

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

Complaint no.: 5240 of 2023
Date of filing: 08.11.2023
Date of decision: 04.07.2025

Mr. Sandeep Garg
R/o: H. No. 956, Sector-10, Panchkula,
Haryana.

Complainant

Versus

M/s Splendor Landbase Limited
(Through its Managing Director and other Directors)
Regd. Office at: Unit 501-511, Splendor Forum,
5th District Center, Jasola, New Delhi-110025.

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Abhinav Arora
Ms. Shreya Takkar along with Ms. Meenal Khanna

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:

Sr. No.	Particulars	Details
1.	Name of the project	"Splendor Epitome", at Sector-62, Gurugram, Haryana
2.	Nature of the project	Commercial Colony
3.	Project area	3.35 acres
4.	DTCP License no. and validity status	51 of 2009 dated 27.08.2009 Valid up to 26.08.2019 58 of 2012 dated 05.06.2012 Valid up to 04.06.2020
5.	Building plans approved on	15.07.2013 [As mentioned by the promoter in BBA at page 44 of complaint]
6.	Rera Registered or not	22 of 2019 dated 26.03.2019 Valid up to 31.12.2023
7.	Allotment letter issued in favour of the complainant	02.09.2011 [Page 59 of complaint]
8.	Unit no. as per allotment letter	064, ground floor [Page 59 of complaint]
9.	Unit admeasuring	445 sq. ft. (super area) 222.5 sq. ft. (carpet area) (Page 59 of complaint)
10.	Date of execution of Builder buyer agreement	Not executed
11.	Possession clause as per allotment letter	<i>xxv. The Company shall endeavor to complete the construction of the Said Office/Retail space(s) within a period of three years from the date of execution of the Space Buyers' Agreement subject to timely payment by the Intending Allottee(s) of sale price,.....</i> [Page 67 of complaint]
12.	Due date of possession	Cannot be ascertained as BBA has not been executed inter se parties



13.	Basic sale price	Rs. 47,17,000/- (as per allotment letter at page 59 of complaint)
14.	Total amount paid by the complainant	Rs. 11,79,250/- (As alleged by complainant at page 25 of complaint and also mentioned in cancellation letter dated 24.10.2019)
15.	Reminder for execution of agreement	15.07.2014 [Page 71 of reply] 05.10.2016 [Page 129 of reply]
16.	Demand for payment along with reminders	17.12.2013 (demand letter), 18.01.2014 and 26.04.2014 [Page 67-70 of reply]
17.	Demand for payment of Rs.23,50,374/-	25.07.2019 [Page 132-134 of reply]
18.	Reminder for payment	30.08.2019 [Page 135-136 of reply]
19.	Final reminder letter	28.09.2019 [Page 137-138 of reply]
20.	Cancellation notice (on the ground of non-payment)	24.10.2019 [Page no. 72 of complaint] Note: The cheque amounting to Rs.1,96,401/- was again sent by the respondent along with letter dated 07.09.2023 in continuation of the aforesaid cancellation letter as the complainant has not encashed the earlier cheque dated 24.10.2019. [Page 73 of complaint]

B. Facts of the complaint:

3. The complainant has made the following submissions:

- i. That in the year 2011, the respondent company issued an advertisement announcing a commercial colony project namely "Splendor Epitome' at Sector 62, Gurugram, launched on 3.075 acres of land under license no. 58 of 2012 issued by DTCP, Haryana.

- ii. That relying on various representations and assurances provided by the respondent, on 14.06.2011, the complainant booked a unit in the project by paying an amount of Rs. 5,00,000/- as a booking deposit in respect of unit bearing no.064, situated on the ground floor in sector 62, with a super area measuring 445 sq. ft. The respondents acknowledged this payment on 02.09.2011.
- iii. That the respondents confirmed the booking of the unit via communication dated 02.09.2011, providing details of the project, allotting Unit 064, Ground Floor, measuring 445 Sq. Ft. (super built-up area), and specifying a total sale consideration of Rs. 47,17,000/-, which included the basic price, EDC and IDC charges, car parking fees, and other unit specifications.
- iv. That the complainant, based on the payment plan, had already paid a total sum of Rs. 11,79,250/- towards the unit against a total sale consideration of Rs. 47,17,000/-. Despite making payments, the complainant's efforts to visit the project site were repeatedly denied, with the respondents claiming that buyers were not permitted to visit during the construction period. This lack of access to the site, combined with a lack of communication, resulted in a loss of time and money for the complainant.
- v. That the complainant diligently sought communication with the respondents regarding the project's status, visiting their office multiple times and making numerous phone calls, all of which were met with inadequate responses.
- vi. That after years of communication breakdown, the respondents suddenly demanded a payment of Rs. 23,50,374/- on 25.07.2019 without providing justifiable reasons for the delay. The complainant raised objections to this demand. Instead of addressing the

complainant's concerns and providing a valid explanation for the delay, the respondent insisted on continued payments, threatening to cancel the allotted unit.

- vii. That on 24.10.2019, the respondents sent a letter to the complainant, stating that they had cancelled the allotted unit. Subsequently, the respondents informed the complainant about the forfeiture of the earnest money amounting to Rs 9,43,400/- and the remittance of the balance amount of Rs 1,96,401/-.
- viii. That the complainant, having endured five years of unresponsiveness and a lack of clarity regarding the project's status, has suffered substantial financial loss and irreversible damage due to the respondents' actions.

C. Relief sought by the complainant:

- 4. The complainant is seeking the following reliefs:
 - i. Direct the respondent to quash the cancellation notice dated 24.10.2019.
 - ii. Direct the respondent to quash the earnest money forfeiture notice dated 07.09.2023.
 - iii. Direct the respondent to not to create 3rd party rights with respect to subject unit.
 - iv. Direct the respondent to handover the possession with all amenities and specifications and to pay delayed possession charges.
 - v. To restrain the respondent from raising any fresh demand under any head.
 - vi. To not to force the complainant to sign any indemnity cum undertaking.
 - vii. To not to charge anything which is not part of BBA.
 - viii. Direct the respondent to obtain valid OC and issue fresh offer of possession.
 - ix. Direct the respondent to provide lease arrangement, if any entered with 3rd party with respect to the said unit.

- x. Direct the respondent to refund amount which was illegally charged by the complainant was not liable to pay.
- xi. Direct the respondent to get the conveyance deed executed.
- xii. Direct the respondent to restore the allotment of the subject unit.

5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds by way of filing reply dated 24.05.2024:

- i. That the Complainant after conducting his own due diligence and market research approached the Respondent for booking of a unit in the project "Splendor Epitome" a commercial colony on a free-hold land admeasuring 3.351 acres situated in Sector 62, in the revenue estate of Village Ullawas, Tehsil Sohna, District Gurgaon, Haryana. It is stated that only upon complete satisfaction of the complainant in the Project, the complainant applied for provisional allotment of a commercial space/unit in the said project and paid booking amount.
- ii. That in due consideration of the complainant's commitment to make timely payments, the respondent allotted a unit bearing no. 064 having super area of 445 sq. ft. vide allotment letter dated 02.09.2011. The basic sale consideration of the unit was Rs. 47,17,000/- however, the complainant was liable to pay other charges including but not limited to EDC, IDC, PLC, IFMS, External Electrification charges, Asset Replenishment Fund, maintenance charges etc. etc. as mentioned in the said allotment letter. The complainant opted for the construction linked payment plan. The allotment letter further contained the

detailed terms of allotment which were duly accepted by the Complainant.

