

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

Complaint no.: 5318 of 2023
Date of complaint: 01.12.2023
Date of decision: 25.04.2025

Mr. Manoj Rajput

R/o: H.No. H-4/108D, Mahavir Enclave Part-1,
Dwarka- New Delhi-110045

Complainant

Versus

M/s Signatureglobal Homes Pvt. Ltd.

Regd. Office at: - Ground Floor, Tower A,
Signature Towers, South City -1,
Gurugram, Haryana-122001.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Sushil Kumar (Advocate)
Shri Venket Rao (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 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.no.	Heads	Information
1.	Project Name and Location	Signature Global Park-V (II), Sector 36, Sohna, Gurugram, Haryana
2.	Licensed area of the project	10.531 acres
3.	Nature of the project	Independent residential floors (Affordable plotted housing colony under DDJAY)
4.	DTCP License no. and validity	118 of 2019 dated 12.09.2019 Valid up to 11.09.2024
5.	HRERA Registered	Registered vide no. 48 of 2022 dated 06.06.2022 (RC/REP/HARERA/GGM/573/305/2022/48) Valid till- 30.09.2024 Registered area- 1.7756 acres
6.	Welcome letter issued by the respondent in favour of the complainant on	22.09.2022 [Page 25 of complaint]
7.	Unit no.	5-B26-3F Independent floor no. 3F in Block B upon plot no. B26 [Page 37 of complaint]
8.	Unit admeasuring	Carpet area- 593.67 sq. ft. Balcony area- 149.40 sq. ft. [Page 37 of complaint]
9.	Builder buyer agreement executed between the complainant and the respondent on	18.10.2022 [Page 33 of complaint]
10.	Possession clause	7.1 Schedule for possession of the said Residential Independent Floor- “...The Promoter assures to handover possession of the Residential Independent Floor along with parking (applicable only if parking fee/charge has been paid) as per agreed terms and conditions by 30th September 2024 unless there is delay



		due to force majeure..." [Page 46 of complaint]
11.	Due date of possession	30.09.2024
12.	Basic sale consideration	Rs.58,59,383.81/-
13.	Total sale consideration	Rs. 64,76,481/- [As per clause 1.2 of BBA, page 38-39 of complaint]
14.	Amount paid by the complainant	Rs.17,08,084/- [As per Customer Ledger dated 28.04.2025 filed by the respondent on 30.04.2025 and as per receipt on page 23 of complaint] Note: In customer ledger dated 28.04.2025, entry of Rs.20,000/- paid by the complainant on 10.09.2023 is not recorded.
15.	Reminders sent by the respondent to the complainant	June 2023 and July 2023 [email is annexed as Annexure R2 and R3 of the reply]
16.	Pre-cancellation letter dated	04.07.2023 [Page 78 of complaint]
17.	Cancellation letter dated	20.07.2023 [As mentioned in Final settlement letter dated 12.08.2023, page 86 of complaint]
18.	Final settlement letter dated	12.08.2023 [Page 86 of complaint] Note: As per settlement letter dated 12.08.2023, the complainant had paid a sum of Rs. 16,19,084/- and the respondent has forfeited a sum of Rs.10,14,905/-.
19.	Legal notice sent by the complainant to the respondent seeking return of the amount paid along with interest and compensation	29.08.2023 [Page 92-95 of complaint]
20.	Completion certificate	06.05.2022 [As per DTCP, Haryana website]
21.	Third part rights created in favour of Mr. Nitin Mittal	01.12.2024 [As per Welcome email sent by respondent to Nitin Mittal, page 30 of reply]

B. Facts of the complaint:

3. The complainant has made the following submissions:

- i. That based on the representation and documents of the respondent, the complainant made an application dated 22.8.2022 and made a payment of Rs. 20,000/- on 22.8.2022. Thereafter, Rs. 20,000/- on 09.09.2022, Rs. 60,000/- & Rs. 20,000/- on 10.9.2022. Pursuant to payment of the aforesaid money, the respondent allotted unit no. 5-B26-3F in the project namely, Signature Global Park-V(2), Gurugram, Haryana, Sector 36, Sohna Tehsil Gurugram, having an area of (as per broacher and a Price List) 1020 sq. ft. along with one car parking to the complainant. In respect of above, the complainant has received a Welcome letter & Email dt. 22.9.2022 from the respondent. However, the respondent has not issued an allotment letter till date.
- ii. That the complainant has received email dated 29.09.2022 and the complainant has further paid a sum of Rs.2,00,000/- on 29.9.2022, Rs.2,82,884/- on 11.10.2022. Thereafter, the respondent has registered the Agreement for Sale on 18.10.2022 and in Paragraph G of the agreement, the respondent has mentioned the carpet area of flat as 593.67 sq. ft. and Balcony Area as 149.404 sq. ft. It is pertinent to mention that the Respondent has **left blank** the area of plot no. B26.
- iii. That the sale agreement registered by the respondent is against the law of land and the respondent has mentioned only those lines, which supports the respondent only. At the time of signing of Agreement for sale, the complainant has specifically objected the same and respondent have mentioned that the Respondent will be offered area as mentioned in the Price List/broacher. After that the respondent made sure that the respondent will charge the payment as per the area mentioned in the agreement for sale dated 18.10.2022. Further, the

respondent has informed that the reduction/increase in carpet area will be considered at the time of possession as mentioned in para 1.7 of the Agreement for sale. Further, in the Agreement for sale the respondent has mentioned carpet area of flat is 593.67 sq. ft. and balcony area of 149.404 sq. ft., but the respondent is charging the complainant for area 1020 sq. ft.

- iv. That at the time of booking, the respondent had shared a price list/broacher in which the respondent had mentioned the area of the flat and price of the flat and also bifurcate the payment plan. It is submitted that as per Section 11 (2) of the Act, the Respondent shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto. Unfortunately, the respondent has no such details on the Price List/ Broacher.
- v. That as per para 1.7 the respondent should reduce the price of unit as per the carpet area offered by Respondent, unfortunately the Respondent failed to do the same and the respondent are charging price as carpet area shown in the Price list along with interest at higher rate on late payment to the complainant client without providing any interest calculation chart.
- vi. That the complainant has further paid a sum of Rs. 50,000/- on 16.02.2023 and Rs. 50,000/- on 25.02.2023. On 13.04.2023, the complainant has received First-Demand Pre-Intimation Letter dated 13.04.2023. The complainant further paid a sum of Rs. 5,00,000/- on 29.4.2023, Rs. 4,00,000/- and Rs. 5,200/- on 30.04.2023.
- vii. That on 04.07.2023, the respondent has issued a pre-cancellation notice to the complainant.

- viii. That the respondent has not performed his functions and duties as defined in section 11 of the Act by not uploaded the quarterly progress report on the website of the Authority and not sent any details of stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the parties. Further The complainant has sent an email dated 03.08.2023 and 04.08.2023 to the respondent for site visit, however, did not receive any reply of the emails by the respondent.
- ix. That as per Section 12 of the Act it is the Obligations of promoter that they must inform/declare the correct information in the advertisement or prospectus. Unfortunately, the respondent has failed to do the same.
- x. That the complainant has further paid a sum of Rs. 1,00,000/- on 10.08.2023. thus, the complainant has made payment of Rs.17,39,084/- out of total sale consideration of Rs.64,75,939/- to the respondent.
- xi. That as per the para 1.10 of the Agreement for Sale, the Respondent has mentioned that Allottee has paid a sum of Rs. 5,00,000/- as booking amount/Application/Advance being part payment towards the total price of the residential independent floor, but in First Demand dt. 13.04.2023, the respondent has mentioned that on Booking amount payable Rs. 1,00,000/- and in price list /broacher the respondent has mentioned that "at the time of submission of Application Form – 9% i.e. Rs. 5,79,984/-. Further it is pertinent to mentioned that the complainant has paid only Rs. 20,000/- on 22.08.2022 at the time of booking, which the respondent has accepted and issued a receipt.
- xii. That on 12.08.2023 the complainant received an email from the Respondent stating Final Settlement Letter, in which the respondent



has mentioned that they have received Rs. 16,19,084/- and the respondent has also mentioned that allotment of subject unit is hereby cancelled with immediate effect. Further, the respondent has also mentioned the refundable amount i.e. Rs.6,04,178.82/- and Rs. 10,14,905.18/- is forfeited. The respondent has not given credited of Rs. 1,00,000/-, which was paid by the complainant on 10.8.2023.

xiii. That on 23.8.2023 the complainant has visited the respondent's office and requested to charge the price as per the area allotted to him, but the respondent denied the same. Thereafter on 26.08.2023, the Respondent has sent an email mentioning that refundable amount is Rs.8,26,250/-. However, as per letter dated 12.08.2023, the refundable amount was Rs. 6,04,178.82/-. It is pertinent to mention that the respondent again and again sends contradict documents, which shows that the respondent is not willing to refund and charging the interest on higher rate as per its own wishes and while giving refund, the respondent is also charging other charges along with booking amount. Further, it is pertinent to mention that as per sale agreement, if cancellation of unit, then only booking amount will be chargeable i.e. Rs. 20,000/- paid by the complainant.

