10.2020, 18.03.2021, 03.04.2021, 15.03.2022, 02.07.2022 are sent by the respondent to the complainant.
- iv. That the respondent has established its bonafides as it delayed the cessation of the ostensible transaction till May, 2024 despite the malafides of the complainant's inter-alia original allottee (Mrs. Shobha Sharma). The termination of the unit on dated 29.05.2024 was absolutely genuine, valid and legally sustainable and within the four corners of law as their refund was also initiated vide cheques same amount of Rs.4,17,480/- and Rs. 4,17,480/- bearing number 992100 and 992200 issued in favour of the complainants 1 & 2 in terms of their email dated 28.05.2024.



- v. That the erstwhile allottee (now deceased) has not been under any influence at any point of time for an allotment in the project "Tulip Yellow" as the complainants are attempting to convey vide their alleged contentions.
- vi. That a flat buyer agreement dated 20.02.2020 i.e. Annexure P/2 had been shared with the original allottee for her signatures and execution. However, its execution was pretended to have been deferred by the erstwhile allottee due to the alleged reasons as quoted by complainants, but those were never revealed to the respondent until March, 2023 from 2020. Even thereafter, the complainants sustained their lethargic & apathetic attitude towards the said ostensible transaction in question which ultimately constrained the respondent to proceed further with its legal cessation of the same by way of termination Letter dated 29.05.2024. Notwithstanding to the termination letter dated 29.05.2024, the complainants had been awarded with multifarious opportunities to honour their commitments but their sheer negligence towards the transaction, although ostensibly in existence, no doubt, persisted with throughout the time period the erstwhile & ostensible transaction and finally it resulted with its termination.
- vii. That the demise of the original allottee had been unveiled for the very first time in the March, 2023 prior to that neither any physical meetings convened nor any communications as allegedly claimed by the complainants have ever been imparted. However, the non-disclosure of the legally valid family hierarchy till the time of legal and valid termination of the transaction further re-established their lethargic, negligent & apathetic approach from the initiation till termination. That no documents as allegedly claimed by the complainants has ever been submitted with the officials of the respondent for the alterations, if any, in the nomenclature



- of the allotment. Anything stated to the contrary is being vehemently denied and refuted in extenso by the respondent.
- viii. That the complainants applied for the loan in November, 2022 without imparting any information to the respondent vis-a-vis about loan sanction, about ailment and demise of Mrs. Shobha Sharma and above all firstly submission of fallacious family hierarchy certificate in 2023 without capturing the name of complainant no.2. Once complainant no. 1 was so sure that the complainant no.2 is not the legal heir to inherit the estate of his deceased wife then on what pretext he applied for the sanction of loan in his name along with his father, it establish the sinister designs of the complainants and their negligent and deliberate acts which converged an active transaction into dormant & ostensible transaction without showing any urgency of its retrieval from the end of the complainants at any point of time.
- ix. Allegedly, the email dated 18.03.2023 Annexure P/8 nowhere reveals any acknowledgement, whatsoever, for the transfer of allotment of said Unit in favour of the complainant no.1 & 2 as purportedly claimed by the complainants. Per-contra, no documents except appended at serial no.3, only Pan and Aadhaar of the complainant no.1 & 3 & a dubious copy of the legal heir certificate in Xerox had been submitted with one of the officials of the respondent which was not approved by the respondent. However, harping upon complainants e-mail dated 2nd March, 2023, the respondent proceeded further with the transaction which was already dormant and treated it as ostensible transaction provided all documents as required under law needs to be submitted for the persistence of the transaction, but the complainants maintained their consistent record of apathetic and lethargic approach again. It is earnestly stated here that neither the documents nor the payments as assured by the complainants till the date



of termination had either been tendered or deposited with the respondent and their such misdeeds which ultimately constrained the respondent to terminate the said ostensible transaction in question validly and legally. No response submitted post receipt of letter dated 24.04.2024 till the issuance of the final legal termination letter dated 25.05.2024, it further established and sustained their consistent approach of reluctance not only towards transaction and ostensible transaction too in question from the date of allotment till the date of its legal and valid termination. Anything stated to the contrary is being vehemently denied and refuted in extenso by the respondent.

- x. That as far as loan sanction is concerned, this fact was never revealed to the respondent and it further established complainants malafide intentions towards the entire transaction, because complainants primarily, submitted a legal heir certificate without capturing the name of his father which was rejected by the respondent. It manifestly unveils their malafide intentions towards the transaction in question. Allegedly, the loan approval, if any, is pertaining to year 2022 and it was pre-mature as till that date neither the company was apprised of about the demise of the original allottee nor any desired documents to establish this aspect had been submitted with the respondent to realign the transaction, although, the complainants miserably failed to submit any document in support of their alleged claim with the respondent till the date of termination as well. Anything stated to the contrary is being vehemently denied and refuted in extenso by the respondent.
- xi. That the complainants and the original allottee (now deceased) have miserably failed to establish through their acts and deeds their keenness to honour their Payment Schedule, demands raised during the persistence of the transaction and their non- imparting of valuable information about the

ailment and even demise Mrs. Shobha Sharma till March, 2023 and now their purported and alleged claims to seek transfer of allotment seems a mere camouflage and nothing else. Till the date of termination of the ostensible transaction, they miserably failed to render any such explanation as allegedly claimed & echoed by them vide their malicious complaint under reply. Their acts, conducts and omissions towards the ostensible transaction in question speak volumes of their reluctance and negligence. In fact, they deliberately deferred each and every time bound stage and brought the transaction to the stage of dormant.

- xii. That on the one hand the complainants averred vide this Para that they are willing to pay the dues of the respondent, but, till the date of termination they were deliberately defying the time bound stages and consistently delayed their obligations at each and every stage of the transaction in question and they maintained their consistency till the date of termination of the ostensible transaction as well. Pertinently, their documents were still awaited in the system, but the respondent proceeded further with the transaction ostensibly on the pretext that they shall clear their pending dues believing it be their commitment as they are one of the occupants of one of our projects, but every time complainants retracted from their commitments.
- xiii. That the alleged loan sanction pertained to year 2022 was just a speculative & hypothetical misdeeds of the complainants that too without getting the allotment transferred in their names in the record of the Respondent. Appositely, no such alleged amount has ever been received by the respondent till the date of termination. Conversely, such nefarious acts & deeds of the complainants inter-alia adducing of a dubious legal heir Certificate(not approved by the company), adducing of Legal heirs Certificate without comprising the name of complainant no.2 which stand

rejected by the respondent and further the fallacious submissions before this Hon'ble Authority that their loan was approved in the name of complainants no.1 & 2 is not digestive at all and it firmly established their malafide intentions towards the transaction and respondents and not to forget against the Authority as well.

- xiv. That admittedly, the original Allottee was in receipt of a copy of the Flat Buyer Agreement in February, 2020, but, she never came forward for its execution. Conversely, the present complainants didn't bother to apprise the respondent about her ailment & demise till March, 2023, it seems that they didn't want to take out the said Flat Buyer Agreement from the wardrobe of the original allottee and fulfil the obligations as upraised therein to process the transaction further. Apparently, it is evident from their conduct that they blocked the flat without adhering to their obligations which did accumulate with the passage of time, but complainants take a dame care of the same. The original allottee remitted only the partial payment in the form of RTGS against the demand dated 17.03.2020 as at the time the amount remitted other demands raised which were not adhered to by the original allottee and complainants as well. Pertinently, the payment released was also delayed in time.
- xv. That what prevented the complainants to honour the other demands and its reminders which were served upon their address i.e. 22.05.2020, 17.06.2020, 9.10.2020, 18.03.2021, 03.04.2021, 15.03.2022, 02.07.2022 none of these Demands have been honoured by the complainants/Original Allottee. Per-contra to the version of the complainants, the Flat Buyer Agreement had duly been sent for its execution, if it be kept in the wardrobes and not taken out for execution, is not at all the fault of the respondent. The respondent couldn't wait till infinity for the execution of Flat Buyer Agreement and kept its flat blocked for infinity.

xvi. That the loan, if any, has been applied in 2022 as per the alleged mail submitted on record, appositely, till that time no information been imparted to the respondent about the ailment& demise of Mrs. Shobha Sharma, thus, the process and mails thereto, if any seems to be a mere camouflage of the complainants and nothing else. The entire complaint seemed to be a bundle of full of tissues of lies and under the garb of these fallacious and suppressed notions complainants are trying to bury their own flaws of negligence, lethargic, apathy and inconsistent approach. Anything stated to the contrary is being denied and refuted in extenso by the respondent.

xvii. That the respondent sent a pre-cancellation letter on 24.04.2024 to the complainant no.1 and 2 stating that the complainant No.1 and 2 are in default by not paying the outstanding dues against the said unit despite repeated reminders and further gave the complainant No.1 & 2 seven-day time to make the payment of outstanding dues, failing which the allotment of the said unit shall be cancelled by the respondent.

7. All other averments made by the complainant were denied in toto.

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

E. Jurisdiction of the authority.

9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with

offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

Section 11.....(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to restore the cancellation of the said Unit vide cancellation letter dated 29.05.2024.

F.II Direct the respondent to transfer the allotment of the said unit in favour of the Complainant and his father Sh. Bodh Raj Sharma who are the surviving legal heirs of the original allottee i.e. Smt. Shobha Sharma who died intestate on 10.09.2022.

F.III Direct the respondent to execute the apartment buyer's agreement as per law with respect to the said Unit.

F.IV Direct the respondent to remove the exorbitant delayed interest imposed by them against the said unit.

13. The abovementioned reliefs are dealt together being interconnected.

14. Some of the admitted facts submitted by both parties are that the original allottee i.e. Smt. Shobha Sharma was allotted a unit no. A2/303 in respondents



project in Tulip yellow, Sector-69, Gurugram vide allotment letter dated 10.01.2020 for a sale consideration of Rs.91,16,400/-. The complainants have paid Rs.17,53,416/- against the subject unit as per the statement of accounts dated 02.07.2022 submitted by the respondent and also by the complainants in its complaint. Further, no buyer's agreement was executed between parties. Subsequently, the original allottee expired on 04.07.2020 and the present complaint was filed by her legal heirs seeking reinstatement of the subject unit as was cancelled by the respondent vide cancellation notice dated 29.05.2024.

15. Further, the complainant through instant complainant submitted that the complainants are ready and willing to pay the outstanding dues against the subject unit. The respondent on other hand submitted that the complainants defaulted in making time payments and several reminders/notice dated 17.03.2020, 22.05.2020, 17.06.2020, 09.10.2020, 18.03.2021, 03.04.2021, 15.03.2022, 02.07.2022 were sent to the complainant. However, the complainants failed to pay the outstanding dues and the unit was terminated vide letter dated 29.05.2024. Also, the refund was also initiated amounting to Rs.4,17,480/- each in favor of complainant no.1 and 2.

16. As per the cancellation letter dated 29.05.2024 annexed on page 88 of complaint, the earnest money deposit amounting to 10% of the total sale price and GST deposited to the concerned Govt. department stands forfeited. Upon perusal of documents on record, various reminders were sent by the respondent to the complainant before cancelling the unit to clear the outstanding dues but the complainant failed to pay the outstanding dues. The respondent sent a cancellation letter on 29.05.2024 due to non-payment. It is observed that as per Section 19(6) & (7) of the Act, 2016, the allottee was under an obligation to make timely payment towards consideration of the allotted unit. The respondent sent demand/reminder letters on 10.12.2013, 18.01.2014, 25.04.2014, 20.05.2019 and 11.07.2019 to the complainant

regarding the outstanding dues for the subject unit. However, the complainant did not pay the outstanding dues.

17. In view of the above findings the Authority observes that the complainants are not entitled for setting aside of cancellation letter being the relief sought. As, the subject unit of the complainant was cancelled by the respondent after issuing proper reminders. Therefore, the cancellation letter dated 29.05.2024 is hereby held to be valid in the eyes of law.
18. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. ***National Consumer Disputes Redressal Commissions in CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited (decided on 29.06.2020) and Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022***, held that 10% of basic sale price is a 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. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. Thus, keeping in view the aforesaid factual and legal provisions the respondent is directed to refund the paid-up amount of Rs.17,53,416/- after deducting the earnest money which shall not exceed the 10% of the sale consideration along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation letter i.e. 29.05.2024 till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. 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 is directed to refund the paid-up amount i.e. Rs.17,53,416/- to the complainants after deducting 10% of the sale consideration being earnest money along with interest at the rate of 11.10% p.a. on such balance amount from the date of cancellation i.e. 29.05.2024 till its realization.

19

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

21. Complaint stands disposed of.
22. File be consigned to registry.

Dated: 22.05.2025

V.I 
Vijay Kumar Goyal
Member

(Haryana Real Estate Regulatory
Authority, Gurugram)