- iii. That the respondent company vide demand letter dated 17.12.2013 raised the demand due on commencement of excavation and requested the Complainant to remit an amount of Rs. 3,69,306/-. Since, the complainant did not come forward to clear his pending dues therefore the Respondent issued reminder letter dated 18.01.2014. Despite sending reminder letter dated 18.10.2014, the Complainant failed to clear his dues therefore the respondent issued another reminder letter dated 16.04.2014.
- iv. Thereafter the respondent vide cover letter dated 15.07.2014 sent copies of the Buyers Agreement for due execution at the complainant's end. Since, the complainant did not return duly executed copies of the buyer's agreement therefore the respondent issued reminder notice dated 05.10.2016 requesting the complainant to execute the Buyers Agreement. However, the Complainant for reasons best known to him failed to return the duly executed copy of the Buyers Agreement.
- v. That the construction and development of the project was affected due to force majeure conditions entirely beyond the control of the respondent company and the same are enumerated hereinbelow:
 - a. Delay in receipt of requisite approvals from the concerned regulatory authorities. Additionally, the building elevation had to be revised due to technical and market-driven changes, which contributed to the delay (as communicated on 17.12.2015)
 - b. The Supreme Court and National Green Tribunal imposed restrictions on mining activities (e.g., *Deepak Kumar v. State of Haryana, 2012*), leading to acute shortages of essential construction materials like sand, gravel, bricks, and crusher. Orders remained in effect through 2018 and beyond, severely disrupting procurement and inflating material costs.
 - c. Orders by HUDA and judicial bodies mandated the use of treated wastewater for construction, which was insufficient and of

- substandard quality, causing resistance from labour and halting work.
- d. Judicial/administrative halts in construction led to labour migration and scarcity, causing prolonged remobilization delays even after restrictions were lifted.
 - e. Ministries imposed additional restrictions on material usage (e.g., banning excavation of topsoil for bricks, enforcing fly ash blending near thermal plants), exacerbating delays and supply chain disruptions.
 - f. Demonetization (Nov 2016) created financial chaos, affecting both project execution and buyer payments.
 - g. Recurring Annual Construction Bans due to air pollution in NCR (ordered by NGT and other authorities) contributed further to work stoppages.
 - h. COVID-19 Pandemic led to complete suspension of construction activities, with a recognized six-month extension granted by RERA (notice dated 26.05.2020).
 - i. Buyer's Defaults: The complainant, despite repeated reminders, failed to execute and return the Buyer's Agreement, make timely payments, respond to requests for clearing dues and completing formalities.
- vi. That since, the Complainant was facing financial issues therefore on his request, the Respondent deferred the demands and raised them at a later stage to accommodate the Complainant. Further, though the construction of the said Project was going on constantly, the Respondent after registration of the said Project with the Hon'ble Authority on 26.03.2019 which was though applied on 31.07.2017 with the Interim Authority, Panchkula and even though the construction of the 1st Basement Roof Slab, Ground Floor Roof Slab and 2nd Floor Roof Slab had been completed earlier but as a goodwill gesture, the demands were raised belatedly only vide letter dated 25.07.2019 after registration of the said Project with this Hon'ble Authority. Vide demand letter dated 25.07.2019, the complainant was informed that the construction had reached the 4th Floor Roof Slab.

Accordingly, the Complainant was requested to remit pending dues to the tune of Rs.23,50,374/-. Vide said later, the respondent had also requested the complainant to execute the Buyer's Agreement/Agreement for sale in respect of the said unit booked by him and get the same registered at the earliest. However, the complainant neither paid the long outstanding amount nor came forward for the execution and registration of the Buyer's Agreement.

- vii. Since, the Complainant failed to clear his dues and further failed to execute and register the Agreement for sale, the Respondent issued reminder letter dated 30.08.2019 requesting the Complainant to clear his pending dues, but to no avail. Vide the aforementioned letter, the Complainant was again requested to execute the Buyers Agreement and get the same registered. Thereafter the Respondent issued final reminder letter dated 28.09.2019 requesting the Complainant to clear his outstanding dues. It is submitted that the complainant had deposited a sum of Rs. 11,79,250/- against the unit till date. Despite repeated requests and issuance of reminders the complainant failed to clear his dues nor came forward to execute the Buyers Agreement therefore, as a consequence of the same the Respondent was constrained to terminate the allotment of the Complainant vide cancellation letter dated 24.10.2019 in accordance with clause xii read with clause xi of the basic terms and conditions of allotment i.e. Annexure II. The Respondent along with the cancellation letter had also sent cheque bearing no. 001950 dated 24.10.2019 for an amount of Rs.1,96,401/- after deduction of earnest money and service in terms of the said allotment letter.
- viii. That since, the Complainant did not encash the cheque dated 24.10.2019 and the same had become stale therefore, the Respondent

Company vide letter dated 07.09.2023 sent another cheque dated 07.09.2023 towards the amount payable i.e. Rs.1,96,401/-. Thus, the Complainants are not entitled to get any reliefs as sought for from this Hon'ble Authority. Failure on the part of the Complainants to perform their contractual obligations disentitles them from any relief and relies on DLF Southern Homes Pvt. Ltd. vs. Dipu C Seminal, 2015 SCC Online NCDRC 1 wherein it was held that:

"13. In the light of aforesaid judgments, it becomes clear that as complainant has not paid any subsequent instalments and committed default in making payments of instalments and also committed default in returning back duly signed agreement, OP had every right to forfeit amount of earnest money deposited by complainant and learned District forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal."

- ix. That the cause of action if any, against the Respondent arose on when the allotment of the Complainant was cancelled on 24.10.2019 on account of his breaches and defaults. The Complainant has approached this Hon'ble Authority after a lapse of more than four years since the cause of action and is now seeking to reap benefits of his own defaults. The cancellation notice dated 24.10.2019 was issued as per the terms of allotment and the same has attained finality. The complainants are thus estopped and barred from raising any objections or contentions with respect to the cancellation notice dated 24.10.2019 issued to the complainant and against the amounts forfeited. It is very well settled that no court or the Tribunal can come to the aid of those who sleep over their rights. In terms of the above, it is submitted that the present complaint is barred by limitation in view of provisions of the Limitation Act, 1963.
- x. That it is submitted that the cancellation of the unit and forfeiture of the amount has been done in accordance with the terms of allotment. It is submitted that the Complainants themselves have violated the

agreed terms and hence is not entitled to get any reliefs from the Hon'ble Authority.

7. All other averments made by the complainant were denied in toto.
8. Written submissions filed by the respondent and complainant are also taken on record and considered by the authority while adjudicating upon the relief sought by the complainant. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

E. Jurisdiction of the authority.

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

E.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

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

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

Section 34-Functions of the Authority:

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

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
- F. Objection raised by the respondent regarding complaint being barred by limitation**
13. The Complainant has approached this Hon'ble Authority after a lapse of more than four years since the cause of action and is now seeking to reap benefits of his own defaults. The cancellation notice dated 24.10.2019 was issued as per the terms of allotment and the same has attained finality. Thus, the present compliant is barred by limitation.
14. So 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) Act, 2016. However, the Authority under section 38 of the Act is to be guided by the principle of natural Justice. It is a 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 is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances. However, this shall not apply to the provisions of section 14 where specific period has already been defined.
15. 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 maybe prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

16. Though both the parties through their respective counsel advanced submissions with regard to the maintainability of the complaint on the ground of the limitation but in view of settled proposition of law, the case of complainant cannot be thrown away being barred by limitation. Limitation if any, for a cause of action would accrue to the complainant w.e.f. 24.10.2019. The complainant has filed the present complaint on 08.11.2023 which is 4 years and 15 days from the date of cause of action. In the present matter, the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 03.10.2024. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of delay and is not barred by limitation.

G. Findings on the relief sought by the complainant

17. Briefly stated the facts are that a unit no. 064, ground floor, having super area of 445sq.ft. was allotted to the complainant in project "Splendor Epitome" situated at Sector 62, Gurugram vide allotment letter dated 02.09.2011 in favour of the complainant. The builder buyer agreement has not been executed till date. The complainant through instant complaint submitted that the project has been delayed and has not been handed over within the stipulated time. Also, the respondent never gave any update regarding the delay in handing over. Therefore, the complainant has approached the authority through present complaint seeking aforesaid reliefs.
18. On the other hand, the respondent has submitted that the complainant has failed to execute BBA despite various reminders dated 15.07.2014 and 05.10.2016. Further, the complainant has failed to pay the outstanding dues even after giving multiple reminders on 18.01.2014, 26.04.2014, 30.08.2019

and 28.09.2019. Hence, the unit of the complainant has already been cancelled due to non-payment of outstanding dues vide letter dated 24.10.2019. Hence, the relief of DPC is misconstrued.

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?

19. On consideration of documents available on record and submissions made by both the parties, it is evident that the complainant was allotted above mentioned unit for a sale consideration of Rs. 47,17,000/-. Upon examining the documents submitted by both parties, the Authority observes that as per the demand letter dated 17.12.2013, the complainant has made payment of Rs.11,79,250/- by the said letter. Thereafter, the respondent company has sent various demand/reminder letter on 18.01.2014, 26.04.2014, 25.07.2019, 30.08.2019 and the final reminder was sent by the respondent on 28.09.2019. However, the complainant has failed to make payment despite various demands/reminders by the respondent.
20. Vide written arguments dated 16.05.2025, the complainant is stating that during 2014-2019, the complainant tried to contact the respondent via various communications, including visits to their office but the Respondent was never available and never allowed the Complainant to visit the Construction site and maintained the complete silence between the 2014-2019, leading the Complainant to reasonably assume the project was indefinitely delayed. No demand letter was received by the Complainant during 2012-2018, as alleged by the Respondent. Further, in 2019, after years of inaction, to his utter shock, the complainant received a first-ever demand letter dated 25.07.2019 after 2011 from the Respondent abruptly requesting an arbitrary amount of Rs. 23,50,374/- citing the 4th floor slab without giving a reasonable explanation for the delay.

21. Upon the perusal of the documents, it is observed that postal receipt in respect of the demand letters dated 25.07.2019, 28.09.2019 has been attached by the respondent and as per Section 27 of the General Clauses Act, 1897, a notice is deemed to be served/delivered when sent by Registered Post unless the contrary is proved by the addressee. In the present case, the complainant herein has failed to prove the same. Further, in the case of *Parimal Vs. Veena @ Bharti (2011) 3 SCC 545*, the Hon'ble Supreme Court after considering large number of its earlier judgments in Greater Mohali Area Development Authority & Ors. Vs. Manju Jain & Ors., AIR 2010 SC 3817 held that in view of Section 114(f) of Evidence Act read with Section 27 of General Clauses Act, 1897, there is a presumption that the addressee has received the letter sent by registered post.
22. It is evident from the records that the complainant has failed to make consistent and diligent efforts to reach out to the respondent regarding the status of the project or to clarify any concerns related to payment demands. Despite the complainant's assertions of attempted communication and office visits between 2014-2019, no documentary evidence has been placed on record to substantiate such claims. In contrast, the respondent has provided postal receipts and documented reminders dated 25.07.2019 and 28.09.2019, which, in view of Section 27 of the General Clauses Act, 1897 and the legal presumption under Section 114(f) of the Indian Evidence Act, are deemed to have been duly served. The complainant's failure to produce any proof of non-receipt or to demonstrate proactive engagement over the years indicates a lack of vigilance on his part. Therefore, the complainant's pleas appear to be unsubstantiated and fail to inspire confidence in the absence of corroborative documentary proof.
23. Further, despite several requests and demand letters, the complainant neither contacted the respondent nor deposited the outstanding dues.

Consequently, the respondent issued a final reminder letter dated 28.09.2019, expressly stating that if the complainant failed to pay the dues within 15 days of receiving the notice failing which the respondent shall be constrained to take consequential action in terms of Application/Provisional Allotment Letter.

24. As per clause xi of the allotment letter, the respondent/promoter has a right to cancel the unit in case the allottee has breached the agreement to sell executed between both the parties. Relevant clauses of the Allotment Letter are reproduced as under for ready reference:

"xi. The Company and the Intending Allottee hereby agree that the application money and earnest money for the purpose of this allotment and for Space Buyers Agreement shall be 20% (twenty percent) of the Total of the basic sale price amounting to Rs. ___/- as may become applicable from time to time, per Office/Retail Space(s). The intending Allottee authorizes the Company to cancel the allotment / Agreement and forfeit the application money/Earnest Money along with the interest on delayed payments, interest on instalments, brokerage etc. in case of breach/non-fulfilment of the terms and conditions herein contained and those of the Space Buyers' Agreement also in the event of failure by the Intending Allottee to sign and return to the Company the Space Buyers' Agreement within thirty (30) days from the date of its dispatch by the Company..

xii. It shall be incumbent on the Intending Allottee to comply with the terms of payment and/or other terms and conditions of the Space Buyers' Agreement, falling which the Company shall be entitled in its sole and absolute discretion to cancel the allotment and forfeit entire amount of Application Money /earnest money, interest on delayed payment, etc. and the allotment letter/ Space Buyers Agreement shall stand cancelled and the Intending Allottee shall be left with no lien, right, title, interest or any claim of whatsoever nature in the Office/Retail Space(s) and the parking space(s) allotted. The Company shall thereafter be free to resell and/or deal with the said Office/Retail Space(s) in any manner whatsoever at its sole discretion. The amount(s), if any, paid over and above the application money/ earnest money, processing fee, interest on delayed payment etc. interest on installments, brokerage, etc. would be refunded to the Intending Allottee by the Company only after realising such amounts to be refunded on resale but without any interest or compensation of whatsoever nature. The Company shall have the first lien and charge on the Said office/retail space(s) for all its dues payable by the Intending Allottee to the Company...

xiii The timely payment of the balance sale consideration as per the Payment Plan forming part of the Space Buyer Agreement and other dues and charges mentioned herein and/or in the Space Buyer Agreement, is of prime essence. In the event the Allottee(s) fails to make the payment on the due dates or commits breach of any of the term and conditions of this Annexure and/or Space Buyer Agreement, the provisional allotment hereby made may be cancelled by the Company after giving a notice in writing to rectify the breach within 15 days and thereafter 20% of the total

cost of the said Space will be forfeited by the Company and the balance will be refunded without any interest and deducting expenses and losses and the Intending Allottee shall be left with no right, title, interest, lien or any claim of whatsoever nature in the above said space. Thereafter the Company shall have the right to allot the said Space to any other person whomsoever and/or deal with the same in any manner whatsoever at its sole discretion without any reference to the Intending Allottee(s)“

25. That the above-mentioned clauses of Allotment Letter provides that the promoter has right to terminate the allotment in respect of the unit upon default under the said agreement. It is observed that the respondent/promoter has issued various demands letter and the complainant has made the last payment only in year 2013 and has failed to make payment thereafter. Finally, the respondent issued cancellation letter on 24.10.2019 as the complainant has failed to clear the outstanding dues.
26. Upon perusal of documents on record, various reminders were sent by the respondent to the complainant before cancelling the unit to clear the outstanding dues but, the complainant has failed to pay the outstanding dues. Thus, the respondent has cancelled the allotment of the subject unit due to non-payment on 24.10.2019. It is observed that as per section 19(6) & (7) of the Act, 2016, the complainant-allottee was under an obligation to make timely payment as per the payment plan towards consideration of the allotted unit. As delineated hereinabove, the respondent has sent various demand/reminder letters to the complainant regarding the payment of the outstanding dues for the subject unit. However, the complainant did not pay the outstanding dues despite affording numerous opportunities by the respondent.
27. In view of the above findings, the Authority observes that the complainant is not entitled for the reliefs being sought under the present complaint as the subject unit of the complainant was cancelled by the respondent after issuing proper reminders. Therefore, the cancellation letter dated 24.10.2019 is hereby held to be valid in the eyes of law.

28. 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."

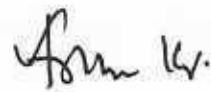
29. Also, Hon'ble Apex Court in *Civil Appeal no.3334 of 2023* titled as *Godrej Projects Development Limited Versus Anil Karlekar* decided on 03.02.2025 has held that 10% of BSP is reasonable amount which is liable to be forfeited as earnest money.
30. So, keeping in view the law laid down by the Hon'ble Apex Court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, 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. 11,79,250/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration i.e., Rs. 47,17,000/- and 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 24.10.2019 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the Authority.

31. 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):
- The respondent is directed to refund the paid-up amount i.e., Rs. 11,79,250/- to the complainant after deducting 10% of the basic sale consideration i.e., Rs. 47,17,000/- being earnest money along with interest on such balance amount at the rate of 11.10% as prescribed under rule 15 of the Rules, from the date of termination/cancellation 24.10.2019 till its realization.
 - 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.
32. The complaint and application, if any, stands disposed of.
33. File be consigned to registry.

Dated: 04.07.2025



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram