

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

Complaint no.: 3666 of 2023
Date of complaint: 25.08.2023
Date of order: 22.05.2025

1. Puneet Jain
2. Yogesh Gupta
3. Sachin Aggarwal

R/o: - 42 Hemkunt Colony New Delhi 110048
and 92 Darya Ganj, 1st Floor, New Delhi- 110002.

Complainants

Versus

Sweet Home Buildwell Pvt Ltd.
Regd. Office at: - 301, Dhaka Chamber, 2068/39,
Naiwala, Karol Bagh, New Delhi

Respondent

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Shri Shashank Singh
Shri Kaushal Budhia

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 provision of the Act or the Rules and regulations made thereunder 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 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.	Particulars	Details
1.	Name of the project	M2k Corporate Park Shopping Plaza
2.	Nature of project	Commercial
3.	RERA registered/not registered	Unregistered
4.	Unit no.	GF-56 (page 36 of complaint)
5.	Unit measuring	1592.53 sq. ft. (page 36 of complaint)
6.	Application form	19.03.2008 (page 22 of reply)
7.	Date of execution of flat buyer's agreement	Not executed
8.	Due date of possession	19.03.2011 (Calculated as per Fortune <i>Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018</i> from the date of application form i.e. 19.03.2008)
9.	Total sale consideration	Rs. 1,70,20,164/- (alleged by respondent page 09 of reply)
10.	Total amount paid by the complainant	Rs.37,82,260/- (alleged by the respondent page 10 of reply and payment receipt issued by respondent page 36 of complaint)
11.	Amount paid back by respondent	Rs.12,29,229/- (page 5 of complaint and page 14 of reply) <i>*cheque not encashed submitted by the respondent during proceedings dated 22.05.2025</i>
12.	Final notice	18.04.2012 (page 39 of complaint)
13.	Occupation certificate	21.10.2016 (page 28 of reply)
14.	Cancellation letter	28.05.2019 (page 40 of complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That based on the misrepresentation of facts and in good faith, the complainant made a booking of a commercial shop, unit no. 56 admeasuring 1592.53 sq. ft., on the ground floor in July 2008 vide application form dated 19.03.2008 in the project "M2K Corporate Park Shopping Plaza" situated at Sector-51, Mayfield Gardens, Gurgaon, Haryana developed by the respondent. As per allotment, basic sale price of the shop was fixed at Rs.9500/- per sq. ft.
- II. That the above-said project was a pre-launching project with a construction linked payment plan and the respondent had committed that the delivery of the possession will be done within 36 months from the date of execution of the form dated 19.03.2008.
- III. That the complainants booked above said unit in 2008 with the respondent and paid a sum of Rs.59,82,260/- through cheque, cash, and demand draft in the name of M/s Sweet Home Buildwell Private Limited.
- IV. That after booking the complainant has not received any update the respondent about the development of the project and further steps that has to be taken in relation to the allotment and agreement regarding the said booking. The respondent never made and executed a builder buyer agreement with the complainant and always asked for some time to execute a builder buyer agreement which is in contravention of Clause 19(ii) of the terms and conditions of the application.
- V. That after the lapse of considerable time, the complainants asked the respondent to execute a builder buyer agreement but it was denied at the end of the respondent claiming that the builder buyer agreement will be executed once the complete amount is paid. The non-execution of the builder buyer agreement on account of unpaid dues is illegal.

- VI. That the complainant visited many times the project site to inspect the status of the development work but the construction work was not satisfactory till 2012 after 36 months of the booking. In the meanwhile, co-applicant of the unit, Mr. Surendra Kumar Gupta passed away, and after getting disappointed with the service of the respondent, the co-applicant Mr. Puneet Jain decided to cancel his booking with immediate effect and sent a request for cancellation for his unit vide letter to the respondent but the respondent did not reply on the said letter.
- VII. That the complainant after more than 4 months, the respondent had sent a final notice for payment of outstanding dues dated 18.04.2012 for the demand of Rs.54,84,296/- to the complaint which was illegal and arbitrary.
- VIII. That the complainant went to Harsha Bhavan and met with head of the respondent company, that he committed about the refund to the complainant but nothing happened. The complainants got shocked to discover in 2016 that the respondent without informing and without taking the consent of the complainants sold the unit to someone else in 2015 itself.
- IX. That in the year 2019, the complainant was shocked when he received an allotment cancellation letter along with cheque dated 24.05.2019 (cheque no. 000058) for cancellation of his booking and in which it was mentioned that due to non-payment of the due amount, the unit has been cancelled and the earnest money, that is 15% of the sale consideration stands forfeited.
- X. That the respondent herein initiated the refund of Rs.12,29,229/- vide cheque dated 24.05.2019 (cheque no. 000058) as against the total amount initiated by the complainants which was to the tune of Rs.59,82,260/-. The payment plan was construction linked and when the complainants failed to see any development in the project, the complainants immediately wanted to rescind the contract and requested for the same. That the fault is on the part of the respondent who failed to consider the cancellation of allotment for any

reason. As per the terms and conditions, it was agreed that the respondent will refund the entire earnest money deposit along with interest to complainants without any objection in case of cancellation of allotment for any reason.

XI. That after the above said illegal cancellation of his booking, the complainant visited the office of the respondent to get his refund but the respondent was never ready to listen to his grievances. The said project is still incomplete and not ready after more than 10 years of booking.

XII. That after repeated requests and reminders, the complainants have not received any satisfactory response from the respondent and by this the respondent is committing deficient and negligence in services. By doing so the respondent has committed a breach of terms and conditions as agreed between the parties and has committed a breach of trust.

XIII. That the complainants herein filed a complaint vide complaint no 4651 OF 2022 at HRERA under section 18 of RERA Act 2016 for the refund of the amount as the possession has not been given to the complainants. That the above-mentioned complaint has been disposed of on 15.09.2022 by the Authority. However, as the complainants were under the impression that they were dealing with M2k infrastructure Pvt Ltd due to the misrepresentation by the respondents herein, the complaint was filed against M2k Infrastructure Pvt Ltd. The said complaint was dismissed in default.

XIV. The restoration application was disposed of by an order wherein liberty was given to the complainant to file a fresh suit against the present respondents for the claim of refund and compensation

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- I. Direct the respondent to refund the entire paid-up amount with interest.
- II. Direct the respondent to pay litigation cost of Rs.1,50,000/-.

III. Direct respondent to pay sum of Rs.5,50,000/- for causing mental, physical harassment, frustration & grievance to the complainant and miserable attitude of the respondent and deficiency in service.

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: -

- i. That the present complaint is not maintainable and barred by limitation in view of the fact that allotment of said shop was cancelled by respondent vide letter dated 28.05.2019 due to failure to pay the instalments and refund cheque dated 24.05.2019 of Rs.12,29,229/- was sent to complainants after deducting/forfeiting earnest money in terms of Clause 5 & 6 of the application form.
- ii. That cancellation notice dated 28.05.2019 with refundable cheque of Rs. 12,29,229/- was delivered to complainant on 31.05.2019. After cancellation of the allotment of shop on 28.05.2019, the complainant failed to take up the matter with the respondent and now after a lapse of more than four years, the complainant has filed the present complaint on 04.08.2023. Further, before filing the present complaint, the complainants never raised any objections as raised in complaint and in case complainants have any objection for the cancellation of allotment and refundable cheques amount, they should have written to the letter as well returned the cheques to the respondent. However, they have retained the refundable cheque with them.
- iii. That Authority in complaint no. 242 of 2018 titled as **"Smt. Mira Mahbubani Vs M/s Ireo Grace Realtech Pvt. Ltd"** vide its final order dated 05.09.2018 dealt with the cancellation of allotment and delay in filing of complaint after lapse of three year of cancellation of allotment and clearly held that

complaint filed after lapse of 3 years is not maintainable as the same is barred by limitation.

- iv. That the complaint is bad in law and liable to be dismissed for non-compliance under the Haryana Real Estate Regulatory Authority, Gurugram (adjudication of complaints), Regulations, 2018. The present complaint is neither signed, verified by all the complainants nor supported with respective affidavits as per Appendix-G of said regulation.
- v. The complaint is liable to be dismissed for suppression, concealment of material facts and committing fraud with the Hon'ble Authority. The complainants had placed on record surviving member certificate no. 90660000015880 dated 15.05.2017 (Annexure-C-12-Page No 38 of Complaint) of second purchaser Mr. Surender Kumar Gupta issued by Govt. of NCT of Delhi on the basis of death certificate number 2704102 mentioned thereon. The complainants had the details of Legal heirs (i.e. Mr. Yogesh Gupta and Mr. Sachin Aggarwal) of second purchaser since 2017, However neither the complaint no. 4651 of 2022 was filed by all the legal heirs of Mr. Surender Kumar Gupta nor the detail of all Legal heirs were disclosed in the earlier Complaint No. 4651 of 2022. From the perusal of Copy of complaint No. 4651 of 2022 filed before the Hon'ble Authority and annexed with Complaint as Annexure-C-16-Page No. 42 to 52, the complaint was signed/verified only by First Purchaser Puneet Jain and Mr. Yogesh Gupta (one Legal heir of Surender Kumar Gupta. Mr. Yogesh Gupta has been shown as the only legal heirs of Mr. Surender Kumar Gupta. Similarly, after dismissal of complaint no. 4651 of 2022 on 15.09.2022, the restoration Application dated 28.11.2022 was filed only on behalf of Puneet Jain and Mr. Yogesh Gupta and as per list of date and events of complaint, the restoration application was disposed of by order dated 28.03.2023 (Not annexed with present complaint). From the above facts, it is clear that the complaint no.

