

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

Complaint no.: 317 of 2022
Date of decision: 04.09.2025

1. Karamvir S/o Sh. Ram Dass
2. Lokesh Shokeen S/o Sh. Balraj Singh
Both RR/o: - Village Daultabad, Sector- 103, Tehsil Kadipur, District Gurugram- 122006
3. Late Sanjay Lakra through Lehal Heir
Sumitra, Poonam Shokeen, and Ajay Lakra
(Through SPA Holder of Legal heir of Sanjay Lakra Sumitra, and Ajay Lakra)

R/o:- House No. 267/1, Pachhiya Mohalla, opposite Government Girls School, Chhawla, South West Delhi- 110071

Complainants

Versus

M/s Satya Developers Private Limited
Registered office at:- 34 Baber Lane, Bangali Market, New Delhi- 11001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Harshit Batra, (Advocate)

Complainants

Shri Arul Prakash, (Advocate) alongwith Sh. Girish Kalra
(AR of the company)

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section

11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and Regulations made there under 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	'The Hermitage', Sector-103, Gurugram
2.	Project Area	10.02 acres
3.	Nature of project	Residential Complex
4.	DTCP license no.	28 of 2011 dated 28.03.2011 Valid/renewal upto 27.03.2019
5.	Name of license	Satya Developers Pvt. Ltd.
6.	RERA Registration	Not Registered
7.	Unit No.	04, 11 th floor, Tower-08 (Page no. 28 of complaint)
8.	Unit area admeasuring	2555 sq. ft. (Page no. 28 of complaint)
9.	Date of buyer's agreement	25.12.2013 (Page no. 26 of complaint)
10.	Possession clause	6.2 Possession Clause <i>That the Developer shall, under normal conditions, complete the construction of tower in which the Said Unit is to be located within a period of 36 (Thirty-Six) months from the start of construction of the said tower or execution of this Agreement whichever is later beyond which, the Developer shall further be entitled to a grace period of another 6 (Six) months. The construction shall be in accordance with the said Plans and specifications stated herein as Annexure-4 subject to such additions, deletions, alterations,</i>

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		<i>modifications in the layout, tower Plans, change in number, dimensions, height, size, area, specification of the Said Unit or change of entire scheme as the Developer may consider necessary or may be required by any competent authority to be made in them or any of them.</i>
11.	Due date of possession	25.06.2017 (Calculated from the execution of BBA and grace period is allowed being unconditional & unqualified)
12.	Total sale consideration	Rs.1,34,34,190/- (Page no. 28 of complaint)
13.	Amount paid by the complainants	Rs.77,23,548/- (As alleged by the complainants on page no. 12 of complaint)
	Amount paid back to complainants	Cheque of Rs.2,83,964/- to each allottee (but not encased by the complainants as per the complainant page 13 of complaint and the same is admitted by the respondent in its reply)
14.	Occupation certificate	12.08.2016 (Page no. 67 of reply)
15.	Offer of possession	29.08.2016 (Page no. 59 of reply)
16.	Arbitral award	09.08.2018 (Page no. 17 of reply)
17.	Reminder letters	20.12.2016, 09.01.2017, 15.02.2017 and 21.03.2017 (Page no. 69 to 83 of reply)
18.	Final opportunity to take over the possession letter by respondent	15.04.2017 (Page no. 80 of reply)
19.	Cancellation of unit	09.08.2018 (As per direction passed by Ld. Arbitrator for cancellation of unit)
20.	Occupation Certificate	12.08.2016 (page 67 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions: -

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- a) That the respondent company advertised to open registration and booking of a residential unit no. 04, built up area 1916 sq. ft. (178.00 sq. metres) and common area 639 sq. ft. (59.33 sq. metres.) total/super area 2555 sq. ft. (237.33 sq. metres.) on 11th floor in Tower 08 of their newly built project named as "The Hermitage" at Sector - 103, Village Daultabad, Gurugram. That the respondent company was represented by Mr. Kamal Raj Gupta as the authorized representative and invite the complainants/allottee(s) to book a residential unit in said project. That the respondent company arranged the visit of its representatives through Mr. Kamal Raj Gupta to the complainants and he also assured the same as assured by respondent company to the complainants, wherein it was categorically promised by the respondent company that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and would allot the residential unit in the name of complainants immediately upon the booking.
- b) That the respondent company issued a customer id no. TH-0399 and registered details in their database against the booking of said residential unit T8-1104 on dated 07.09.2013, in favour of the complainants. That the complainants again paid an amount of Rs.8,27,090/- through Gurgaon Gramin Bank cheque no. 061795 dated 09.09.2013 issued on the name of the respondent company as per their demand at their office. That the complainants once again paid an amount of Rs.27,96,458/- through Gurgaon Gramin Bank cheque no. 066634 dated 12.12.2013 issued on the name of the respondent company as per their demand. That all the above said amount of issued cheques of the complainants were well received and encashed by the respondent company.
- c) That the respondent company called the complainants to sign and execute written buyers agreement for allotment of the detailed residential unit in

