

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM****Complaint no.:** 7847 of 2022
Order pronounced on: 25.07.2025**1. Mrs Neeru Singh**
2. Mr Prakash Chand Jat**Both R/o:** - H. No-976, Sector 22B, Gurugram,
Haryana-122015**Complainants**

Versus

1. BPTP Limited
M-11, Middle Circle, Connaught Circus,
New Delh-110001
2. Countrywide Promoters Pvt. Ltd.
M-11, Middle Circle, Connaught Circus,
New Delh-110001**Respondents****CORAM:**
Shri Vijay Kumar Goyal**Member****APPEARANCE:**
Ms. Priyanka Agarwal (Advocate)
Shri Harshit Batra (Advocate)Complainants
Respondents**ORDER**

1. This complaint has been filed by the complainants/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 provision 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S. No. | Heads | Description | |
|--------|---------------------------------------------|---------------------------------------------------------------------|---------------------------------------------------|
| 1. | Name of the project | "Spacio", Sector 37D, Gurugram, Haryana | |
| 2. | Project area | 43.588 acres | |
| 3. | DTCP license no. | 83 of 2008 issued on 05.04.2008 | 94 of 2011 issued on 24.10.2011 |
| | Validity of license | 04.04.2025 | 23.10.2019 |
| | Name of the license holder of 83 of 2008 | M/s Super Belts and 4 others | M/s Countrywide Promoters Pvt. Ltd. and 11 others |
| | Licensed area | 23.814 acres | 19.744 acres |
| 4. | RERA registration number | 300 of 2017 dated 13.10.2017 | |
| | Validity of registration certificate | w.e.f. 13.10.2017 till 12.10.2020 | |
| 5. | Unit no. | P-904, 9 th floor, tower-P (Page no. 61 of complaint) | |
| 6. | Unit admeasuring | 1225 sq. ft. (Page no. 61 of complaint) | |
| 7. | Revised unit area | 1303 sq. ft. (as per offer of possession on page no. 115 of reply) | |
| 8. | Date of execution of flat buyer's agreement | 02.03.2012 (Page 56 of complaint) | |
| 9. | Possession clause | "3. Possession" | |

| | | |
|-----|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | <p>3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller/confirming party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. As prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Flat to the Purchaser(s) within a period of 36 months from the date of execution of agreement of the Flat or from the date of sanctioning of building plans. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority. (Emphasis supplied).</p> |
| 10. | Date of sanctioning of building plans | 21.09.2012 (PAGE 4 OF REPLY) |

| | | |
|-----|------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| 11. | Due date of delivery of possession as per clause 3.1 of the flat buyer's agreement | 21.03.2016 (Calculated from date of sanction of the building plans being later) ➤ Grace period is allowed |
| 12. | Total sale consideration | Basic - Rs 52,68,314/- (on page no. 66 of the complaint) Rs. 59,95,424/- page 115 of reply |
| 13 | Total amount paid by the complainant | Rs 44,21,047/- (on page no. 115 of reply) |
| 14 | Occupation certificate | 15.01.2021 (on page no. 110 of reply) |
| 15 | Offer of possession | 03.03.2021 (on page no. 113 of reply) |
| 16 | Demand letters on account of non-payment | 17.07.2021, 18.08.2021, 03.12.2021, 14.01.2022 |
| 17 | Termination letter | 11.11.2022 (page 113 of reply) |

B. Facts of the complaint

3. The complainant has submitted as under:

- That the complainant is a law-abiding citizens and consumers who have been cheated by the malpractices adopted by the respondent is stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainant being interested in the project because it was a housing project and the complainants had needed an own home for their family.

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- ii. That one-sided development agreement and inordinate delay in possession has been one of the core concerns of home buyers. The terms of the agreement are non-negotiable and buyers even if they do not agree to a term, there are no option of modifying it or even deliberating it with the builder.
- iii. That the said plot in the matter was first allotted to Mr. Amit Kumar Harish and Mr. Sanjeev Kalra in year 2011 but then 14th July 2011 it was sold through an agreement to sell, to Mr. Rajveer Singh F/O Mrs. Neeru Singh who booked the flat admeasuring 1225 sq. ft. in BPTP Spacio Sector- 37 D, Gurugram by paying a booking amount of Rs. 30,000/- through cheque/RTGS. on dated 07.07.2011.
- iv. That the complainant was allotted the flat no. P-904, 9th Floor, Tower-P, admeasuring 1225 Sq. ft. in Project "BPTP Spacio" Sector- 37 D, Gurugram, Haryana.
- v. That the respondent to dupe the Mr. Rajveer Singh in their nefarious net even executed buyer's agreement signed between Mr. Rajveer Singh and M/S BPTP Limited & Countrywide Promoters Pvt. Ltd on dated 03.03.3012, just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants.
- vi. That the total cost of the said flat is Rs. 45,59,700/- including BSP, EDC/IDC, CMC, Car Parking, ECC/PBIC/FFC including basic, development charges, club, firefighting & power backup installation charge, IFMS, car parking as per builder buyer agreement clause 2 and out of that sum of Rs. 44,21,047.70/- Paid by the complainants in time bound manner.

- vii. That it is pertinent mentioned here that according to the statement the complainant paid a sum of Rs 4421047/- before offer of possession which is more than 95% of total sale consideration as per BBA and after that the respondent terminated the unit as per BBA due date of possession of the unit was 02.03.2015 and the respondent offered the possession after 6 years of due date and terminate the unit without any prior notice to the complainants its illegal arbitrary.
- viii. Respondent 1 is main promoter, unilaterally introduce respondent 3 as a maintenance agency without taking prior consent from allottees and respondent no. 3 was start extracting money from allottees in the head of advance maintenance, IFMS, administrative charges and common electricity charges without giving physical possession. in case allottees are not paying these charges at the time of demand respondent 3 imposed interest charges @18% p.a either allottees liable to pay or not.
- ix. That the advance maintenance, IFMS and administrative charges was demanded by the Respondent -1 on the behalf of Respondent-3 & if the same was not paid by complainants before possession. But builder was not given physical possession of the flat. this is illegal arbitrary and unilateral. After that respondent no-3 was started to send maintenance bill without giving physical possession of property.
- x. That respondent was liable to hand over the possession of a said unit before 01.03.2015 so far from completion as per buyer's agreement clause no 3.1 but builder offered the possession on dated 03.03.2021 but flat are not in habitable condition.
- xi. That the respondents without any notice terminated the unit as per BBA respondent liable handover the possession before 01.03.2015 but offer of

- possession send on dated 03-03-2021 after 6 years of due date and illegal demands raised in this offer of possession without any calculation.
- xii. That the builder in last 10 years, many time made false promises for possession of flat and current status of project still desolated and raw not even 70% work is completed builder breach the trust and agreement.
- xiii. That respondent executed FBA is one sided at the time of offer of possession builder used new trick for extracting extra money from complainant and forcibly imposed escalation cost and wrongly justified it. It is understood when respondent booked the flat in 2011 and which was to be delivered by 2015 and therefore it is understood inflation was calculated at the time of booking. If project is delayed by the respondent, complainant is not responsible. When we see inflation index of past 18 year during this period rate of inflation is decreased so builder is liable to give discount in basic sale price rather than forcibly imposing escalation cost with unjustified reason. Basic sale price which was fixed at the time of booking so demand of escalation cost is totally illegal, arbitrary, unjustified and unacceptable.
- xiv. That the respondent at the time of offer of possession forcibly imposed escalation cost electrification & STP charges club membership charges and increased the super area of flat 1225 sq. ft to 1303 sq. ft. but carpet area remains same. Due to increase in super area payable amount was increased and it was created extra burden on complainant which has been objected by the complainant at the time of offer of possession, it is unjustified and illegal.
- xv. That respondent demanded 1 year advance maintenance charges, as per the Haryana Apartment Owners Act and the charges are to be paid monthly hence asking for the maintenance charges in advance for 12

months, without having given the possession and without the registration of the flat is absolutely illegal.

xvi. That the complainants Mr. Rajveer Singh and Mrs. Neeru Singh approached to the respondent for name substitution and name deletion request according our request the respondent accept the request and change the name accordingly and finally unit transfer to Mrs. Neeru Singh D/O Mr. Rajveer Singh and Mr. Prakash Chand Jat. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, and trick of extract more and more money from complainant pocket seems and that the same is evident from the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainant who has spent her entire hard earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainant great financial and emotional loss.

xvii. That the complainant does not want to withdraw from the project. The Promoter has not fulfilled his obligation therefore as per obligations on the promoter under sections 11(4), 12, 18, and 19(3) the promoter(s) are obligated to pay delayed possession interest to the allottee.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - i. Direct the respondent to give delayed possession interest from the due date of possession till the actual handover of the flat, with all amenities as specified in the brochure and builder buyer agreement.
 - ii. Direct the respondent to quash the termination letter.



- iii. Direct the respondent to quash the increased in super area of flat as carpet area remain same.
 - iv. To get an order in their favour by restraining the Respondent(s) from charging Cost escalation (cost escalation is wrongly computed).
 - v. To get an order in their favour by restraining the Respondent(s) from charging STP and electrification charges (As per BBA, electrification is already included in other head and builder demanded STP charges without actual cost certificate from a cost accountant or Architect and cost bifurcation).
 - vi. Direct the respondent to quash club membership charges.
 - vii. Direct the respondent not to charge holding charges.
 - viii. Restraining the respondents from charging GST as the due date of possession was much before July 2017 as the GST was implemented from July 2017 only.
5. On the date of hearing, the authority explained to the respondents/promoters 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 respondents

6. The respondents have contested the complaint on the following grounds:
- i. That the complainants being interested in the real estate development of the respondent no.1, known under the name and style of "Park Spacio" located at Sector 37-D, Gurugram, Haryana booked a residential unit in the said project. It is pertinent to mention that the project has all the necessary approvals and permissions.
 - ii. The original allottees, Mr. Amit Kumar Harish and Mr. Sanjeev Kalra booked a flat vide an application form dated 24.10.2010, subsequent to



which, the original allottees were allotted a flat bearing number P-904 in Tower P, tentatively admeasuring super build up area 1,225 sq. ft. vide allotment letter dated 14.02.2011. That it is an admitted fact that the unit was transferred to Mr. Rajveer Singh from the original allottees. That, Mr. Rajveer Singh stepped into the shoes of the original allottees on transfer of the unit to him.

- iii. That thereafter, the flat buyer's agreement dated 13.02.2012 was executed between the parties. It is pertinent to mention that the flat buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- iv. It is also an admitted fact that the name of Mrs. Neetu Singh was added to the unit after the request of Mr. Rajveer Singh, the then sole allottee of the unit. That thereafter, the allottees namely Rajveer Singh and Neeru Singh requested for name deletion of Mr. Rajveer Singh on 07.02.2019 and hence the name of Mr. Rajveer Singh was deleted from the documents. Subsequently, Mrs. Neeru Singh then requested for name addition of Mr. Prakash Chand Jat in the unit on 14.11.2019. That the unit then stood in the name of Mrs. Neetu Singh and Mr. Prakash Chand Jat, the complainants herein.
- v. That both the parties were obligated to fulfil their respective obligations as set out under the agreement. That the proposed due date of offer of possession, as per clause 3.1 of the agreement, was 36 months from the date of sanction of the building plan or execution of flat buyer's agreement, whichever is later with a grace period of 180 days, subject however, to the force majeure circumstances.



- vi. That the due date is calculated from the sanction of building plan (21.09.2012) being later as the flat buyer's agreement was executed on 02.03.2012. thus, the proposed due date for offer of possession comes out to be 21.03.2016.
- vii. Furthermore, it needs to be seen that the development of the unit and the project as a whole is largely dependent on the fulfilment of the allottees in timely clearing their dues. That the due date of offer of possession was also dependent on the timely payment by the complainants, which, the complainants failed to do. The demands were raised as per the agreed payment plan however, despite the same, the complainants have delayed the payment against the unit. That the total sales consideration of the unit was Rs. 59,95,424/- out of which the complainants had/have only made payment of Rs. 44,21,047/-.
- viii. That it was the obligation of the complainants to make the payments as per the agreed terms and conditions of the agreement. That the timely payment of the sales consideration of the unit was the essence of the agreement executed between the parties as per clause 11 of the agreement. That in case of default by the complainants, the complainants bound to make the payment of interest.
- ix. It is submitted that the demand letters were raised as per the agreed payment plan however, the complainants had continuously delayed in making the due payments, upon which, various payment request letters and reminder notices were also served to the complainants from time to time. The list of demand and reminders is as under:

| | |
|--------------------|------------|
| Reminder Notice-I | 17.07.2021 |
| Reminder Notice-II | 18.08.2021 |



| | |
|---------------------|------------|
| Reminder Notice-III | 03.12.2021 |
| Final Demand Notice | 14.01.2022 |

- x. That the respondent no.1 has complied with all of its obligations, not only with respect to the flat buyer's agreement with the complainants but also as per the concerned laws, rules and regulations thereunder and the local authorities. That despite innumerable hardships being faced by the respondent no. 1, the respondent no.1 completed the construction of the project and applied for the occupation certificate before the competent authority and successfully attained the occupation certificate dated 15.01.2021.
- xi. That only after obtaining the requisite permissions, the respondent no.1 legally offered the possession of the unit to the complainants on 03.03.2021. It is pertinent to mention that vide letter dated 03.03.2021 regarding the offer of possession, the complainants were also asked to make the requisite payment based on the statement of final dues and complete the documentation required to enable the respondent no.1 to initiate the process of handover of unit and registration of sale deed, however, the complainants never turned up to take the possession of the unit or remit the outstanding sales consideration of the unit.
- xii. It is moreover submitted that the respondent no.1 had at the time of offer of possession already credited Rs 4,30,683/- in the account of the complainants.
- xiii. That the complainants stood in the event of default for not making payment, not taking possession of the Unit, non- execution of sale deed, and non-payment of statutory dues. Accordingly, the respondent no.1 had

a right to terminate the unit as per the agreed terms and conditions under the agreement. That multiple opportunity was given to the complainants to rectify their default through the reminder notices dated 17.07.2021, 18.08.2021, 03.12.2021 and final demand notice for payment of outstanding amount dated 14.01.2022, however, the complainants again willingly and voluntarily chose to not rectify the same, and consequently, after waiting for more than one year from the offer of possession letter, the respondent no.1 was constrained to terminate the allotment of the unit of the complainants by issuing the termination letter on 11.11.2022. It is submitted that the said termination letter was duly served to the complainants vide email dated 15.11.2022.

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 these undisputed documents and submission 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 allottee as per 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

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 complainant at a later stage.

F. Findings on the objections raised by the respondents:**F.I. Objection regarding wrongful impleadment of respondent no.2 in the array of parties.**

12. The respondents have raised an objection of wrongful impleadment of respondent no.2 i.e., M/s. Countrywide Promoters Pvt. Ltd. in the array of parties. The respondent no.1 stated that respondent no. 2 is only a confirming party in the Agreement and no specific relief has been sought by the complainant from respondent no.2.
13. As per record available the respondent no.2 is a Confirming party to the Agreement dated 02.03.2012 and was granted licence by the Director, Town and Country Planning, Haryana vide licence no. 83 of 2008 and 94 of 2011. The respondent no. 2 cannot escape its responsibility and obligations

to the allottees of the project being licensee of the project and is covered under the definition of promoter within the meaning of 2(zk)(i),(v).

14. Promoter has been defined in section 2(zk) of the Act. The relevant portion of this section reads as under: -

"2. Definitions. — In this Act, unless the context otherwise requires —

(zk) "promoter" means, —

(i)

(ii) a person who develops land into a project, whether or not the person also constructs structures or any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures there; or

(iii) xxx

(iv) xxx

15. As per aforesaid provisions of law, respondent no.1 & 2 will be jointly and severally liable for the completion of the project. Whereas, the primary responsibility to discharge the responsibilities of promoter lies with respective promoter in whose allocated share the apartments have been bought by the buyers. In view of the same, the contention/objection of respondent no.1 stands rejected.

F.II Objection regarding Force Majeure circumstances:

16. The respondent no.1 has raised the contention that the construction of the project, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction and development activities, restrictions on usage of water. The plea of the respondent no.1 regarding various orders of the NGT and all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent no.1 leading to such a delay in the completion. Thus, the respondent no.1 cannot be given any leniency based on aforesaid reasons as it is well settled principle that a person cannot take benefit of his own wrong.



17. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020 has observed that:

69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

18. The respondents were liable to complete the construction of the project and the possession of the said unit was to be handed over by 21.09.2015 and the respondents are claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant:

G.I. Direct the respondent to give delayed possession interest from the due date of possession till the actual handover of the flat, with all amenities as specified in the brochure and builder buyer agreement.