xiv. That on 23.8.2023 the Respondent has provided the ledger to complainant which shows that the complainant has paid Rs. 17,19,084/- (in which the Respondent has included Rs. 31000/- Handi Scheme on 29.6.2023). Further it is pertinent to mention that on 10.9.2022 the complainant has paid Rs. 20,000/- + 60,000/- on very same day, unfortunately the Respondent has given the credit only of Rs. 60,000/-. That as per your ledger the total should be Rs. 17,39,084/-.

A✓

- xv. That on 29.08.2023, the complainant sent a legal notice through his counsel, which was received by the respondent on 31.08.2023 and the respondent never gave any reply to the Legal Notice.
- xvi. That the respondent took more than 25 percent of the total sale consideration amount from the Complainant in the year from August 2022 to August 2023 and has failed to provide the allotment letter and area of the unit and also failed to charge the price for the area which the respondent is offering as per the Agreement for Sale. Further, the respondent indulged in unfair trade practice and misled the complainant about the agreement, price list and therefore, is liable to be punished accordingly, in terms of the provisions of the Act.

C. Relief sought by the complainant:

4. The complainant is seeking the following reliefs:
- Direct the respondent to refund the entire payment i.e., Rs. 17,39,084/- deposited by the complainant in respect to the unit.
 - Direct the respondent to pay interest to the complainant at applicable rates in terms of the Act, 2016, within the timeline as provided under Rule 16 of HRERA Rules.
 - To impose penalty on the respondent as per the provisions of section 61 of the Act for admitted contravention of section 13 and 18 of the Act.
 - Direct the respondent to pay compensation to complainant under section 18 of the Act, 2016, within the timeline as provided under Rule 16 of the Rules, including compensation.
 - Direct the respondent to pay the cost of litigation to the complainant.
 - Pass any other or further order(s) or direction(s) as the Authority may deem fit and proper in the facts and circumstances of the present case.

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 on the following grounds by way of filing reply dated 13.03.2024:

- i. That the respondent vehemently denied that complainant can be an aggrieved person with regard to cancellation of allotment or that there was any deficient service or illegal cancellation or that there was any failure to provide the Unit Area as promised. Admittedly BBA has been executed and registered on 18.10.2022 concluding the term and conditions of allotment. It is pertinent to mention that Para 21 of the BBA categorically mandates *"This Agreement, along with its schedules, constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes any and all understandings, any other agreements, allotment letter, correspondences, arrangements whether written or oral, if any, between the Parties in regard to the said Residential Independent Floor and parking (applicable only if parking fee/charge has been paid)."* It is pertinent to mention that these texts are the part of the agreement notified by the State Government under the Act 2016. Complainant has never objected in any term of BBA. Nevertheless, alleged Price list/brochure enclosed i.e. Annexure C10 Respondent has not been issued by Respondent though it contains certain details of the project. Further Complainant never brought the alleged Price list/brochure enclosed i.e. Annexure C10 to the knowledge of Respondent prior to filing of the present complaint. Further, it is categorically admitted that payment was not made in terms of agreed installments despite repeated demands, reminders

A

and pre-cancellation; hence allotment was cancelled under compulsion.

- ii. That it is the complainant who intentionally defaulted despite the receipt of repeated demands, reminders and pre-cancellation; hence allotment was cancelled under compulsion. Further, BBA was admittedly entered into on 18-10-2022 and allotment was cancelled in August 2023. The complainant never raised any issue of either area or any false promise during the said period. Rather complainant has made payment after 18-10-2022 without raising any question or issue. Hence, complaint deserves to be dismissed on this ground alone.
 - iii. That respondent has sent reminders to complainant in June 2023 and July 2023 also besides the admitted reminder to make payments as per agreed payment plan.
 - iv. That the respondent has discharged it's all obligation under section 11 as applicable at relevant point of view. Further, this Hon'ble Authority will appreciate that allegation regarding Respondent has not performed his functions and duties as defined in section 11, has nothing to do with cancellation of allotment. Rather it suggested to be nothing but a pressure tactics with a sole motive of causing wrongful loss/harm to Respondent and wrongful gain to itself.
 - v. That it is submitted payment of Rs. 1,00,000/- made on 10.08.2023 was updated in the ledger i.e. Annexure C22. The Complainant has paid total Rs.17,19,084/- which can also be confirmed from Annexure C22.
 - vi. That since the allotment was cancelled due to intentional default by complainant, hence, deduction would be in terms of Para 9.3(ii).
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 refund the entire payment i.e., Rs. 17,39,084/- deposited by the complainant in respect to the unit.**
- F.II Direct the respondent to pay interest to the complainant at applicable rates in terms of the Act, 2016, within the timeline as provided under Rule 16 of HRERA Rules.**
- F.III Direct the respondent to make the payment of the monthly interest as installment until the actual delivery of the possession of the unit to the complainant, in the interest of justice.**

13. The abovementioned reliefs are dealt together as being interconnected.
14. Briefly stated the facts are that an independent floor no.3F in Block B upon plot no. B26 was allotted to the complainant in the project "Signature Global Park-V (II)", Sector 36, Sohna, Gurugram, Haryana. Builder buyer agreement executed between the complainant and the respondent on 18.10.2022. The complainant through instant complaint submitted that the the respondent took more than 25 percent of the total sale consideration amount from the Complainant from August 2022 to August 2023 and has failed to provide the allotment letter and area of the unit and also failed to charge the price for the area which the respondent is offering as per the Agreement for Sale. Therefore, the complainant has approached the authority through present complaint seeking aforesaid reliefs.
15. On the other hand, the counsel on behalf of the respondent submitted that BBA was admittedly entered into on 18.10.2022 and allotment was cancelled in August 2023. The complainant intentionally defaulted in making timely payments despite the receipt of repeated demands, reminders and pre-cancellation; hence allotment was cancelled in terms of the BBA executed inter se parties. However, the complainant never raised any issue of either area or any false promise during the said period. Rather complainant has

made payment after 18.10.2022 (i.e., after execution of BBA) without raising any question or issue. Hence, complaint deserves to be dismissed on this ground alone.

In view of the factual matrix of the present case, the question posed before the authority is whether the cancellation is valid in the eyes of law?

16. The authority has gone through the payment plan, which was duly signed by both the parties, which is reproduced for ready reference:

SCHEDULE 'C'

Construction Linked Payment Plan For SG-Park 5-Phase-2		
S.No.	Particulars	(%)
1.	Application Fess	100000
2.	Within 15 days from the date of submission of application form	9% of Total Price (Less Booking Amount
3.	Within 15 days from the date of submission of application form	Execution and registration of the Builder Buyer Agreement
4.	Within 60 days from the date of booking or Clearance of 1st Payment (whichever is earlier)	16% of Total price
5.	Within 8 months from the date of booking or Completion of Construction milestone listed here under (whichever is Later). A) Excavation of 75% Plots. B) Foundation of 25% Plots.	25% of Total Price
6.	Within 16 months from the date of booking or Completion of Construction milestone listed here under (whichever is Later). A) Excavation of 75% Plots. B) Foundation of 25% Plots.	25% of Total Price
7.	Within 24 months from the date of booking or Completion of Construction milestone listed here under (whichever is Later). A) 4 th Floor roof of 100% Plots.	20% of Total Price
8.	On offer of possession.	5% of Total Price + Possession Charges/Other Charges (If any) as applicable.

17. It is matter of record that the complainant booked the aforesaid unit under the above-mentioned payment plan and paid an amount of Rs.17,08,084/- towards total consideration of Rs. 64,76,481/- (as per clause 1.2 of BBA, page 38-39 of complaint) which constitutes 26.37% of the total sale consideration. It is pertinent to note that as per the payment plan agreed inter se parties, the respondent vide demand letter dated 13.04.2023 (Annexure C3, page 72-75 of complaint) raised demand on account of "Within 8 months from the date of booking or Completion of Construction milestone A) Excavation of 75% Plots and B) Foundation of 25% Plots" amounting to Rs.25,75,357/-. Upon non- payment of the outstanding dues by the complainant, the respondent issued various reminders to the complainant to clear the outstanding dues. In this regard, the respondent has placed on record reminders (through email) of June 2023 and July 2023. Also, a pre-cancellation letter was sent by the respondent on 04.07.2023. Finally, cancellation letter was issued by the respondent on 20.07.2023 and thereafter, a Final settlement letter dated 12.08.2023 was issued by the respondent. However, it is matter of record and evident from statement of account dated 23.08.2023 that the complainant has made payment of Rs.1,00,000/- only on 10.08.2023 which is after the cancellation of the allotment. As on 10.08.2023, the respondent has raised total demand of Rs. 32,38,241/- and the complainant has paid an amount of Rs.17,08,084/- against the said demand. It is observed that the complainant has failed to make the requisite payment despite various demand/reminders by the respondent.
18. As per clause 9.3 of the buyer's agreement, the respondent/promoter has a right to cancel the unit in case the allottee has breached the agreement to sell executed between both the parties. Clause 9.3 of the buyer's agreement is reproduced as under for a ready reference:



"9.3 The Allottee shall be considered under a condition of Default, on the occurrence of the following events:

- (i) In case the Allottee fails to make payments for two consecutive demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate prescribed in the Rules;*
- (ii) In case of Default by Allottee under the condition listed above continues for a period beyond ninety days after notice from the Promoter in this regard, the Promoter may cancel the allotment of the Independent Floor for Residential Independent Floor, alongwith parking (applicable only if parking fee/charge has been paid) in favour of the Allottee and refund the money paid to him by the allottee by forfeiting the booking amount paid for the allotment and interest component on delayed payment (payable by the customer for breach of agreement and non-payment of any due payable to the promoter). The rate of interest payable by the allottee to the promoter shall be the rate prescribed in the rule 15 of the HRERA Rules, 2017. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within ninety days of such cancellation. On such default, the Agreement and any liability of the promoter arising out of the same shall thereupon, stand terminated. Provided that, the promoter shall intimate the allottee about such termination at least thirty days prior to such termination."*

19. That the above-mentioned clause provides that the promoter has right to terminate the allotment in respect of the unit upon default under the said agreement. It is observed that the respondent/promoter has issued various demands letter and finally, issued pre-cancellation letter to the complainant on 04.07.2023. Despite the issuance of pre-cancellation letter, the complainant has failed to clear the outstanding dues.
20. 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 has failed to pay the outstanding dues. Thus, the respondent has cancelled the allotment of the subject unit due to non-payment on 20.07.2023. It is observed that as per section 19(6) & (7) of the Act, 2016, the complainant-allottee was under an obligation to make timely payment as per the payment plan towards consideration of the allotted unit. However, the complainant did not pay the outstanding dues despite affording numerous opportunities by the respondent.

12

21. In view of the above findings, the Authority observes that the complainant is not entitled for the reliefs being sought under the present complaint as the allotment in respect of the subject unit of the complainant was cancelled by the respondent after issuing proper reminders. Therefore, the cancellation letter dated 20.07.2023 is hereby held to be valid in the eyes of law.
22. However, 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. *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."

23. Also, Hon'ble Apex Court in *Civil Appeal no.3334 of 2023* titled as *Godrej Projects Development Limited Versus Anil Karlekar* decided on 03.02.2025

19

has held that 10% of BSP is reasonable amount which is liable to be forfeited as earnest money.

24. 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. 17,08,064/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration i.e., Rs.58,59,383.81/- along with interest on such balance amount 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 termination/cancellation 20.07.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.III To impose penalty on the respondent as per the provisions of section 61 of the Act for admitted contravention of section 13 and 18 of the Act.

25. The above-mentioned relief sought by the complainant was not pressed by the counsel for the complainant during the pendency of the complaint or during the arguments. The authority is of the view that the complainant's counsel does not intend to pursue the above-mentioned relief sought. Hence, the authority has not raised any findings w.r.t to the above-mentioned relief.

G.IV Direct the respondent to pay compensation to complainant under section 18 of the Act, 2016, within the timeline as provided under Rule 16 of the Rules, including compensation.

G.V Direct the respondent to pay the cost of litigation to the complainant.

26. The complainant is also seeking relief w.r.t compensation and litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State*

of Up & Ors. (Civil Appeal no. 6745-6749 of 2021), has held that the adjudicating officer has exclusive jurisdiction to deal with the complaints for compensation under sections 12,14,18 and section 19 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72 of the Act. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation and litigation expenses.

G. Directions of the Authority.

27. 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.17,08,084/- to the complainant after deducting 10% of the basic sale consideration i.e., Rs.58,59,383.81/- being earnest money along with interest on such balance amount at the rate of 11.10% as prescribed under rule 15 of the Rules, from the date of cancellation i.e., 20.07.2023 till its realization.
- 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.

28. The complaint and application, if any, stands disposed of.

29. File be consigned to registry.

Dated: 25.04.2025

V.I. 
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory
Authority, Gurugram