

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

Complaint no. : 851 of 2023  
Order pronounced on: 01.05.2025

**Varinder Kumar Uppal**

R/o: H.No. 111, Sector-5, Gurugram-122001, Haryana

**Complainant****Versus****1. BPTP Limited****2. Anjali Promoters & Developers Pvt. Ltd.****3. BPTP Resort Pvt. Ltd****4. Countrywide Promoters Pvt. Ltd.**Regd. office: M-11, Middle Circle, Connaught Circus,  
New Delhi- 110001**Respondents****CORAM:**

Shri Vijay Kumar Goyal

**Member****APPEARANCE:**

Shri Abhay Jain (Advocate)

Shri Harshit Batra (Advocate)

**Complainant  
Respondent****ORDER**

1. The present complaint has been filed by the complainants/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 there under or to the allottee as per the agreement for sale executed inter-se them.

**A. Unit and Project-related details:**

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

S. N.	Particulars	Details
1.	Name of the project	Centra One
2.	Project location	Sector 61, Gurugram
3.	Date of booking application form by original allottee	25.10.2006 [As per annexure 2 at page no. 31 of the complaint]
4.	Date of allotment	05.02.2007 [As stated by respondent at page no. 02 of the reply]
5.	Unit No.	06-612 [Page no. 17 of the reply]
6.	Unit Area	1000 sq. ft. [page no. 02 of the reply]
7.	Date of agreement for sale	Not executed
8.	Possession clause	N/A
9.	Due date of possession	N/A
10.	Total sale consideration	66,67,930/- [As stated by the respondent vide proceedings dated 01.05.2025]
11.	Date of endorsement in favour of complainant	27.02.2008 [Page 37 of complaint]
12.	Amount paid by the complainant	Rs.32,31,563 /- [As per receipts at page 31-40 of complaint] Rs.6,32,813/- out of Rs.32,31,563/- is against PF Resort Fund since 26.11.2007
13.	Occupation certificate	Not obtained



14.	Offer of possession	Not offered
15.	Demand letters	12.05.2010, 14.12.2010, 28.03.2011, 31.05.2011 [Page 17-24 of reply]
16.	Termination letter	24.05.2013 [Page 24 of reply]

### B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

- a. The grievances of the complainant relate to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondents in regard to the commercial space unit no. 612 measuring 1000 square feet in the commercial project 'Centra One' situated in Sector 61, village Ghata, Gurugram, Haryana, purchased by the complainant paying his hard-earned money.
- b. The respondents, BPTP Limited, Anjali Promoters and Developers Private Limited, BPTP Resort Private Limited and Countrywide Promoters Private Limited hereinafter referred to as Respondent No. 1, 2, 3 & 4 respectively) are companies duly incorporated under the Companies Act, 1956 (as amended upto date) and are being sued through its Chairman cum Managing Director. The respondents are carrying out business as builder, promoter and colonizer and is inter alia engaged in development and construction activities.
- c. The original allottee was approached by the sales representatives of the respondent no. 1 who made tall claims about the project describing it as the world class commercial project. The original allottee was invited to the sale office and was lavishly entertained and promises were made to him that the project would be finished in time as per the approved layout plan, complete with parking and other common area facilities. The original

allottee was impressed by their statements and oral representations and ultimately lured to pay Rs.11,55,000/- via cheque no. 155542 dated 25<sup>th</sup> October, 2006 to respondent no. 1, BPTP Limited as booking amount for the property. The respondent No. 1 acknowledged the booking payment and issued receipt dated 12<sup>th</sup> December, 2006.

- d. original allottee further paid Rs.8,66,250/- via cheque no. 155552 dated 5<sup>th</sup> February, 2007 towards payment of 1<sup>st</sup> instalment for the commercial property to the respondent no. 1. The respondent issued receipt dated 12<sup>th</sup> February, 2007 to the original allottee.
- e. In 2008, the complainant, Mr Varinder Kumar Uppal purchased the commercial space in 'Centra One' project from the original allottee and paid the sum of Rs.20,21,250/- to the original allottee via cheque no. 000068 dated 15<sup>th</sup> January, 2008. The original allottee signed and submitted an affidavit dated 14<sup>th</sup> February, 2008 to the respondent no. 2 stating to transfer/endorse the said commercial space unit no. 612 in the project 'Centra One' in the name of the complainant, Mr Varinder Kumar Uppal.
- f. The respondent no. 2 duly endorsed the purchase of the commercial space in the name of the complainant, Mr Varinder Kumar Uppal on 27<sup>th</sup> February, 2008.
- g. The complainant paid a sum of Rs.5,77,500/- to the respondent no. 2, Anjali Promoters and Developers Private Limited via cheque no. 282886 dated 4<sup>th</sup> January, 2008 for payment towards commercial space in project 'Centra One'.
- h. The complainant sent a Letter dated 27<sup>th</sup> February, 2008 to the respondent no. 3, BPTP Resort Private Limited requesting to transfer the sum of Rs.6,32,813/- paid by the complainant for apartment unit no. 1695 in PF Resorts project at Faridabad to the Commercial Space Unit No. 612 in 'Centra One' project, as the respondent no. 3 had failed to arrange bank



loan for the apartment booked in PF Resorts project at Faridabad. Thus, the complainant being aggrieved, requested for transfer of his hard earned money from PF Resorts, Faridabad to the present project 'Centra One', Gurugram.

- i. The complainant intimated the respondents about the change of address of the complainant vide letter dated 9<sup>th</sup> March, 2008 and requested them to update the new address in their records for all future communications.
- j. The complainant, in total, paid a sum of Rs.32,31,563/- to the respondent No. 1, 2 & 3 for the said commercial space unit no. 612 till 2008. The respondents have demanded and collected a huge amount without following the payment plan as promised at the time of booking. Also, the respondents had failed to issue the allotment letter and had failed to execute the builder buyer agreement with the complainant till date.
- k. The details of the various payments made by the Complainant for the Commercial Space are mentioned as under:

<u>S.No.</u>	<u>Receipt Date</u>	<u>Amount</u>
1.	12 <sup>th</sup> December, 2006	Rs.11,55,000/-
2.	12 <sup>th</sup> February, 2007	Rs.8,66,250/-
3.	4 <sup>th</sup> January, 2008	Rs.5,77,500/-
4.	27 <sup>th</sup> February, 2008 (Date of request to transfer of amount from PF Resorts, Faridabad to Centra One, Gurugram)	Rs.6,32,813/-
TOTAL		Rs.32,31,563/-

- i. The complainant, time and again, approached the respondents and enquired about the status of completion of the project. The respondents did not bother to respond to the requisitions made by the complainant.



The complainant had never received any communication and information about the status of the project from the respondents.

- m. Being aggrieved by the actions of the respondents, the complainant sent emails dated 10<sup>th</sup> august, 2011 and 18<sup>th</sup> August, 2011 to the respondents enquiring about the status and completion of the project as no construction activities were visible at the project site at that time. The complainant also mentioned about the non-communication made by the respondents regarding the payment demands raised and the stage of construction of the project. The complainant visited the office of the respondents and was shocked to know that the respondents had overdue a huge amount of demand along with delayed interest for the unit about which the complainant was totally unaware. Due to the non-communication and casual approach of the respondents, the complainant had faced difficulties and missed the opportunity to avail the benefit of Timely Payment Discounts (TPD). The respondents imposed huge interest on the complainant for delay in payments without any fault of the complainant. But still, the respondents did not respond to the queries raised by the complainant till date.
- n. The complainant had shared his concerns with the respondents but the respondents had failed to address the concerns of the complainant and didn't bother to respond to the complainant. All the acts of the respondents are arbitrary, illegal and unlawful and totally in their own interest.
- o. The respondents have failed to fulfil their obligations and have failed to offer the legal and legitimate possession of the commercial space to the complainant till date. Thus, due to the inordinate delay and failure of the respondents to fulfil their obligations, the complainant now seeks refund of his entire deposited amount of Rs.32,31,563/- with interests from the



respondents from various dates of receipts along with prescribed rate of interest.

- p. Even after a delay of more than sixteen (16) years and three (3) months from the date of booking in 2006 till date, the respondents have failed to take any remedial measures which have ultimately resulted in causing hardships and difficulties for the complainant.
- q. The complainant approached the respondents many times and pleaded for delivery of possession of its commercial space but the respondents did not give any justified replies to his emails, personal visits and telephone calls, seeking information about the commercial space of the complainant. This is a violation of Section 19 of the Act, 2016.
- r. The respondents have in an unfair manner siphoned off funds meant for the project and utilised the same for the company's own benefit for no cost. The respondents being builder and developer, whenever in need of funds from banks or investors ordinarily have to pay heavy interest per annum. However, in the present scenario, the respondents utilised funds collected from the complainant and other such buyers for the company's own good in other projects, being developed and maintained by the respondents.
- s. The respondents have collected a huge amount from gullible, naïve buyers including the complainant from 2006 to 2008 and kept on promising the complainant to deliver the possession of his commercial space on time as promised at the time of booking. The respondents failed to issue allotment letter and execute the builder buyer agreement with the complainant till date. The complainant paid all payable amounts as and when demanded by the respondents and paid a sum total of Rs. 32,31,563/- to the respondents till 2008. The respondents kept demanding payments from the complainant but the construction activities were not visible at the project site.

- t. Even after a delay of more than sixteen (16) years and three (3) months from the date of booking in 2006, till date, the respondents have failed to offer the legal and rightful possession of the commercial space to the complainant. Thus, due to the inordinate delay and failure of the respondents to fulfil their obligations, the complainant now seeks refund of his entire deposited amount of Rs.32,31,563/- with interests from the respondents from various dates of receipts along with prescribed rate of interest.
- u. The genesis of the present complaint lies in the gross indifference, refusal and failure of the various obligations on the part of the respondents. The Respondents initially enticed various customers including the Complainant to pay his hard-earned money for the purchase of the commercial space in the said project.
- v. Till date, the respondents have failed to offer the legal and rightful possession of the commercial space to the complainant. Thus, due to the inordinate delay and failure of the respondents to fulfil their obligations, the complainant now seeks refund of his entire deposited amount of Rs.32,31,563/- with interests from the respondents from various dates of receipts along with prescribed rate of interest.
- w. Complainant intends to withdraw from the project. The complainant seeks the complete refund of his deposited amount along with interest at the prescribed rate for the inordinate delay caused due to the failures of the respondents. The complainant reserves his right to seek compensation before the appropriate forum and in accordance with law.

**C. Relief(s) sought by the complainant:**

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

- i. Direct the respondent to refund of the amount received by the promoter in respect of the commercial space with interest at the prescribed rate.



- ii. Direct the respondents to pay legal expenses of Rs.1,00,000/- incurred by the complainant for filing and pursuing the instant 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) of the Act to plead guilty or not to plead guilty.

**D. Reply by the Respondent:**

6. The respondent had made the following submissions in the reply:
- a. The complainant has got no *locus standi* or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation and incorrect understanding of the provisions of the Act as shall be evident from the submissions made in the following paragraphs of the present reply.
  - b. the Promoter of the Project known under and name and style of "CENTRA ONE" is respondent no. 2, i.e., Anjali Promoters and Developers Private Limited. Hence, it is most humbly prayed before this Ld. Authority that the name of the other respondents, i.e., BPTP Ltd., BPTP Resort Pvt. Ltd., and Countrywide Promoters and Developers Pvt Ltd be deleted from the present complaint in the interest of justice.
  - c. Thereafter, in 2008, the complainant purchased the unit from the original allottee and consequently, on 27.02.2008, the above-noted unit was endorsed in favor of the complainant. The plan opted by the complainant in order to buy the captioned unit was a "Time Linked Payment Plan" (changed to Construction Linked Plan).
  - d. The respondent no. 2, in order to complete the construction of the said unit in timely manner provided with various demands letters to the original allottee and complainant but to no avail. That the complainant/allottee was duty-bound to make timely payments as per the agreed payment plan. That the complainant failed to pay the demands raised at the time of

the start of raft and since then, no outstanding dues were paid by the complainant even after various demand letters and reminders by the respondent no. 2, within the stipulated time period. The demands raised were:

DEMAND	DATE OF DEMAND	DUE DATE OF PAYMENT
For Milestone 'On Start of Raft - 7.5% of the Basic Sale Price along with the previous outstanding dues.	12.05.2010	27.05.2010
For Milestone - At the start of 3 <sup>rd</sup> Floor Slab - 7.5% of Basic Sale Price along with the previous outstanding dues.	14.12.2010	29.12.2010
For Milestone - "At the start of 7 <sup>th</sup> Floor Slab - 5% of Basic Sale Price along with the previous outstanding dues.	28.03.2011	12.04.2011
Final Opportunity Notice - Pre-Termination	31.05.2011	14.06.2011

- e. That although, the complainant was very well aware of the fact that the timely remittance of the due payments is of the essence, the complainant miserably failed to perform his obligations and had stopped making payments as per the chosen Payment Plan. The last payment made by the complainant was on 04.01.2008 of Rs. 5,77,500/- vide cheque no. 282886 dated 04.01.2008 and thereafter no payment is being done by the Complainant. It is vehemently denied that any payment of Rs. 6,32,813/- was ever received by the promoter/respondent no. 2 or any alleged request for transfer was accepted by the promoter.
- f. The complainants stood in the event of default since 04.01.2008 for not making payment. Accordingly, the respondent had a right to terminate the unit after having waited for almost 4 years, a final opportunity was given to the complainants to rectify their default through the pre-cancellation



letter dated 31.05.2011, however, the complainant again willingly and voluntarily chose to not rectify the same, and consequently, the respondent terminated the unit by issuing the cancellation letter on 24.05.2013.

- g. Thereafter, the present complaint was filed on 20.02.2023 (date of performa), i.e., after 3559 days (9 years 8 months and 27 days) of termination of the unit. That the present complaint is barred by limitation. That no cause of action persists as on date and hence, the present complaint is liable to be dismissed. That in cases where no specific limitation period is mentioned in the Act, the limitation of 3 years applies. The Haryana RERA, Gurugram has taken cognizance of the same and has categorically noted that the absence of a provision of limitation does not allow the Authority to take cognizance of the barred claim. That as per the order of this Ld. Authority in the case titled as "Shipra Gupta vs Vatika Sovereign Park Pvt. Ltd. & Anr." bearing complaint no. 763 of 2020.
- h. As noted above, the period of 3 years would be considered a reasonable time to challenge the validity of the termination/cancellation letter but the complainant in the present case did not pursue any remedy and remained ignorant for almost a period of 10 years after receiving the termination letter dated 24.05.2013. Thereby, the complainant is not entitled for any relief claimed in the present case.
- i. Without prejudice to the above-noted contentions and right of the respondents, it is pertinent to mention here that the complainant, in the present matter is not an allottee under section 2(d) of the Real Estate (Regulation and Development) Act, 2016. That there is no allotment or execution of a buyer's agreement, as is also admitted by the complainant under para 9 of the complaint, and hence, the complainant is not an allottee. That in the absence of there being any allotment, there does not





exist any builder buyer dispute in the present case, and hence, this Ld. Authority does not have the subject matter jurisdiction to deal with the present complaint.

- j. At this instance, without any prejudice to the contentions and submissions made before it is also pertinent to note that the complainant herein is not the original allottee and any rights and obligations between the parties will commence only from the date of endorsement of the party to the unit. That the complainants being subsequent buyer, have no right to seek interest on the payments made before he was nominated to the unit. That having knowledge of the existing delay, due to circumstances beyond the control of the respondent, the complainant willingly and voluntarily purchased the unit. That such prior knowledge, willing and self-initiated act of the complainant, without any protest, amounts to acceptance of the existing circumstances and the complainant cannot be allowed to reap benefits by extracting monies from the respondent and forgoing their complete satisfaction against the unit. Hence, the complaint is liable to be dismissed with costs against the complainant.

7. 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 submissions made by the parties.

**E. Jurisdiction of the Authority:**

8. 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**

9. 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 the entire Gurugram District for all purposes

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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**

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

**Section 11(4)(a)**

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

**Section 34-Functions of the Authority:**

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

11. Hence, given 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 objections raised by the respondent**

##### **F.I. Objection regarding complainant not being an allottee**

12. The respondent has taken a stand that the complainant is not an allottee under section 2(d) of the Act as there is no allotment or execution of buyer's agreement and in the absence of allotment there does not exist any buyer's agreement. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

13. In view of above-mentioned definition of "allottee" and keeping in view the facts of present case, it is matter of record that the subject unit was endorsed in favour of the complainant by the promoter on 27.02.2008. This endorsement, coupled with the terms and conditions of the application for allotment, establishes the existence of a binding relationship between the parties with respect to the unit. Accordingly, the complainant qualifies as an 'allottee' under section 2(d) of the Act, irrespective of the execution of a formal buyer's agreement. Hence, this contention is devoid of merit and the objection raised by the respondent is therefore rejected.

**F.II Objection with regard to mis-joinder/deletion of respondent no. 1, 3, 4 in the present complaint**

14. While filing the complaint the complainant sought relief against Anjali Promoters and Developers Private Limited., i.e., BPTP Ltd., BPTP Resort Pvt. Ltd., M/s BPTP Limited. On failure to fulfil their obligation due to the inordinate delay to complete the project, the complainant approached the authority seeking relief of refund against the allotted unit. A perusal of various documents placed on the record shows that the project 'Centra One' is registered by respondent no. 2 (Anjali Promoters and Developers Private Limited) and the demands had been raised against the unit were being raised by the respondent no. 2 only. The respondent no. 1, 3 and 4 are neither necessary nor a proper party in the present complaint. It is not disputed that all the demands raised by the respondent no. 2 and all the receipt was issued of the unit in favour of the complainant was made by the respondent no. 2 only. However, the receipts annexed with complaint showing payment to respondent no. 1 (BPTP Limited) is for the unit situated at Faridabad. Also, it



is matter of record that buyer's agreement is not executed between the parties herein. Thus, it shows that there is no privity of contract between respondent no. 1, 3 and 4 and the complainant and as such the plea of the respondent no. 2 with regard to deletion of name of respondent no. 1,3 and 4 is hereby allowed.

**F.III Objections regarding complaint being barred by the limitation**

15. The respondent-promoter raised the contention that the complaint is barred by limitation. As far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
16. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in *MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020* have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
17. In the present matter, the cause of action arose on 24.05.2013 when the respondent terminated the unit. The complainant subsequently filed the present complaint on 15.03.2023, i.e., after a period of 9 years, 8 months from the date of the cause of action. Notably, the period from 15.03.2020 to 28.02.2022, is to be excluded from this calculation due to statutory provisions. Furthermore, the respondent has retained the amount paid by the

complainant throughout this period without effecting a refund following the termination. Consequently, the cause of action continued to subsist during the entire period. In light of these considerations, the Authority finds that the present complaint has been filed within a reasonable time frame and is therefore not barred by the statute of limitations.

**G. Findings on relief sought by the complainants:**

**G.I Direct the respondent of the amount received by the promoter in respect of the commercial space with interest at the prescribed rate.**

18. The original allottee was allotted a unit in the project of respondent no. 2 "Centra One" at sector 61, Gurugram vide allotment letter dated 05.02.2007 and paid a total sum of Rs. 20,21,250/-. The complainant herein purchased the unit in question from the original allottee and got endorsed in his favour vide endorsement letter dated 27.02.2008. Thereafter, the complainant had paid Rs. 5,77,500/- against the unit to the respondent no.2. The complainant herein intends to withdraw from the project and are seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec. 18(1) proviso reads as under:

**Section 18: - Return of amount and compensation**

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

**he shall be liable on demand of the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.**

**Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."**

19. Furthermore, the respondent, in its reply, has stated that the cancellation/termination of the complainant's unit was carried out due to the



complainant's non-compliance, despite multiple reminders and demand letters being issued.

20. It is matter of record that the complainant paid an amount of Rs. Rs. 5,77,500/- subsequent to the endorsement dated 27.07.20228 as the last payment only in the year 04.01.2008. The respondent has sent various demand/ reminder letters dated 12.05.2010, 14.12.2010, 28.03.2011, 31.05.2011 and finally issued termination letter dated 24.05.2013 due to non-compliance on part of allottee.
21. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit. The respondent after giving reminders mentioned-above for making payment for outstanding dues as per payment plan and has cancelled the subject unit. Despite issuance of aforesaid numerous reminders, the complainant has failed to clear the outstanding dues. The respondent has given sufficient opportunity to the complainant before proceeding with termination of allotted unit. Thereafter, the respondent issued final notice dated 24.05.2013, and the relevant proportion of the said notice is reproduced as under:

*"However, despite receipt of the last and final opportunity vide our Final Notice, you have deliberately failed to pay the overdue payments as per the terms thereof. Thus, your willful failure to comply with the terms of the Final Notice expressly signifies your acceptance and confirmation to termination/cancellation of allotment of the aforesaid Unit as on the date of the Final Notice and, hence, your booking/allotment/Agreements in respect of Unit no. 06-603 stands cancelled/terminated with effect from the date of the Final Notice. Consequently, the earnest money, accumulated interests thereon and brokerage (if any) paid accordingly stands forfeited by the Company and henceforth you do not have any rights and/or interests in the allotment/registration/booking/Agreements in respect of the Unit and all rights, title and interests in the said Unit henceforth vests solely in the Company. Further, by willfully refusing and failing to comply with the Reminders and Final Notice and the terms of the Agreements you have voluntarily, consciously and intentionally waived and relinquished all your rights and privileges under*

*the terms of the Agreements with effect from the date of the Final Notice. Accordingly, the Company shall be free to deal with the said allotment or the Unit, at its sole discretion."*

22. Now, another question arises before the authority that whether the authority can direct the respondent to refund the balance amount as per the provisions laid down under the Act of 2016, when the complainant has sought the relief of the refund of the entire paid-up amount while filing of the instant complaint or during proceeding. It is pertinent to note here that there is nothing on record to show that the balance amount after deduction as per relevant clause of agreement has been refunded back to the complainant. Further, it would be appropriate to consider the objects and reasons of the Act which have been enumerated in the preamble of the Act and the same is reproduced as under: -

*"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."*

23. From the above, the intention of the legislature is quite clear that the Act of 2016 has been enacted to protect the interests of the consumer in real estate sector and to provide a mechanism for a speedy dispute redressal system. It is also pertinent to note that the present Act is in addition to another law in force and not in derogation. In view of the same, the authority has power to issue direction as per documents and submissions made by both the parties.

24. 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. 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 Singh 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."*

25. 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.

**26. Admissibility of refund at prescribed rate of interest:** The complainant is seeking refund of the paid-up amount at the prescribed rate of interest. Since, the allottee intends to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%;*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

**27.** The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

**28.** Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 01.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

**29.** The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

 



*"(za) 'interest' means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

*the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

*the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

30. 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, 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 liable to refund the amount received from the complainant i.e., Rs. 20,21,250/- 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, from the date of termination i.e., 24.05.2013 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

31. The complainant, both in the complaint and during the proceedings dated 01.05.2025 and 20.03.2025, has contended that a letter dated 27.02.2008 was sent to respondent no.3, i.e., BPTP Resort Pvt. Ltd., requesting the transfer of an amount of ₹6,32,813/- originally paid towards apartment no. 1695 in the 'PF Resorts' project at Faridabad to a commercial unit bearing no. 612 in the 'Centra One' project at Gurugram. However, upon careful perusal of the documents placed on record, it is evident that the said payment of

₹6,32,813/- was not made towards the 'Centra One' project located in Gurugram. As such, no financial transaction or consideration is established in respect of the unit in the 'Centra One' project. Furthermore, the claim relating to the refund or transfer of amounts paid for a unit situated in Faridabad pertains to a project falling outside the territorial jurisdiction of this Authority. Accordingly, the refund of Rs. 6,32,813/- in this regard cannot be entertained and stands outside the scope of adjudication before this Authority.

**F.II Direct the respondent to to pay legal expenses of Rs.1,00,000/- incurred by the complainant for filing and pursuing the instant case.**

32. The complainants are seeking above mentioned relief w.r.t. compensation.

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. (supra)*, has 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.

**H. Directions issued by the Authority:**

33. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

1. The respondent is directed to refund the paid-up amount of Rs. 20,21,250/- after deducting the earnest money which shall not exceed the 10% of the sale consideration along with prescribed rate of interest @





11.10% p.a. on such balance amount from the date of termination till the actual date of realization.

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

34. Complaint stands disposed of.

35. File be consigned to the Registry.

**Dated: 01.05.2025**



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

**HARERA**  
**GURUGRAM**