G.II. Direct the respondent to quash the termination letter.

19. All these reliefs sought by the complainants are being considered together.
20. The complainants were allotted a unit bearing no. P-904, 9TH Floor in the project of the respondents named "Spacio" at Sector-37D, Gurugram for a

sale consideration of Rs.52,68,314/-. A flat buyer's agreement was executed between the complainants, respondent no.1 and 2 on 02.03.2012.

21. The complainants-allottees have paid a total amount of Rs.44,21,047/- against the sale consideration of Rs.52,68,314/-, which is 82% of the sale consideration. The plea of the respondent is that the plot of the complainants was cancelled by the respondent vide termination letter dated 11.11.2022 on account failure of the complainants to make payment of the outstanding dues.
22. Herein, the complainants intend to continue with the project and are seeking quashing of notice for termination dated 11.11.2022. Now, the question before the authority is whether the notice for termination letter dated 11.11.2022 issued by the respondent to the complainants is valid or not, in the eyes of law?
23. It is matter of record that the complainants paid an amount of Rs.44,21,047/- towards sale consideration of Rs.52,68,314/- as per the statement of accounts filed with the complaint. However, the rest of payment was payable at the time of offer of possession and the respondent has issued intimation of possession with respect to the allotted unit on 03.03.2021 i.e., after obtaining occupation certificate from the concerned department on 15.01.2021 along with an additional charge of Rs.18,91,376/-. Thus, the offer of possession dated 03.03.2021 is valid offer of possession.
24. On 17.07.2021, the respondents made a demand for the payment of rest of the amount after achieving the milestone "at the time of offer of possession". Then respondent then issued various demand letters dated 17.07.2021, 18.08.2021, 03.12.2021 and 14.01.2022 but the complainants had failed in making the complete payment. Therefore, the respondents have submitted that they have raised all the demands as per the payment plan, but the



complainants had even failed in making the undisputed amount as per agreement. Upon the continuous act of non-payment, the unit was terminated on 11.11.2022.

25. Moreover, it is contended that the respondents have increased the super area of the subject unit without giving any formal intimation, by taking any written consent from the allottees. On perusal of record, the super area of the unit was 1225 sq. ft. as per the flat buyer's agreement and it was increased by 78 sq. ft. which is 6.37% vide letter of offer of possession, resulting in total super area of 1303 sq. ft. The authority holds that the super area (saleable area) of the flat in this project can be increased upto 15% as per the agreement executed between the parties.
26. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that as per the payment plan agreed between the parties, the complainant was obliged to make payments on time. It is notable that the respondents have sent several reminders as per the payment plan agreed between the parties, but the same having no positive results and ultimately leading to cancellation of unit vide email dated 11.11.2022. Further, Section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary payments in a timely manner. Especially, when the unit is completed and OC has been obtained by the respondents. Further, adequate opportunities had also been given to the complainants through reminder letters on 17.07.2021, 18.08.2021, 03.12.2021 and 14.01.2022. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 02.03.2013 is held to be valid. But while cancelling the unit, it was an obligation of the respondents to return the paid-up amount after deducting the amount of earnest money. However, the deductions made

from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land 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 *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage.* National Consumer Disputes Redressal Commissions in ***CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in ***CC/2766/2017*** in case titled as ***Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022***, held that *10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money"*. Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

27. Keeping in view the aforesaid factual and legal provisions, the respondents/promoter is directed to refund the paid-up amount of Rs.44,21,047/- after deducting 10% of the sale consideration of Rs.52,68,314/- being earnest money along with an interest @10.90% p.a. (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 on the refundable amount, from the date of cancellation i.e., 11.11.2022 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.
28. In view of the findings detailed above, the rest of the reliefs sought by the complainant becomes redundant and no direction to the same.

H. Directions of the authority

29. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act in respect all matter dealt jointly to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondents/promoter are directed to refund the paid-up amount of Rs. 44,21,047/- after deducting 10% of the sale consideration of Rs.52,68,314/- being earnest money along with an interest @10.90% p.a. (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 on the refundable amount, from the date of cancellation i.e., 11.11.2022 till its realization.

ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

30. Complaint stands disposed of.

31. Files be consigned to registry.

Dated: 25.07.2025


Vijay Kumar Goyal
(Member)

Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM