



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

**Complaint no.:** 5207 of 2024  
**Date of complaint:** 21.10.2024  
**Date of decision:** 02.05.2025

Mr. Rajesh Kumar

**R/o:** Flat No. 129, Shri Keshav Kunj Apartment,  
Sector-17, Pocket-D, Dwarka Phase-2,  
South West Delhi-110078.

**Complainant**

**Versus**

M/s Sobha Ltd.

**Regd. Office at:** - 5<sup>th</sup> Floor, Rider House,  
Plot No. 136P, Sector-44, Gurugram-122003.

**Respondent**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Shri Gajraj Naharwal (Advocate)

Shri Abhishek Sharma and Ms. Charu Sinha (Advocates)

**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.	Particulars	Details
1.	Name of the project	Sobha City (Phase 1 Part 2), Sector 108, Gurugram, Haryana
2.	Nature of the project	Residential Group housing Project
3.	RERA Registered/ not registered	Registered vide registration no. 115 of 2017 dated 28.08.2017 Valid up to 01.05.2022 Registered area: 35734.98 sq. mtrs.
4.	License no. and validity	107 of 2008 dated 27.05.2008 Valid up to 26.05.2025
5.	Unit no.	C2-022, 2 <sup>nd</sup> floor, tower C2 [Page 53 of complaint]
6.	Unit area admeasuring	1308.68 sq. ft. (Carpet area) 2072.90 sq. ft. (Super area) 189.45 sq. ft. (Exclusive balcony area) [Page 53 of complaint]
7.	Date of BBA	12.04.2018 [Page 28 of complaint]
8.	Possession clause	<b>4.1 Schedule for possession of the Said Unit/Apartment for Residential Usage:</b> <i>...the Promoter assures to handover possession of the Unit/Apartment for Residential usage along with parking as per agreed terms and conditions on or before 31/10/2021, subject to further grace period until 01/05/2022 unless there is delay due to 'Force Majeure Events,...'</i>



		[Page 34 of complaint]
9.	Due date of possession	01.05.2022 [Grace period is included]
10.	Basic sale consideration	Rs.1,79,47,194/- [As per SOA dated 01.09.2023, Page 74 of complaint]
11.	Sale consideration	Rs.2,06,77,123/- (including taxes) [As per SOA dated 01.09.2023, Page 74 of complaint]
12.	Amount paid by the complainant	Rs.1,71,28,681/- [As alleged by the complainant on page 4 of complaint]
13.	Payment Request Letters/reminders	09.03.2018, 31.03.2018, 13.04.2018, 25.04.2018, 07.08.2018, 07.09.2018, 20.02.2019, 03.05.2019, 28.06.2019, 13.08.2019, 29.11.2019, 18.12.2019, 18.01.2020, 27.12.2022
14.	Occupation certificate	02.11.2022 [As per DTCP website]
15.	Offer of possession	N/A
16.	Cancellation Letter	06.10.2023 [Not placed on record]
	Note: After cancelling the allotment, the respondent has refunded an amount of Rs. 81,48,533.56 to the Bank on 31.12.2023 and in this regard, NOC has been granted by the Bank on 19.01.2024. [Page 20 & 24 of reply]	
17.	Legal notice sent by the complainant on	10.08.2024 [Page 137 of complaint] 03.09.2024



		[Page 146 of complaint] 26.09.2024 [Page 150 of complaint]
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**B. Facts of the complaint:**

**3. The complainant has made the following submissions:**

- i. That the respondent no. 1 was developing a Residential Group Housing Complex Known as "**Sobha City**" situated at Village-Babupur, Sector-108, Gurugram, in collaboration with respective landowner in a joint development agreement. The license bearing no. 107 of 2008 dated 27.05.2008 was granted by DTCP, Chandigarh w.r.t. land measuring 39.375 Acre situated at Village Babupur, Sector 108 District Gurugram. The complainant vide application dated 28.02.2018, applied for the allotment of a unit bearing no. **C2-022**, having carpet area of 1308.68 sq. ft. on 2<sup>nd</sup> floor, tower no. C2 along with car parking in said complex and made a payment of Rs. 7,00,000/- till 09.02.2018.
- ii. That complainant even took a hefty loan from the bank and always made all the timely payments as and when required by respondent in accordance with the progress in construction of the said project. This act of the complainant shows the readiness and willingness, eagerness and bonafide of the complainant to make the payment so that he can get the unit at the earliest. But due to some unforeseen circumstances, the complainant was engaged in a false and frivolous civil case in the year 2022, with his own brother and an order of civil imprisonment was passed against the complainant on 07.07.2023 due to which he was sent for imprisonment.
- iii. That respondent had conversation with complainant over email for making the payment which was due. The complainant used to make the payments timely from 2018, but unfortunately missed on a few last