namely project. That a buyer's agreement was executed and signed on date 25.12.2013, between the parties. That the complainants also paid an amount of Rs.36,00,000/- against the said booked residential unit through Gurgaon Gramin Bank cheque no. 068791 dated 29.08.2014, issued on the name of the respondent company as per demands. That the respondent company released an acknowledgement and account statement up to date 30.08.2014, after well receipt of the total amount of Rs.77,23,548/- in favour of the complainants against the detailed booked residential unit in namely project 'The Hermitage'. That all the amount was encashed by the respondent company and the same is clear crystal from the bank account statement of the complainant.

- d) That the respondent company are bound with the terms of buyer's agreement dated 25.12.2013 well executed and signed by them and the complainants. That a basic sale consideration of the allotted unit of Rs.1,27,95,440/- was fixed as per clause 2.1(v) of the signed buyer's agreement dated 25.12.2013 and an additional amount of Rs.6,38,750/- was asked being PLC accordingly the said booked residential unit was sold to the complainants on a total sale consideration amount of Rs.1,34,34,190/-. That the terms of payments be offered and settled and be paid on the basis on/ over Possession linked payment plan/PLP with car parking and other facilities as and when provided by the respondent company. That the complainants were paid more than half amount of Rs.77,23,548/- to the respondent company in regard to this deal and the same were well received and used by the respondent company, which include basic sale price, preferential location charges, parking charges and service tax etc. That it was fixed that 50% amount of the total sale consideration shall be paid at the time of the allotment and possession of

the said booked residential unit in favour of the complainants as per terms and conditions of the buyer's agreement.

- e) That the respondent company agreed and assured to deliver possession within 36 months of the said booked residential unit in favour of the complainants as per clause 6.2 of well executed buyer's agreement. That the respondent company assured to pay a penalty of Rs.5/- per sq. ft. per month, if they fail to give possession within 30 days after paying all dues as per clause 6.3 of well executed buyer's agreement means if the respondent company failed to give possession within 36 months in that circumstances are liable to pay a penalty of Rs.5/- per sq. ft. i.e., Rs.2555 x 5= Rs.12,775/- per month to the complainants. That the respondent company also abide by the clause 4.3 of well executed buyer's agreement by refunding paid amount of the complainants along with a simple interest of 10% p.a., if the respondent company failed to allot the residential unit within time limit of 36 months.
- f) That all of a sudden during Covid-19 pandemic lockdown period the complainants received letter dated 24.08.2020, with envelopes on the name of the respondent company through post without signature and name of the issuing authority of the respondent company accompanied with two Kotak Mahindra Bank Cheques No. 007114, 007115 dated 17.08.2020 each of an amount of Rs.2,83,964/- on the name of complainants namely Karamvir & Lokesh Shokeen respectively, and one Kotak Mahindra Bank Cheques No. 007116 dated 17-08-2020 of amount of Rs.2,83,965/- on the name of another complainant namely Sanjay Lakra. That all the three cheques are not encashed till date by any of the complainants as doubtful and without any reason, details, authentication and contract sent to the complainants. That in said letters dated 24.08.2020, the respondent company wrong and illegally without any prior notice, reason and

authentication tried to cancel the said booked residential unit of the complainants for which they have no right and title to do so.

- g) That the respondent company without prior notice, intimation and raising any earlier demand letter whatever in the notice and knowledge wrong and illegally cancelled the same booked residential unit of the complainants without any reason, right and title and did offence and breach the contract terms of executed buyers agreement. That the complainants are not so educated and couldn't understand the contents of issued letter dated 24.08.2020 and ulterior motive of the respondent company. That whenever find convenient during the restricted lockdown period complainants visited to the site and office of the respondent company to know about the reason of issued cheques and letter on the name of the complainants although they always eager and several time approached to the respondent company persons/officials and asked for allotment and possession of their booked residential unit. That the complainants also complained the matter to the respondent company time to time in this period but they excuse by one pretext to other and even not bother to reply satisfactorily with appropriate reasons.
- h) That the respondent company agreed to sell residential unit T8 -1104, vide buyer's agreement to sell dated 25.12.2013 in favour of the complainants. That the respondents well received total amount of Rs.77,23,548/- till date from the complainants as a consideration amount against the sale of detailed unit. That despite getting the sale consideration as per demand, the respondents failed to deliver the possession of the detailed residential unit. That the respondent company in the above tenure demanded and received more than 50% of sale consideration amount one by one from the complainants and failed to do any progress and development works according to their commitments and assurances and even not reported

well about the status of the work on progress and failed to offer/deliver allotment and possession of the booked residential unit in namely project. That the complainants even failed to receive loan facility from their banker due to not providing, completion and supply of necessary documentation and information from the respondent company of said booked residential unit in namely project. That all the act and conduct of the respondent company are totally doubtful, wrong and illegally and against the contract with the complainants in regard to booking of the detailed unit of namely project.

- i) That the complainants issued a legal notice No. 427 dated 06.12.2021, through counsel which were served through speed post to the respondent company to their registered and corporate office. That the complainants through counsel call upon the respondent company to take back served letter dated 24.08.2020 along with accompanied three detailed cheques and requested to go ahead and update the status and deliver possession of the registered residential unit T8-1104 in the said project and if not possible the same than to refund the total paid amount of Rs.77,23,548/- with interest of 24% p. a. to the complainants without any delay, but in vain. That the same legal notice of the complainants through counsel were well received by the respondent company on date 07/08.12.2021, but the respondent company not bother to contact or reply to the said legal notice till date and avoid with ulterior motive the request of the complainants being dishonest.
- j) That it is submitted that the subject matter of the present complaint is with respect to possession along with delay of possession charges upon the money/amount paid by the complainants with the penalty, interest, therefore, it falls within the provisions of the Act, 2016 and the Rules, 2017. As per rule 15 of the Rules 2017, the respondent is liable to pay

interest and compensation as per the highest State Bank of India Marginal cost of Lending Rate (MCLR) plus two percent.

- k) That the complainants have suffered heavy monetary loss just because of the unfair trade practices adopted by the respondent company in their business practices with respect to the said residential unit. That respondent company has forced the complainants to suffer grave, severe and immense mental and financial harassment and loss with no fault on their part. That the respondent company is therefore, liable to pay the damages and compensation for the monetary loss and harassment suffered by the complainants due to the refusal or delay in delivery of possession of aforesaid residential unit.
- l) That the cause of action accrued in favour of the complainants and against the respondent company on 03.08.2013 when the complainants had booked the said residential unit and it further arose when the respondent company failed/ neglected to deliver the said residential unit. The cause of action is continuing and is still subsisting on day-to-day basis. That no other civil/ criminal case is pending between the parties in any other office/authority/ forum/commission or court of law. Hence, the present complaint.

C. Relief sought by the complainants

4. The complainants have sought following relief(s):
1. Direct the respondent to refund the entire paid amount along with interest from the date of cancellation till its actual realization. (During proceeding dated 04.09.2025, the counsel for the complainants brought to the notice of the Authority, the complainants have filed the present complaint on 15.02.2022, and seeking the relief of physical possession of the allotted unit along with delayed possession charges, but the

respondent unilaterally created 3rd party rights and execute a conveyance)

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 contested the complaint on the following grounds:-
- a) That the complainants have no right or title in respect of the unit in dispute before this Authority as the unit allotment was terminated and stood cancelled as per the Award dated 09.08.2018 passed by the Ld. Arbitrator and the same unit was allotted to Ms. Anita Bharti and executed conveyance deed on 29.05.2019 in the favour of Ms. Anita Bharti. The complainants were fully aware of such facts related to the cancellation of the buyer's agreement which is intentionally concealed by the complainants in the present complaint in order to extort money from the respondent company by filing false and frivolous complaint against the respondent. Thus, there is no legal, valid and existing agreement between the complainants and the respondent. As aforesaid mentioned it was cancelled by the ld. arbitrator vide order dated 09.08.2018. Thus, in the present complaint as filled by the complainants against the respondent company is not maintainable.
- b) That the complainants have filed the present complaint before this Authority despite of the Award passed by the Ld. Arbitrator vide Award dated 09.08.2018 instead of challenging the said Award. It was held in ***Vikram Choudhary & Anr. Vs Country Colonizers Pvt.Ltd. & Anr.*** by the Hon'ble Real Estate Regulatory Authority, Punjab that "*If at all the Complainants had any grievance against the award of the Arbitrator, they should have challenged it.*" Thus, in the present case the complaint is not

maintainable on the ground that complainants should have challenged the Arbitral award dated 09.08.2018 instead of filing complaint of the pre decided subject matter.

- c) That the complainants have concealed very relevant and material facts from this Authority and deliberately with ulterior motives concocted a story to get reliefs to which the complainants are not at all entitled, by misleading the Authority by non-disclosing the Arbitral Award passed by the Ld. Arbitrator. It was held in ***Kishore Samrite vs. State of U.P. & Others reported in 2013(2) SCC 398*** in para 32 & 36 which reads as follows –

"32 The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorized or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs."

"36 Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (Buddhi Kota Subbarao (Dr.) v. K. Parasaran, (1996) 5 SCC 530)."

- d) Thus, as per the aforesaid paras it is respectfully submitted that a litigant shall not abuse the process of the Court for certain unauthorised or unjust gains and bound to make full and true disclosure of the facts. The complainants in the present complaint mis led the Authority in order

to obtain wrongful and unjust gains. Hence the present complaint is liable to be dismissed. Despite passing of the award and having its knowledge the complainants preferred not to challenge it before appropriate forum within time. The complainants failed to challenge the said Award under Section 34 of the Arbitration & Conciliation Act, 1996. By service of the aforesaid Arbitral award dated 09.08.2018 by the Ld. Arbitrator, the complainants were well aware of the cancellation of the agreement executed between the parties in compliance of the directions passed by the Ld. Arbitrator vide award dated 09.08.2018 and subsequent to cancellation of the unit. On 28.08.2020 the respondent refunded the amount as per the award by way of three cheques issued to all of the three complainants separately via cheque bearing no. 007114, 007115 and 007116. Thus, at present the respondent does not have liability in favour of the complainants.

- e) That the complainants approached the respondent company and expressed their desires/interests in purchasing a unit in the said project and upon the complainant's request, the respondent company allowed the respondents to inspect the said lands, plans, ownership records of the said lands and other documents relating to the title, area and other relevant details. That after going through all the relevant documents and the terms and conditions, the complainants signed the application form dated 03.08.2013 and deposited the advance payment amount of Rs.5,00,000/- with the respondent company. Following the application form the respondent company duly sent the 2 (two) copies of the buyer's agreement allotting the unit in tower no. 08, being Unit No. 04 on the 11th Floor, admeasuring approx. 2555 sq. feet of Super Area) along with letter dated 12.12.2013 for the complainant to sign and return for further action within 7 (Seven) days from the date of the letter. That in the aforementioned

letter the complainants were specifically requested to go through all the terms of the buyer's agreement and it was mentioned that only once the complainants have read and accepted the terms of the agreement, they were to return the agreement for the signatures. In case the complainants do not wish to go ahead with the execution of the agreement, then they had an option to withdraw from the scheme and were entitled to seek refund of their monies. This shows that the complainants from the start were well aware of all the terms and conditions of the buyer's agreement and had opted to abide by the same by executing the buyer's agreement on 25.12.2013.

- f) That the respondent company addressed final call letter dated 29.08.2016 informing the complainants that in light of the occupancy certificate having been applied for by the respondent company on 02.02.2016 in respect of Tower- 6, 7 & 8 along with the part of basements of its project- the hermitage and having received the same on 12.08.2016, the respondent company had commenced the handing over the possession of the said unit. That vide the said letter, the complainants were informed that the actual physical possession of their unit shall be handed over to them within 30 days of submission of all the requisite documents of possession to the respondent and after payment of all the dues in terms of the enclosed statement of accounts. That vide the aforesaid letter, the complainants were called upon to pay the amounts of Rs.1,01,44,463/- towards final payment due to the respondent. The respondent company attached a detailed statement of accounts with the said letter in order to clarify any doubts with respect to the outstanding sum payable by the complainants.
- g) That the complainants failed to clear their dues against the demand raised by the respondent company in the final call letter on account of which the

respondent has been constrained to issue reminders to the final call letter dated 29.08.2016 on 20.12.2016, 09.01.2017, 15.02.2017, 21.03.2017 along with various emails till 15.04.2017 despite of which the complainants have failed to clear their dues towards the respondent company. That clearly the complainants have failed to perform its obligations under the buyer's agreement despite of which the respondent company was throughout ready and willing to perform its part of the obligation but the complainants with mala fide intention to wriggle out from the buyer's agreement were not coming forward to pay the balance sale consideration in terms of the reminders, final call letter and subsequent reminders and complete the possession formalities in respect thereof.

- h) That in these aforesaid circumstances, the respondent in order to amicably resolve the issues invoked this arbitration pursuant to clause 20 of the said buyers agreement via letter dated 22.11.2017. In pursuant to such letter dated, the appointment of Arbitrator was made and the same was communicated to the complainants through speed post on 04.12.2017. That the Arbitration proceedings commenced on 06.01.2018 the complainants did not appear for the proceedings and the matter was adjourned for 03.02.2018. The aforesaid order dated 06.01.2018 was sent to the complainants through speed post and the same was delivered to them on 13.01.2018 as per the tracking report of postal department available on its website.
- i) That again on 03.02.2018, the complainants failed to comply with the aforesaid order and further reasonable opportunities were given to the complainants to cause their presence in the matter on 10.03.2018 and 17.03.2018 whereby it was duly informed to the complainants that if they failed to appear, the Arbitral Tribunal will proceed ex-parte against the

complainants. The aforesaid order dated 03.02.2018 was sent to the complainants via speed post. Thus, it is pertinent to mention that the complainants were wholly aware of the Arbitral Proceedings from the commencement date till the last and final opportunity given by the Arbitral Tribunal. That on 09.08.2018 due to the non-appearance of the complainants despite of giving ample of opportunities the award was passed by the Ld. Arbitrator in favour of the respondent and against the complainants.

j) Thus, in compliance and accordance of the Award passed by the Ld. Arbitrator the complainants and respondent agreement stood cancelled. Further the allotment was made to another party due to termination of buyer's agreement between the complainants and the respondent. They have no vested right in the subject matter of the dispute in present complaint and hence the complaint is not maintainable and liable to be dismissed. In compliance of the directions passed by the Ld. Arbitrator vide Award dated 09.08.2018, and subsequent to cancellation of the unit. On 28.08.2020 the respondent refunded the amount as per the award by way of three cheques issued to all of the three complainants separately as follows: -

- Cheque no. 007114 drawn on Kotak Bank in favour of Karamveer for an amount of Rs.2,83,964/-.
- Cheque no. 007115 drawn on Kotak Bank in favour of Lokesh Shokeen for an amount of Rs.2,83,964/-.
- Cheque no. 007116 drawn on Kotak Bank in favour of Sanjay Lakra for an amount of Rs.2,83,965/-.

k) That on 06.12.2021, after almost 3 years of the aforesaid Award being passed by the Ld. Arbitrator, the complainants sent a legal notice to the Respondent and demanded the possession of the aforesaid Unit which is the subject matter of the dispute in the present complaint which was baseless and completely frivolous as the said unit belongs to another party

as a matter of fact the agreement was terminated in accordance with the award passed by the Ld. Arbitrator on 09.08.2018.

- l) That after cancellation and termination of the aforesaid Agreement in terms of the award the complainant is left with no right, title or interest in Unit No. 1104, on 11th Floor, in Tower - 08, in "The Hermitage", Sector - 103, Gurgaon and after making the refund as aforesaid, the respondent stood discharged of its liability and was free to sell/allot the said unit to any person in terms of the Award. Furthermore, at present, the complainants have no right to sue the respondent in respect of the said agreement. Hence the complaint is liable to be dismissed with exemplary cost.
- m) That it is respectfully submitted that subsequent to cancellation of the aforesaid agreement the respondent sold the said unit to Ms. Anita Bharti and executed conveyance deed on 29.05.2019 in her favor. The complainants filed the present complaint to extort money from the respondent by filling false, frivolous and baseless complaint by further concealing the facts of the arbitral proceedings as the complainants were fully aware of the Award dated 09.08.2018, and the complainants are not entitled to get any relief from the Authority.
7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
9. The complainant and respondent have filed the written submissions on 28.08.2025 and 20.08.2025 respectively which are taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainants.

E. Jurisdiction of the authority

10. 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

11. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

12. 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 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.”

13. 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. Finding on the objection raised by the respondent.

F.I Objection regarding the complaint being barred by limitation.

14. The counsel for the respondent submitted that the complainant has filed the present complaint on 15.02.2022 after cancellation of the unit on 09.08.2018. Therefore, the present complaint is barred by limitation.

15. 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. As discussed earlier, the subject unit was allotted on 25.12.2013. Though the possession of the unit was to be offered on or before 25.06.2017 after receipt of occupation certificate on 12.08.2016 and offered the possession of the same on 29.08.2016. Thereafter, due to non-payment the subject unit was cancelled on 09.08.2018. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 09.08.2018. The present complaint seeking refund the entire paid amount was filed on 15.02.2022, which is 3 years 6 months and 06 days from the date of cause of action.
16. It is also observed that the Hon'ble Supreme Court in its order dated **10.01.2022 in MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. 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 23.07.2023. 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.

F.II Objection regarding maintainability of complaint as the dispute with regard to the subject unit was resolved by the arbitration clause which refers to the dispute resolution system mentioned in agreement.

17. The respondent has raised an objection that the present complaint is not maintainable before this Authority as the dispute had already been amicably settled between the parties by the sole arbitrator Sh. Suresh Chandra Sharma, (Advocate) vide his order dated 09.08.2018. Further, as per clause 20 of the

buyer's agreement entered between the parties on 25.12.2013, the complainants and the respondent company agreed that in case any dispute arise between the parties, the said dispute would be resolved only through the Dispute Resolution Mechanism. Clause 20 of the buyer's agreement is reiterated herein for ready reference:-

20. ARBITRATION

20.1 It is agreed between the parties that any dispute which may be in relation to this present Agreement would not be taken up by the parties against each other in any criminal complaint either to the police or any Court.

*Both parties specifically waive their rights to do so against each other. The Buyer also waives his right to file Consumer Complaint on any issue which may be connected or arise out of this Agreement. **Parties agree to resolve their entire disputes through the Dispute Resolution Mechanism agreed herein below.***

20.2 That in case of any dispute or controversy arising out of or in connection with this Agreement the same shall be referred to the Arbitration of a Sole Arbitrator to be appointed by the Managing Director of the Developer. The arbitration proceedings shall be held in accordance with the Arbitration & Conciliation Act, 1996, and the Rules made there-under as amended from time to time. The place of Arbitration shall be New Delhi only and the language of the arbitration shall be English.

The cost of arbitration including the arbitrator's fee shall be shared jointly by the Developer and the Buyer. The parties agree that during the pendency of the Arbitration, the parties shall continue to discharge their respective obligations under this Agreement.

20.3 The rights and obligations of the parties under or arising out of this Agreement shall be construed and enforced in accordance with the laws of India.

18. In view of the above, the respondent company appointed Sh. Suresh Chandra Sharma, (Advocate) as a sole Arbitrator to resolve the dispute between the parties as per clause 20 of the buyer's agreement. The arbitration proceedings commenced on 06.01.2018 and continued till 09.08.2018 but the complainants did not appear before the Ld. Arbitrator on any of the date fixed for proceedings. Due to non-appearance of the complainants despite giving many opportunities, the Ld. Arbitrator passed an award on 09.08.2018. As per the award dated 09.08.2018, the Ld. Arbitrator held as follow:

"It is thus clear from the evidence that the Respondents have failed to pay the balance sale consideration as agreed by them under the Buyer's Agreement and failed to honour their obligations. Further the Respondents

have not appeared before this Tribunal despite awarding various opportunities and there is no rebuttal against the evidence of the Claimant Company and as such there is no cogent reasons to reject the evidence of the Claimant Company.

In the result, taking all circumstances into consideration and for the reasons aforesaid, an arbitral award is made in favour of the Claimant Company and against the Respondents, as under:

- i. The Buyer's Agreement dated 25.12.2013 between the Claimant Company and the Respondents is cancelled/terminated and the Claimant Company is entitled to forfeiture of earnest money and deductions towards the losses suffered by the Claimant company towards Brokerage, tax(es) and Interest @18% per annum on delayed payments.*
- ii. The Respondents have proceeded ex-parte and have not paid arbitration fees of their share and therefore the Complainant Company is entitled to further deduct the arbitration fees of the Respondent's share of Rs.50,000/- and litigation cost of Rs.50,000/- over and above the earnest money.*
- iii. The Claimant Company is directed to pay the balance amount to the Respondents after deductions as mentioned in Para (i) and (ii) above after selling of the said unit in the market.*
- iv. The Respondents shall have left with no right, claim and interest in the residential Unit No. 04 on 11th Floor in Tower-08 in the Hermitage, Sector-103, Gurgaon, Haryana and the Claimant Company shall be free to sell/allot the same to any person.*

A signed copy of this Arbitral Award be sent to the parties in terms of Section 31 (5) of the Arbitration and Conciliation Act, 1996 as amended time to time."

19. The counsel for the respondent submits that once an arbitration award is being passed by the sole arbitrator for the unit in question, this Authority has no jurisdiction to entertain the complaint. Hence, the respondent prays that the present complaint be dismissed being not maintainable before this Authority.
20. The Authority being a quasi-judicial body, is guided by the principles of natural justice and is duty-bound to ensure that the interests of all stakeholders are fairly represented and protected. Where a contractual clause, such as the one providing for unilateral appointment of an arbitrator, is found to be violative of principles of fairness, equity, and public policy, the Authority is well within its powers to declare such a clause void and unenforceable. In

doing so, the Authority does not rewrite the contract but merely ensures that contractual terms do not override fundamental legal norms and public interest.

21. The Authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that Section 79 of the Act bars the jurisdiction of civil courts with respect to any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, Section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the Authority.
22. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows: -

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in *A. Ayyaswamy (supra)*, the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...
56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

23. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC. The relevant paras are of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act.

The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

24. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint.

G. Findings on the relief sought by the complainant.

F.1 Direct the respondent to refund the entire paid up amount along with interest from the date of cancellation till its actual realization;

25. In the present complaint, the subject unit was booked by the three allottees namely Karamvir, Lokesh Shokeen and Late Sanjay Lakra i.e., complainants herein in the project of the respondent/promoter namely, 'The Hermitage', situated in Sector-103, Gurugram. The complainants herein and the respondent company has entered into a buyer's agreement on 25.12.2013 for the unit no. 04, tower-8, 11th floor for a unit admeasuring 2555 sq. ft. super area for an agreed sale consideration of Rs.1,34,34,190/- against which the complainants paid an amount of Rs.77,23,548/- i.e., 57.49% of the sale consideration. The complainants have opted the possession linked payment plan. The occupation certificate of the project was obtained by the respondent/promoter on 12.08.2016 and thereafter, possession of the allotted unit was offered to the complainants on 29.08.2016. Thereafter, the respondent has issued various reminder cum demand letters to the complainants and requested them to pay the outstanding dues and taken over the possession but the complainants have failed to pay the same. Due to non-payment of the outstanding dues, the respondent company has cancelled the unit allotted to the complainants on 09.08.2018 as per arbitration award.

26. During proceeding dated 27.03.2025, the counsel for the complainants stated at bar that one of the allottees namely Sanjay Lakra has expired during the course of proceedings dated 08.01.2025, and a death certificate is placed on record. Further, seeks time to file the succession certificate as well as amended memo of parties along with affidavit of LR's. In compliance of the said order the complainants have filed amended memo of parties on 30.06.2025 and the surviving member certificate no. 90660000280087, issued by the Revenue Department, District Magistrate Karawal Nagar, North East District, Govt. of NCG of Delhi during the course of hearing on 14.07.2025.
27. The respondent submitted that the complainants are defaulter and have failed to make payment as per the agreed payment plan. Various reminders and final opportunities were given to the complainants, to pay the outstanding dues and take over the possession of the allotted unit, but the complainants failed to pay the same. Further submits that to resolve the dispute amicably between the parties herein, the respondent company has appointed a sole arbitrator Sh. Suresh Chandra Sharma, (Advocate) in terms of clause 20 of the buyer agreement dated 25.12.2013. On 09.08.2018 due to non-appearance of the complainants despite availing many opportunities, the Ld. Arbitrator passed a direction to cancel the unit allotted to the complainants, as delineated above. Now, the question before the Authority is whether this cancellation is valid or not?
28. The Authority has gone through the payment plan, which was duly signed by both the parties, and the same is reproduced herein for ready reference: -

Sr. No.	Installments	Charge	%	Amount (Rs).	Total Amount
1.	On Booking	Basic Price	6.50	5,00,000.00	5,00,000.00
2.	Within 30 days of Booking	Basic Price	3.50	7,79,544.00	7,79,577.00
3.	Within 4 Months of booking or commencement of 3 rd floor whichever is later.	Basic Price	15.00	19,19,316.00	26,85,816.00
		Penthouses	50.00	1,91,625.00	
		Corner PLC	50.00	1,27,750.00	

		EDC+IDC	50.00	4,47,125.00	
4.	Within 12 months of Booking or commencement of 10 th Floor whichever is later.	Basic Price	25.00	31,98,860.00	39,65,360.00
		Corner PLC	50.00	1,27,750.00	
		Penthouse	50.00	1,91,625.00	
		EDC+IDC	50.00	4,47,125	
5.	At the time of offer of possession & other charges (Annexure-2)	Basic Price	50.00	63,97,720.00	63,97,720.00

29. It is matter of record that the complainants booked the aforesaid unit under the above mentioned payment plan and paid an amount of Rs.77,23,548/- towards the total sale consideration of Rs.1,34,34,190/- which constitutes 57.49% of the total sale consideration. The respondent has obtained the occupation certificate in respect of the unit allotted to the complainants on 12.08.2016 and thereafter, the possession of the same was offered to the complainants on 29.08.2016. It is important to note that the respondent issued various demand notices and reminders to the complainants with regard to payment of outstanding dues and taking over of possession of the allotted unit. But the complainants neither paid the outstanding dues nor took over the possession of the unit allotted to them. To resolve the dispute amicably between the parties herein, the respondent company has appointed a sole arbitrator in terms of clause 20 of the buyer's agreement dated 25.12.2013. On 09.08.2018 due to non-appearance of the complainants despite availing many opportunities, the Ld. Arbitrator passed a direction to cancel the unit allotted to the complainants.
30. It is pertinent to mention here that as per Section 19(6) & 19(7) of Act of 2016, the allottees are under obligation to make payments towards consideration of allotted unit as per agreement to sale dated 25.12.2013. The respondent sent various reminder letters dated 29.08.2016, 20.12.2016, 09.01.2017, 15.02.2017 and 21.03.2017 to the complainants for making payment for outstanding dues as per payment plan. Despite issuance of aforesaid

numerous reminders, the complainants have failed to take possession and clear the outstanding dues. On 09.08.2018 due to non-appearance of the complainants despite availing many opportunities, the Ld. Arbitrator passed a direction to cancel the unit allotted to the complainants. In compliance of the direction passed by the Sole Arbitrator, the respondent refunded the amount as per the award by way of three cheques issued in favour of all the three complainants separately i.e., Cheque no. 007114 in favour of Karamvir for an amount of Rs.2,83,964/-, cheque no. 007115 in favour of Lokesh Shokeen for an amount of Rs.2,83,964 and cheque no. 007116 in favour of Sanjay Lakra for an amount of Rs.2,83,965/- and the said amount was not encashed by any of the complainants.

31. The Authority observes that after coming into force of the Act, 2016 the arbitration proceedings initiated by the respondent promoter shall not be binding on the complainants and they are well within their right to approach the Authority seeking desired relief as prescribed under the Act, 2016 as well as rules and regulations made thereunder. However, the Authority is of view that the complainants/allottee(s) have failed to pay the balance sale consideration as agreed by them under the buyer's agreement and failed to honour their obligations. The Authority observes that the complainants were obligated to pay the demands towards balance sale consideration of the unit, which have remained unpaid till date. Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Further, Section 19(10) of the Act obligates the allottee to take possession of the unit within a period of two months from the date of issuance of occupation certificate. Hence, in view of the above, the cancellation of the unit made by the respondent in view of the arbitration award dated 09.08.2018 is held to be valid. But while cancelling the unit, it was an obligation of the respondent 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 Ors. VS. Sarah C. Urs., (2015) 4 SCC 136*, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 *Ramesh Malhotra VS. Emaar MGF Land Limited* (decided on 29.06.2020) and *Mr. Saurav Sanyal VS. M/s IREO Private Limited* (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as *Jayant 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."

32. 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

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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. The Authority observes that post cancellation of the unit on 09.08.2018, the complainants sought refund of the deposited amount against the unit vide legal notice dated 06.12.2021, and the counsel for the complainants also clarify during proceeding dated the complainants have sought the relief refund only. The Authority further observes that the complainants first time initiated any action against the allotted unit of them by sending legal notice dated 06.12.2021, and request the respondent to refund the entire paid-up amount along with interest. So, the above mentioned reasons, the respondent is directed to refund the amount received from the complainants after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 10.85% (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 request of refund via legal notice dated 06.12.2021, 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

33. 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/promoter is directed to refund the paid-up amount of Rs.77,23,548/- after deducting 10% of the sale consideration of Rs.1,34,34,190/- being earnest money along with interest at the rate of 10.85% as prescribed under rule 15 of the Haryana Real Estate

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(Regulation and Development) Rules, 2017, from the date of request of refund via legal notice dated 06.12.2021, till its actual realization.

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

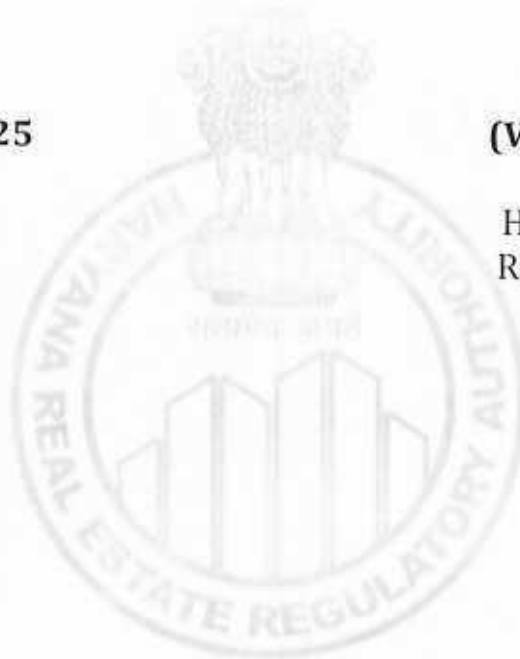
34. Complaint as well as applications, if any, stand disposed off accordingly.

35. File be consigned to registry.

Dated: 04.09.2025



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



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GURUGRAM