4651 of 2022 was filed by complainants with suppression of material facts as well the order dated 28.03.2023 has been obtained by complainants by playing fraud upon the Authority and the same is a nullity and dishonest in the eyes of law. It is submitted that non-disclosure of the relevant and material documents/information from the Authority with a view to obtain an undue advantage would amount to fraud.

- vi. The complaint is liable to be dismissed for failure to comply with the provision of Order 22 Rule 3 of the CPC. Subject unit was jointly purchased by/allotted to Mr. Puneet Jain and Surender Kumar Gupta. Now the present complaint has been filed by first purchaser Mr. Puneet Jain and Mr. Yogesh Gupta and Sachin Aggarwal being Lr's of second purchaser Mr. Surender Kumar Gupta. However, the factum of death of second purchaser Mr. Surendra Kumar Gupta and his actual surviving legal heirs was never brought to the knowledge of the respondent as well to the Authority prior to filing of the present complaint before the Authority nor an appropriate application under Order 22 Rule 3 of the CPC has been filed within statutory time frame to bring on record the all surviving legal heirs (i.e. Mr. Yogesh Gupta and Mr. Sachin Aggarwal) of said Second Purchaser Mr. Surendra Kumar Gupta with the present complaint under reply.
- vii. That the present complaint under reply is not maintainable against the complainant no. 2, Mr. Yogesh Gupta and complainant no.3, Mr. Sachin Aggarwal as there is no privity of contract between complainant no.2 and 3 and respondent.
- viii. Further, the complaint is also not maintainable in view of the deliberate and persistent defaults on the part of the complainant no.1 and Joint Allottee, Mr. Surendra Kumar Gupta (now deceased) in making the payment of the outstanding dues in accordance with the payment plan opted by the

complainant no.1 and joint allottee, Mr. Surendra Kumar Gupta (now deceased).

- ix. That the Authority has no jurisdiction to try and entertain the present complaint under the provision of RERA Act and Rules as the full occupation Certificate cum completion certificate of the project was granted by the authority i.e. STP, Gurugram on 21.10.2016 vide memo bearing no. STP (G)/2016/1341 i.e. prior to the commencement of RERA Act, 2016. Therefore, the project does not come under the definition of "On-going Project".
- x. The present complaint has been filed by complainant in August, 2023 for seeking refund of amount after cancellation of allotment of Shop in May, 2019 on the ground as mentioned in Para 15 of complaint that project is still incomplete and not ready after more than 10 year of booking, whereas the full occupation certificate cum completion certificate of project was issued in 2016, which speak itself the project was ready and completed in all respect since 2016 only and complainants are submitting the false and fabricated facts to the Authority.
- xi. That complainant no.1 Mr. Puneet Jain along with joint allottee Mr. Surendra Kumar Gupta (now deceased) approached the respondent for purchase/allotment of one commercial shop/unit No. G-56 admeasuring 1592.53 sq. ft. super area @ Basic Sale Price of Rs. 9500 per sq. ft. and preferential location charges of Rs.18,91,129/-@ 5% of BSP for unit facing road & @ 7.5% of BSP for unit facing Atrium in the Commercial Complex "M2K Corporate Park" located at Sector-51, Gurugram after agreeing to the terms and condition of allotment mentioned in the application form duly signed and submitted by Mr. Puneet Jain and Mr. Surendra Kumar Gupta with respondent. Mr. Puneet Jain and Mr. Surendra Kumar Gupta had agreed to purchase the said Shop against Consideration of Rs.1,70,20,164 which

includes Basic Sale Price of Rs. 1,51,29,035/- and PLC amount of Rs. 1,891,129/- excluding other charges and taxes as mentioned in Clause 4 of application form. As per payment Plan opted by Mr. Puneet Jain and Mr. Surendra Kumar Gupta, 10% BSP amount of Rs.15,12,904/- was payable at the time of Booking and 15% BSP amount of Rs.22,89,355/- was payable within 45 days of Booking. As such 25% BSP amount of Rs. 37,82,259/- was to be completed/paid by complainants within 45 days of booking. Along with the application form cum allotment terms, complainants had paid an amount of Rs.30,25,808/-.

- xii. Further in clause 5 read with clause 6 of application form cum allotment terms, it is agreed by complainants that 15% of the consideration amount (which comes to Rs.25,53,031/-) would be treated as earnest amount to ensure fulfilment of the terms and condition of application by complainants and in the event, the complainants fails to pay any installments and/or other charges within 30 days from due date, the respondent shall have right to cancel/terminate the allotment and forfeit the above said earnest amount.
- xiii. That the receipt dated 24.10.2008 for the total received amount of Rs.37,82,260/- was also issued by the respondent. No amount of Rs. 6,00,000/- and Rs.16,00,000/- in cash as alleged in the para was ever received by the respondent.
- xiv. That neither the complainant no.1 nor Mr. Surendra Kumar Gupta (now deceased) at any point of time sent any sort of communication to the Respondent for the execution of the apartment buyers' agreement and for any other issues as raised in the complaint. The respondent through its representative requested many time complainants to come to office to sign and execute the agreement, but complainants never came the office to sign and execute the agreement, therefore the delay and breach of Clause 19(ii) of application form, if any, pertaining to the execution of the apartment buyer's

agreement is completely and solely attributable to the complainant no.1 and Mr. Surendra Kumar Gupta, co-applicant and not to the respondent.

xv. That the respondent came to know about the death of co-applicant Mr. Surender Kumar Gupta only after the receipt of the present complaint. The complainant no.1 nor the legal heirs of Lt. Surender Kumar Gupta sent any communication/informed to the respondent regarding the death of Mr. Surender Kumar Gupta for the period of around 11 years, which itself shows the seriousness of the complainants with respect to the present allotment of the shop. Further, no such letter with the request for cancellation of booking as alleged by the complainant no.1 was ever received by the respondent nor has been placed on record.

7. All other averments made in the complaint were denied in toto.

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

E. Jurisdiction of the authority

9. The authority has complete territorial and 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.

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E.II Subject matter jurisdiction.

11. 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.

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 complainant at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection raised by the respondent regarding the complaint being non-maintainable on ground of being barred by limitation.

13. The respondent further contends that the complaint is not maintainable as it is barred by limitation, citing that the complainants did not raise any grievance from 2018. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to Act, 2016. The same view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 006000000021137 titled as **M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others** which provides as under:

"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered

subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs provided thereunder cannot be denied to allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."

14. Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

G. Relief sought by the complainants.

G.I Direct the respondent to refund the entire paid-up amount with interest.

15. Some of the admitted facts submitted by both the parties are that a unit no. G-56 was jointly purchased by the Puneet Jain and Surender Kumar Gupta (now deceased having legal heirs namely Yogesh Gupta and Sachin Aggarwal as per the surviving member certificate no.90660000015880 issued by Revenue Department, Govt. of NCT of Delhi). As per the application form dated 19.03.2008 (Annexure R-2) having customer ID 5503 the subject unit was allotted to the complainants for a basic sale price of Rs.1,51,29,035/- under construction linked payment plan. The complainant has paid Rs.37,82,260/- against the subject unit. The occupation certificate for the subject unit was obtained on 21.10.2016.
16. In the present complaint the complainants are seeking refund of the paid-up amount along with interest. However, the respondent in its reply contended that the complainants have failed to pay the instalments and stopped making further payments after 25% of the BSP, and thereafter a final notice was issued to the complainants on 18.04.2012 which further led to the cancellation of the allotment vide letter dated 28.05.2019.
17. On considering the documents available on record as well as submissions made by both the parties, it can be ascertained that the complainants have paid only

Rs.37,82,260/- out of the sale consideration of Rs.1,51,29,035/-which is only 25% of the sale consideration. The respondent sent a final notice letter for payment of outstanding dues on 18.04.2012. However, no payment was made after issuance of said notice dated 18.04.2012 as evident from the payment receipt dated 24.10.2008 amounting to Rs.37,82,260/- issued by the respondent (Annexure C 10). Also. As per the construction linked payment plan the 25% of the amount was to be paid by the complainants within 45 days of booking and thereafter further payments on the basis of construction. However, the complainants have only paid 25% of the sale consideration. Hereby, the respondent cancelled the allotment of unit on 28.05.2019. The authority is of considered view that the respondent was right in raising demands. However, the complainants continued with their default and failed to make payment even after issuance of final notice dated 18.04.2012 leading to cancellation of unit vide letter dated 28.05.2019.

18. As, per clause 6 of the application form, the respondent/promoter have right to cancel the unit and forfeit the earnest money where an allotment of the unit is cancelled due to default of complainant to make timely payments as per the agreed payment plan. Clause 6 of the application form is reproduced under for ready reference:

6.

In the event the Applicant/s fails to pay any instalment and/or other charges with interest within 30 days from the cue date, the Company/Developer shall have the right to cancel/terminate the Allotment forthwith and forfeit the entire amount of Earnest Money deposited by the Applicant/s and upon such cancellation, the Applicant/s shall be left with no right, title, interest or lien on the said Unit whatsoever. Upon such cancellation/termination of the Allotment, the Applicant/s in addition to forfeiture of the Earnest Money shall also be liable to reimburse to the Company/Developer the amount of brokerage/commission paid, if any, by the Company/Developer towards the booking/allotment of the said unit.

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19. Further, section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the application form is held to be valid.
20. 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 ors. VS. Sarah C. ors., (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."

21. 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. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the sale consideration and return the remaining amount 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.
22. The respondent during proceedings dated 22.05.2025 submitted that an amount of Rs.12,29,229/- was refunded through cheque to the complainant after deduction of 15% earnest money in terms of booking form but the said cheque was not encashed by the complainant.
23. Now, the question arises regarding the period for which the respondent is liable to pay interest on the amount already paid by the complainant, after deductions. In the present case, although the respondent issued a cheque refunding the amount paid by the complainant after deductions. However, these deductions were not in accordance with Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018. Further, the amount paid by the complainant has remained with the respondent since the cancellation of the unit. Thus, interest should be calculated from the date of cancellation of unit until the amount is fully realized. The rationale behind this is that the complainant's funds have been effectively held by the respondent thereby depriving the complainant to put to it in his own use. Thus, it is fair and just for the respondent to bear the financial

responsibility for the interest during this period based upon the principle of unjust enrichment which provides that no one should benefit at the expense of another in a way that the law considers unjust.

24. Therefore, in view of above refund of the paid-up amount along with interest on the paid-up amount by complainants after deduction is to be paid by the respondent from the date of cancellation letter i.e. 28.05.2019 with interest till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G.II Direct the respondent to pay litigation cost of Rs.1,50,000/-.

G.III Direct respondent to pay sum of Rs.5,50,000/- for causing mental, physical harassment, frustration & grievance to the complainant and miserable attitude of the respondent and deficiency in service.

25. The complainants are seeking above mentioned relief w.r.t. compensation and litigation. Hon'ble Supreme Court of India in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & rs. 2021-2022(1) RCR (C), 357* held that an allottee is entitled to claim compensation & litigation charges under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H.Directions of the authority.

26. 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.37,82,260/- to complainant after deducting 10% of the sale

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HARERA
GURUGRAM

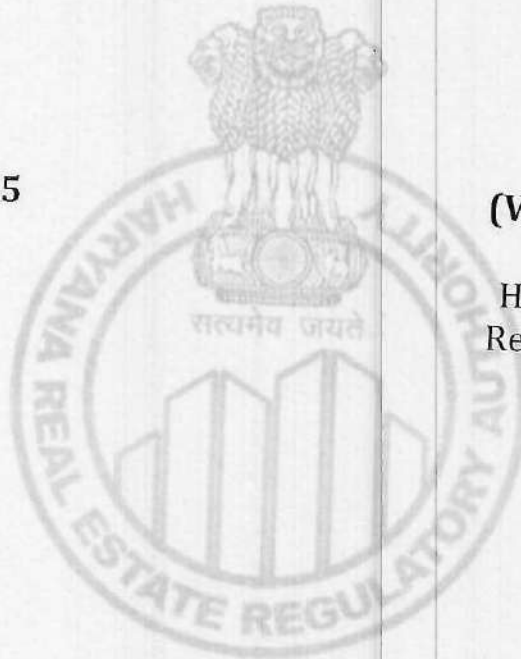
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consideration being earnest money along with interest at the rate of 11.10% on such balance amount from the date of cancellation letter i.e. 28.05.2019. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

27. Complaint stands disposed of.

28. File be consigned to the registry.

Dated: 22.05.2025



HARERA
GURUGRAM

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