payments around the year 2022-2023 due to civil imprisonment and corona virus hitting the business and work globally. The complainant requested the respondent to give some time to make the payment as complainant came out of the civil imprisonment on 22.09.2023 and his business also suffered in his absence and complainant's wife also mentioned in the email itself that how she suffered in filling the EMIs of Rs.1,25,000/- p.m. alone being a homemaker. That after complainant came out of the imprisonment, the respondent displayed clever play and gave him only 4 days' time, i.e. 28.09.2023 in the email dated 25.09.2023 for making the remaining payment or else respondent will cancel the allotment of the said unit, which was very unreasonable giving such a short duration for making the remaining payment and shows that respondent already made up his mind to cancel complainant's unit and just for the formality gave complainant only 4 days to make the remaining payment. Complainant also requested respondent to please understand the situation and give at least a week's time, owing to him just getting out the imprisonment, to arrange such a hefty amount. But respondent didn't give any grace period or revert back to the complainant's genuine request.

- iv. That complainant only took a week's time to make the payment and sent the cheque dated 05.10.2023 for Rs. 45,00,000/- as mentioned in the email but respondent willingly rejected the said payment mentioning that 'unit is under cancelation' and proceeded against complainant for cancellation of the said unit and sent back the cheque and cancelation email/notice of the unit C2-022 on 06.10.2023 at 12:49 pm, in relation of the payment installment of the said unit C2-022. Within half an hour i.e. 13:26 respondent received an email from complainant regarding making a payment of Rs.60,00,000/- and was





ready to send the photo of the same cheque which would act as a proof of willingness to make the outstanding payment. But respondent didn't reply intentionally as main motive was to forfeit the amount invested by my client and to resell the said unit further by creating a third party right of another customer and cancelling the allotment of the said unit. This clearly shows the unwillingness of the respondent to perform his part of the agreement to sell.

- v. That the respondent has made the complainant to run from pillar to post and made the complainant subject matter of harassment, humiliation and deprived the complainant from his hard-earned money on the fake endurances, promises and assurances.
- vi. That the respondent cancelled the said unit even after receiving about 80% of the total sale consideration i.e., payment made by complainant to respondent directly totals amounts to Rs. 58,20,000/- from 28.02.2018 till 12.01.2023 and payments received by respondent from bank towards the said unit totals to Rs. 1,13,08,681/- from 31.10.2018 till 17.12.2022, both of which amounts to Rs. 1,71,28,681/- and the complainant was ready and willing to pay the remaining amount, the readiness of which was depicted vide conversation on email between the complainant and respondent.
- vii. That on 06.10.2023, the respondent canceled the said unit of the complainant, ignoring all the genuine requests of the complainant and even rejected the payment of Rs. 45,00,000/- or any other further payment giving lame excuses to the complainant. That after the bogus cancelation of the said unit, the respondent informed the bank 1 month later, and returned the amount to bank 3 months later without informing the complainant thus violating the tri-partite agreement between the parties i.e. the complainant, respondent and the Bank.



Knowing that such extra time of even a week was given to the complainant, the remaining amount could have been paid towards the said unit.

viii. That complainant after turning all the stones possible to reach out to a conclusion without engaging into a legal battle sent a legal notice to the respondent on 02.08.2024 to hand over the possession. After receiving the same, the respondent did not take any step but replied by sending reply dated 03.09.2024. That some crucial facts were omitted by the respondent inadvertently in the 1<sup>st</sup> legal notice, so an amended legal notice was sent to respondent dated 26.09.2024 to which respondent did not reply.

ix. That the Complainant submits that the Respondent deliberately and with a mischievous intention tricked the Complainant through false promises convinced them in paying up huge amount to the Respondent. The said dishonest intention of the Respondent is amply evident from their entire conduct and from the various acts, commission and omissions on the part of the Respondent set out hereinafter:

- Failure to reply to the Complainant's queries, to deliver possession of the flat in question and to act in an absolutely high handed manner.
- Deliberately committing absolute breach of the allotment and the promises and projections at the time of booking even though it formed the essence of the contract.
- Complete failure to keep the promised schedule of possession of the flat in question and indefinite delay without any valid reason whatsoever.
- The actions of the Respondents and particularly the act of collecting huge amount of money from the Complainant; and not offering



possession of the flat in question amounts to an Unfair Trade Practice. The respondents are bound to deliver possession of the flat in question.

**C. Relief sought by the complainant:**

4. The complainant is seeking the following reliefs:

- i. Direct the respondent to accept remaining payment due towards the said unit and require hand over of possession of the subject unit.
- ii. Direct the respondent to pay a sum of Rs. 10,00,000/- as compensation for damages on account of mental harassment caused to the Complainant, lack of service, physical discomfort, mental agony which complainant has suffered due to only negligent act and deficiency in service on the part of the Respondents, so that the Respondents never even think to harass someone in near future.

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 14.02.2025:

- i. That the complaint is baseless, devoid of any merit and has been filed by the Complainant as a feeble and misleading attempt to get the possession of the Flat from the Respondent, the allotment whereof has been validly terminated/cancelled by the Respondent in terms of the Agreement for Sale dated 12.04.2018 [**"Agreement for Sale"**] vide its cancellation notice dated 06.10.2023 [**"Cancellation Notice"**] on account of multiple, regular and recurring failures on the part of the Complainant to timely pay the requisite installments in terms of the agreed payment schedule towards the purchase of the Flat in line with





the executed Agreement for Sale dated 12.04.2018. This failure in making timely payments was despite the fact that the Respondent accorded countless opportunities stretched over a considerably long time, including on humanitarian grounds, when the Respondent was not even contractually obligated to do so. Failure to pay the requisite payments in a timely manner also disentitled the Complainant to take possession of the Flat in terms of the Agreement for Sale, both of which formed events of default thereunder.

- ii. Therefore, cancellation of the allotment of the Flat by the Respondent in favour of the Complainant under the Cancellation Notice was a *simplicitor consequence* of breach of the terms of the Agreement for Sale. Additionally, upon the cancellation of the allotment in favour of the Complainant, the Respondent was also obligated to return the loan amount disbursed by the South Indian Bank Limited in respect of the Unit on behalf of the Complainant in terms of the tripartite agreement dated 12.10.2018 [**"the Tripartite Agreement"**] which was duly complied by the Respondent. In other words, the disbursed amount by the South Indian Bank Ltd., which formed the bulk of the amounts received in relation to the Flat, has already been returned by the Respondent. Consequently, the interim and / or final reliefs sought by the Complainant have been rendered infructuous and otiose for being contractually impermissible and legally untenable owing to the financial delinquency of the Complainant in payment of the outstanding amount pertaining to the Flat/Unit. On this ground alone, the Complaint deserves to be dismissed.
- iii. That the Complainant is a habitual defaulter and has been consistently breaching the agreed payment mandates under the Agreement for Sale despite repeated reminders, regular follow-ups, extensions on



humanitarian grounds, all of which the Respondent was not contractually obligated to do so.

- iv. That the conduct of the Complainant has been such that it repetitively smacks of dishonesty from the very beginning of its contractual obligations with the Respondent in respect of the Flat. In this regard, the payment request letters, and the reminder notices addressed by the Respondent to the Complainant between 09.03.2018 and 27.12.2022 i.e. for roughly four years, which remained unpaid, are tabulated hereinbelow for ease:

Sr. No.	Particulars of communications	Outstanding amount
1.	Payment Request Letter dated 09.03.2018	Rs. 18,10,083/-
2.	Payment Request Letter dated 31.03.2018	Rs. 25,16,133/-
3.	Payment Request Letter dated 13.04.2018	Rs. 26,72,399/-
4.	Payment Request Letter dated 25.04.2018	Rs. 46,82,481/-
5.	Reminder Notice dated 07.08.2018 for the payment of outstanding amounts	Rs. 35,62,832/-
6.	Payment Request Letter dated 07.09.2018	Rs. 55,70,926/-
7.	Payment Request Letter dated 20.02.2019	Rs. 27,83,246/-
8.	Payment Request Letter dated 03.05.2019	Rs. 40,45,845/-
9.	Payment Request Letter dated 28.06.2019	Rs. 53,79,034/-
10.	Payment Request Letter dated 13.08.2019	Rs. 68,59,620/-
11.	Reminder Notice dated 29.11.2019 for payment of outstanding amounts	Rs. 70,88,552/-
12.	Payment Request Letter dated 18.12.2019	Rs. 84,94,460/-
13.	Reminder Notice dated 18.01.2020 for payment of outstanding amounts	Rs. 84,94,640/-
14.	Reminder Notice dated 27.12.2022 for payment of outstanding amounts	Rs. 89,58,022/-

- It is pertinent to mention that aforesaid Payment Request Letters and Reminder Notices from S.no. 1 to 12 were issued before the onset of Covid – 19 pandemic.
- v. That despite the above-mentioned reminder notices dated 29.09.2019, 18.01.2020 and show cause notice for cancellation dated 25.02.2020, when the Complainant was still failing to make any further payments, the Respondent was constrained and compelled to issue cancellation of the allotment of the Unit vide notice dated 29.09.2020 to the Complainant. However, without prejudice to the rights and contentions of the Respondent and solely on humanitarian grounds, the Respondent withdrew the Cancellation notice dated 29.09.2020 and re-instated the allotment in favour of the Complainant *vide*-mail dated 24.11.2020, at the request and assurances of the Complainant to pay all the outstanding payments at the earliest.
- vi. However, soon thereafter, the Complainant once again started defaulting in its payment obligations under the Agreement for Sale. Additionally, from time to time, the Complainant used to issue cheques in favour of the Respondent under the garb of making part payments towards the purchase of the Flat, however, it is pertinent to note that the said cheques were admittedly returned for being dishonored on account of insufficiency of funds. A list of such cheques has been enlisted hereinbelow for ease of reference:

Sr. No.	Date	Cheque Details	Amount	Remarks
1.	30.10.2018	Cheque No.000016	Rs.5,00,000/-	Funds Insufficient
2.	03.12.2018	Cheque No.000019	Rs.8,00,000/-	Funds Insufficient
3.	03.09.2019	Cheque No.218051	Rs.32,00,000/-	Funds Insufficient
4.	20.09.2019	Cheque No.686917	Rs.32,00,000/-	Funds Insufficient
5.	30.10.2019	Cheque No.218064	Rs.35,00,000/-	Funds Insufficient
6.	03.09.2020	Cheque No.161	Rs.45,00,000/-	Funds



				Insufficient
7.	16.09.2020	Cheque No.162	Rs.45,00,000/-	Funds Insufficient
8.	08.07.2021	Cheque No.973909	Rs.10,00,000/-	Funds Insufficient
9.	10.12.2021	Cheque No.942035	Rs.20,00,000/-	Funds Insufficient
10.	26.06.2023	Cheque No.2536	Rs.11,00,000/-	Funds Insufficient

- vii. That without prejudice to the rights and contentions of the Respondent in law and once again solely on humanitarian grounds, the Respondent cooperated and did not initiate a criminal action against the Complainant under Negotiable Instrument Act, 1881 despite the admitted dishonor of cheques deposited by the Complainant. As a further humanitarian gesture, the Respondent decided not to cancel the allotment of the Complainant on the oral assurance of the Complainant to adhere to the payment obligations.
- viii. That despite the above, the Respondent kept addressing reminder letters / notices repeatedly/ calling on a regular basis, requesting the Complainant to make payments towards the outstanding amounts, however, by failing to pay any heed to them, the Complainant kept breaching the terms of the Agreement for Sale with impunity. It is further submitted that even then the Complainant kept on defaulting on the payment obligations under the Agreement for Sale.
- ix. It is further submitted that the conduct of the Complainant of being a repeated offender is also buttressed by the fact that a civil court was pleased to remand the Complainant to civil imprisonment *vide* its Order dated 07.07.2023. A bare perusal of the said order makes it abundantly clear that the Complainant has also been in default of a money decree and on failure to pay the same in an execution petition



filed by the decree holder subsequently, the Complainant was remanded to civil imprisonment.

- x. That for its oblique motives and solely in order to mislead this Hon'ble Authority, the Complainant has chosen to bring on record only convenient facts suiting his interest and has consciously suppressed true and the complete facts that has a substantial bearing on the Complaint. In this regard, it is submitted that the reminder notices / letters and other documents referred above have all been suppressed by the Complainant despite being in possession thereof. All the Payment Request letters/Reminder Notices issued by the Respondent have been duly received by the Complainant.
- xi. It is submitted that the actions of Respondent are in strict compliance of the Agreement for Sale and the Tripartite Agreement dated 12.10.2018. On the contrary, the Complainant is in blatant breach of the payment obligations under the Agreement for Sale.
- xii. That the terms of the Agreement for Sale dated 12.04.2018 executed with the Complainant makes it abundantly clear that the handing over of the possession and conveyancing of the Flat was subject to full and complete payment of the consideration of the Flat. Further, being a real estate project, timely remittance of part payments towards the sale consideration for the Flat was of the utmost essence. The payment plan specified in Schedule I of the Agreement for Sale also clarifies that the same is linked to the progress in construction and therefore, timely payment of each instalment is essential for the overall development of the Project. The same is also evident from **Clause 5.2** of the Agreement for Sale that it was incumbent upon the Complainant to make the payment towards total consideration in instalments in terms of the Price Schedule and Payment Plan specified in Schedule -I and the terms





of the Agreement for Sale. Additionally, in terms of **Clause 1.4**, the Respondent is well within its right to levy an interest in any delay in payments towards any amount/costs/charges which is due and payable.

- xiii. That even subsequent to the South Indian Bank Ltd. sanctioning the request for grant of a loan for the sum of Rs.1,50,00,000/- and paying part instalments to the Respondent in terms of the Tripartite Agreement on behalf of the Complainant, he failed, time and again, to meet the payment obligations on his part. In this regard, it is relevant to point out that the Respondent sent reminder notices / emails dated 24.08.2022, 03.06.2023 for payment of outstanding amounts, however, to no avail.
- xiv. That subsequently, the Respondent addressed an email to the South Indian Bank Ltd. on 04.09.2023 marking a copy of the same to the Complainant (At Pg.104 of the Complaint) *inter alia* stating that despite the timely grant of Occupation Certificate on 02.11.2022 for the tower in which the Flat of the Complainant is situated and despite several follow ups in relation to the outstanding amounts, the same remained unpaid time and again. Under this email, the Respondent communicated its intention to not wait any further and to proceed with the cancellation of the allotment of the Flat. In response thereto, the wife of the Complainant addressed an email of even date once again requesting for an extension till 22.09.2023 when the Complainant was to be released from the custody. Once again, on sheer humanitarian grounds, the Respondent extended the cancellation of the allotment, as requested by the wife of the Complainant when the Respondent was not obligated to do so.

- xv. On 25.09.2023, the Respondent communicated to the Complainant its final intention to cancel the allotment if the outstanding amounts were not paid by 28.09.2023 (At Pg.107 of the Complaint). Accordingly, when the Complainant once again failed to make the requisite payments, the Respondent was constrained to cancel the allotment of the Flat especially in light of the chequered history and antecedents of the Complainant and issued the Cancellation Notice dated 06.10.2023 in terms of Clause 10.4 of the Agreement for Sale since the Complainant was severely and hopelessly in breach of **Clause 10.3** of the Agreement for Sale. The allegation that the Respondent gave only four days to the Complainant to pay the outstanding amount is not correct as adequate and reasonable time was accorded to the Complainant to pay the outstanding amount.
- xvi. Since the cancellation of allotment in favour of the Complainant marked as one of the events under the Tripartite Agreement for the monies disbursed by the South Indian Bank Ltd. to be returned to it, the Respondent proceeded to abide by the same and returned the monies received by the Respondent from the South Indian Bank Ltd. on behalf of the Complainant.
- xvii. Subsequently, on receipt of an amount in the sum of Rs.81,48,533.56/- from the Respondent, the South Indian Bank Ltd. addressed a letter dated 19.01.2024 to the Respondent *inter alia* informing it that the Bank was pleased to discharge the Respondent from its obligations under the Tripartite Agreement in terms of Clause 10 thereof.
- xviii. Additionally, in present facts and circumstances, it has been proved that there has not been any default and/or delay on the part of the Respondent. In fact, as of the date of cancellation notice i.e. 06.10.2023, the Respondent had concluded/completed the Project, obtained the

occupation certificate on 02.11.2022 and commenced handing over of the possession of units to the allottees.

- xix. It is pertinent to note that in the case of real estate projects, time is always of the essence. The developers/ builders are expected to deliver the projects and hand over the possessions of the units to the allottees in a time-bound manner. In real estate projects, the major chunk of monies infused in the projects is through the customer receipts and therefore, often, the homebuyers / allottees form the biggest financial creditors of the developers *qua* that project. In such scenarios, the timely payments by the allottees against their purchased units become an essential component for the overall development of the project. The Act also recognizes the same and has provided for the rights and obligations of the allottees concerning making timely payments to the developers under Section 19(6) of the Act which casts a duty upon every allottee, who has entered into an agreement, to make the necessary payments in the manner and within the time frame specified in the said agreement.
- xx. Therefore, it is submitted that whilst the RERA is a beneficial legislation that seeks to safeguard the rights of the homebuyers when it comes to real estate transactions, however, it also balances the rights and duties of the allottees vis-à-vis those of the developers by putting the onus of timely payments upon the allottees. Admittedly, the Complainant has not honored its statutory and contractual duty to make the requisite payments as per the executed Agreement for Sale.
- xxi. Therefore, the Complaint of the Complainant deserves to be rejected on this ground alone. It will, however, wreak havoc on the developers in the real estate sector including the Respondent if the Complaint is allowed, thereby putting a premium on the defaulting party who seek

to unjustly wriggle out of their obligations under the respective agreement for sale, which is not the intent and purpose behind the enactment of the RERA. The Complainant it at fault himself and should not be given the opportunity to raise the complaint by putting the government machinery into action and by abusing its process.

xxii. That the forfeiture amount specified in the Cancellation Notice is strictly limited to the extent outlined under the terms of the Agreement for Sale dated 12.04.2018. Pertinently, such forfeiture cannot and ought not to be deemed to constitute unjust enrichment or arbitrary action on the part of the Respondent. The unit of the complainant was cancelled owing to its own financial delinquency and failure to pay the outstanding amount for an unreasonable long period of time in line with executed Agreement for Sale. No unjust enrichment or unfair trade practice was perpetrated on the Complainant as alleged.

xxiii. On the contrary, the reason for including forfeiture clauses in agreements like the one in the present case is to restitute and/or reimburse the developer for the monies lost over a long period of time on account of a defaulting allottee i.e. the Complainant in the instant case. It is further submitted that the forfeiture clauses in that sense act as liquidated damages on account of breach of the terms of the agreement.

xxiv. The total amount received by the Respondent as on the date of Cancellation Notice is Rs. 1,71,28,681/-. Pertinently, the said amount includes payments received directly from the Complainant and from the South Indian Bank Ltd. The break-up of the forfeited amount, as mentioned in the Cancellation Notice dated 06.10.2023, is in terms of Clause 10.4 of the Agreement for Sale and is as follows:

**Forfeitable Amount includes:**



1. **GST:** Rs.22,34,032/-
2. **Booking amount:** Rs. 21,62,267/- (which is 10% of the total sale consideration of Rs. 2,16,22,674/- )
3. **Interest on delayed payment:** Rs. 47,33,985/-  
**Amount to be returned to South Indian Bank (lender):** Rs. 1,26,08,681/-.  
**Amount to be recovered from the Allottee:** Rs. 46,10,284/-

xxv. However, vide the letter dated 19.01.2024, the South Indian Bank accepted the receipt of refund of Rs.81,48,533.56/- on 31.12.2023 from the Respondent.

xxvi. Without prejudice to the rights and contentions of the Respondent, it is submitted that the Respondent is entitled to claim and recover an amount of Rs. 46,10,284/- and more from the Complainant in terms of the Agreement for Sale. सत्यमेव जयते

xxvii. Despite the above, an attempt has been made by the Complainant to portray that the forfeiture clause in the Agreement for Sale is illegal. It is submitted that forfeiture clauses are permissible and valid, and the Hon'ble Supreme Court has, in *Satish Batra v. Sudhir Rawal* [reported in (2013) 1 SCC 345], clarified that to justify the forfeiture of advance money, the terms of the contract should be clear and explicit. It is submitted that in light of all that is stated above, it is abundantly clear that the forfeiture by the Respondent is completely justified and in terms of the provisions of the Agreement for Sale. Therefore, the said attempt by the Complainant, in addition to being frivolous, also falls flat on its face.

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 oral as well as written 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 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**

10. 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.*

11. 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 accept remaining payment due towards the said unit and require hand over of possession of the subject unit.**

12. Briefly stated the facts are that a unit no. C2-022, 2<sup>nd</sup> floor admeasuring 2072.90 sq. ft. (super area) was allotted to the complainant in the project "Sobha City (Phase 1 Part 2)", Sector 108, Gurugram, Haryana. Thereafter, a BBA was executed inter se parties on 12.04.2018 and as per clause 4.1 of the said BBA, the respondent promised to handover the possession of the subject unit by 01.05.2022 including grace period. The complainant through the present complaint consistently demonstrated bona fide intent and readiness to fulfil his contractual obligations by making substantial payments amounting to approximately 80% of the total sale consideration towards the allotted unit and by promptly communicating his willingness to clear the remaining dues upon release from civil imprisonment. It is further submitted that the respondent, however, acted in a manner that was both unreasonable and lacking in fairness by granting an unduly short window for payment, refusing to consider the genuine hardships faced by the complainant, and ultimately rejecting further payments without adequate justification and ultimately, cancelling the subject unit on 06.10.2023. Therefore, the complainant has approached the authority through present complaint seeking aforesaid reliefs.
13. On the other hand, the respondent submitted that the present complaint is wholly devoid of merit and is nothing more than a vexatious attempt by the Complainant to unjustly claim possession of the Flat despite his own repeated, prolonged, and admitted defaults under the Agreement for Sale dated 12.04.2018. The Respondent has, at every stage, acted in accordance with the terms of the Agreement for Sale and the Tripartite Agreement, and has even gone above and beyond its contractual obligations on several occasions purely on humanitarian grounds. The cancellation vide letter dated 06.10.2023 of the allotment was a direct and inevitable consequence of the Complainant's continued financial delinquency, notwithstanding numerous

reminders, notices, and even reinstatement opportunities. Further, the respondent has refunded the loan amount to the South Indian Bank Ltd., in compliance with contractual forfeiture provisions. Therefore, the Complaint is not only contractually and legally untenable but also an abuse of process aimed at circumventing the consequences of the Complainant's own failures. Accordingly, the respondent prayed for dismissal of the present complaint.

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?

14. Upon examining the documents available on record and submission made by both the parties, the Authority observes that the occupation certificate was obtained by the respondent on 02.11.2022 and thereafter, the respondent through email dated 27.12.2022 has asked the complainant to clear the outstanding dues amounting to Rs. 89,58,022/-. This communication marked the beginning of a clear and documented process of follow-up for outstanding payment, with no ambiguity as to the respondent's expectations. It is evident from the documents filed by the parties that the complainant has made part payment of Rs. 11,00,000/- vide cheque dated 26.06.2023 and the same was admittedly returned for being dishonored on account of insufficiency of funds. The complainant does not dispute this dishonour. This incident further demonstrates the continued default and unreliability on the part of the complainant in honoring financial obligations, even post-OC.
15. It is observed that the occupation certificate was received on 02.11.2022 and the respondent has after waiting sufficiently, has sent an email on 04.09.2023 at 11:45 am, to the South Indian Bank Ltd. marking a copy to complainant stating as under:

*"Kindly note, since your trailing email of 21.07.2023 neither you nor the allottee(s) has communicated to us with payment of outstanding amount. As on date outstanding is ₹92,38,120/- (Rupees Ninety-Two Lakhs Thirty Eight Thousand One Hundred and Twenty Only).*



***Now we cannot wait any further. We are going ahead with cancellation of the unit and shall keep you posted.***

*It is pertinent to mention that Occupation Certificate of the tower C2 in which the Unit of the allottee Mr. Rajesh Kumar is situated was received on 02.11.2022 and we have been continuously following up with the allottee(s) to take possession of his unit with payment of the outstanding amount but to no avail. Mr. Rajesh Kumar has been a habitual offender since long and we have waited for a considerable time only on humanitarian grounds.*

*As you know, the allottee(s) has taken home loan from your branch situated at Connaught Place, New Delhi with sanction letter dated 28.09.2018 (Ref No. SIB/CP/SANC/30/20/18-19).*

*A tripartite Agreement (TPA) dated 12.10.2018 was executed among the parties viz. South India Bank (lender), Sobha Limited (Developer) and Mr. Rajesh Kumar and Mrs. Suman Rani (Allottee) with the issuance of permission of mortgage (PTM) dated 17.10.2018 by the developer registering equitable charge on the Unit. Copies of the documents are attached herewith.*

*As the cancellation is in the offing and we are party to the TPA, request you to please guide us how to move forward in the light of the terms of the TPA and thereby releasing the Unit from the charge with requisite NOC/consent in our favour.*

*Request you to please take cognizance of the above facts and revert on receipt of this email."*

16. In response of the aforesaid email dated 04.09.2023 at 9:18 pm was sent by the complainant to the respondent stating as under:

*"I am spouse of Mr. Rajesh Kumar. I have told the bank, Ms. Shilpa Malik and Mr. Nitin Kohli that my husband Mr. Rajesh Kumar is lodged in Tihar since 7/07/23, his last hearing was on 18/08/23, he will be released from Tihar on 22/09/2023. It is already very hard for me to arrange for the EMIs every month since, I am a housewife. This home is a dream for our family you have heard with us for this long kindly Please wait till 22-09-2023 he will pay the outstanding amount once he will be out for sure. Kindly please don't go ahead with the cancellation."*

17. After passage of about 20 days, on 25.09.2023 at 12:35 pm, the complainant again requested the respondent to grant some time for clearing outstanding dues and the relevant extract of the email is reproduced as under:

*"As you already know I was in custody till 22.09.2023 because of an ongoing case with my brother. I was released from Tihar on 22nd and I will pay the outstanding amount for my unit till 05/10/2023, also I will pay the amount for registry as well with my outstanding amount only."*



18. In response to the above the respondent vide email dated 25.09.2023 at 12:47 pm stated that:

*"In case you fail to make payment by 28.09.2023, we will cancel the Unit."*

19. Instead of making the payment, the complainant again vide email dated 26.09.2023 at 20:35 requested the respondent to grant time till 05.10.2023 to make payment of the outstanding dues and the relevant extract of the email is reproduced as under:

*"I was in custody from last two and half months and trust me I have gone through a really hard time and because of which there was a trouble in my business as there was no one to handle. You have always provided me with time whenever I have asked, which I really appreciate please, provide me this last time I am asking for, please wait till 05-10-23. I promise I will give the outstanding payment by then. Just trust me this last time."*

20. To the aforesaid email, the respondent responded vide email dated 27.09.2023 again reiterating that the complainant shall clear outstanding amount otherwise, the unit will stand cancelled on 28.09.2023. The relevant extract of the email is reproduced as under:

*"We will cancel the Unit on 28.09.2023 in default of your making payment of the total outstanding amount for the Unit C2-022 in Sobha City Project."*

21. The complainant again through email dated 27.09.2023 at 7:42 am stated as under:

*"I will be submitting the check today at the site for the principle amount. I will give the check for Interest and registry in some time.  
Please don't go ahead with the cancellation it's just 7 more days I am asking for kindly provide them."*

22. To sum up, the Authority observes that the respondent, despite the complainant's prolonged default, continued to engage constructively. On 04.09.2023, an email was sent by the respondent to the complainant and the lender bank (South Indian Bank), stating that the outstanding amount had increased to ₹92,38,120/- and that the respondent could not wait any further. The email clearly indicated that cancellation of the unit was imminent. In response, the complainant's spouse requested that the



respondent to wait until 22.09.2023, citing the complainant's incarceration. Again, on 25.09.2023, the complainant personally requested time until 05.10.2023 to make full payment, claiming release from custody on 22.09.2023. The respondent, in good faith, replied via email dated 25.09.2023, offering one final opportunity and setting a strict deadline of 28.09.2023 for payment. Instead of complying, the complainant sent another email on 26.09.2023, requesting extension till 05.10.2023. The respondent, by email dated 27.09.2023, reiterated in unambiguous terms that the unit would be cancelled on 28.09.2023 in the event of non-payment. No full payment was received by the stipulated deadline.

23. From the above factual matrix, the Authority finds that the respondent received the OC on 02.11.2022, and thereafter provided ample and reasonable time, nearly 11 months for the complainant to fulfill his financial obligations. The Complainant defaulted in making timely payments on several occasions over a prolonged period. The record also shows **at least 10 dishonoured cheques**, amounting to over ₹2.60 crore cumulatively. These dishonoured instruments, even if not acted upon criminally by the Respondent, significantly undermine the Complainant's claim of "bonafide intent.". Clause 10.3 and 10.4 of the BBA dated 12.04.2018 explicitly outline the consequences of continuous default, which include cancellation of the allotment. Moreover, the Respondent reinstated the allotment once earlier (in 2020) despite an earlier cancellation, purely on humanitarian grounds. Post reinstatement, the Complainant again failed to adhere to payment obligations. Further, the respondent has returned the bank loan component post-cancellation in compliance with the Tripartite Agreement dated 12.10.2018.
24. Since the Complainant is found to be a habitual defaulter and breached the terms of BBA repeatedly, this Authority is unable to grant the relief of

possession or reinstatement of the allotment and the cancellation of allotment of Unit No. C2-022 by the Respondent is legally valid.

25. 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."

26. 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 has held that 10% of BSP is reasonable amount which is liable to be forfeited as earnest money.
27. 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.1,71,28,681/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration i.e., Rs. 1,79,47,194/- and shall also deduct the amount already refunded by the respondent i.e., Rs.81,48,533/- to the financial institution. The respondent is directed to return the remaining amount 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 06.10.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G. Directions of the Authority.**

28. 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 of Rs.1,71,28,681/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration i.e., Rs. 1,79,47,194/- and shall also deduct the amount already refunded by the respondent i.e., Rs.81,48,533/- to the financial institution.
- ii. The respondent is further directed to return the remaining amount 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



termination/cancellation 06.10.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

iii. 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.

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

30. File be consigned to registry.

**Dated: 02.05.2025**



**(Arun Kumar)**

Chairman

Haryana Real Estate Regulatory  
Authority, Gurugram

**HARERA**  
**GURUGRAM**