

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

Complaint no. : 4403 of 2023  
Complaint received on: 13.10.2023  
Order reserved on: 07.08.2025

**Aditi Mandloi**R/o- 1747, 2<sup>nd</sup> Floor, Sector - 45 Gurugram**Complainant****Versus****DSS Buildtech Pvt. Ltd**Regd. office: 506, 5<sup>th</sup> Floor, Time Square Building, B-Block,  
Shushant Lok, Phase 1, Gurugram, Haryana**Respondent****CORAM:**

Shri Vijay Kumar Goyal

**Member****APPEARANCE:**

Shri Chatainya Singhal (Advocate)

**Complainant**

Shri Harshit Batra (Advocate)

**Respondent****ORDER**

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.

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

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, the date of proposed handing over of the

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possession, and the delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"The Melia", Sector-35, Gurugram
2.	Total area of project	17.418754 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no.	77 of 2013 dated 09.08.2013 valid up to 09.08.2024
5.	Name of licensee	Smt. Aarti Khandelwal W/o Parmil Khandelwal, Smt. Rukmani Devi W/o Somnath Ahuja & 2 others.
6.	Registered/not registered	Registered vide no. 288 of 2017 dated 10.10.2017 Valid up to 26.04.2025
7.	Application form dated	28.02.2023 [Page 71 of reply]
8.	Unit no.	D-704, 7 <sup>th</sup> floor, [Page 22 of complaint]
9.	Area of the unit	873 sq. ft. [Page 20 of complaint]
10.	Date of allotment letter	28.02.2023 [Page 20 of complaint]
11.	Date of execution of BBA	Not executed
12.	Possession clause	N/A
13.	Due date of possession	28.02.2026 [In absence of buyer's agreement, calculated as 3 years from the date of allotment as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> ]
14.	Basic sale consideration	Rs.91,89,063/- [Page 21 of complaint] <b>Rs.1,02,91,751/- (including taxes)</b> [Page 21 of complaint]
15.	Total amount paid by the complainant	Rs.10,29,175/- [As stated at page 11 of complaint]



		and also confirmed by the respondent vide its reply]
16.	Rejection of Loan by Bajaj Housing and ICICI	25.04.2023 and 16.09.2023 (Page 25 and 29 of complaint respectively)
17.	Cancellation of unit	24.07.2023 (Page 27 of complaint)

### B. Facts of the complaint:

3. The complainant has made the following submissions in their complaint:

- The complainant on 28.01.2023, visited the project site through Square Yards and met Mr. Priyank from Silver glades. Another visit along with square yards and discussed unit availability and price. D704 in Tower D was selected in the project. 90% home loan requirement was also discussed with Mr. Priyank on this date and informed that we have eligibility with Bajaj Finance. It was informed to us that the home loan will not be a problem.
- The complainant visit to silver glades office, for final negotiations. Application was filed on 31/01/2023 and a payment of 2 Lac was made through cheque in favour of the builder against booking of D704 in The Melia. ref. invoice dated 04/02/2023. Another payment of 3lac was made through cheque in favour of the builder. Ref invoice dated 06/02/2023. On Feb 18, 2023 payment of Rs.5,29,175/- was made through RTGS to the builder. This completed a total of 10% of booking amount which was demanded by the builder.
- On 27/02/2023 application for home loan was completed with application ID H401HHL09-76678 with Bajaj Housing Finance. Loan was applied with co-applicant. On Feb 28, 2023 the complainant received the allotment letter from the builder for D-704. On Mar 2, 2023 received 3 copies of agreement for sale and a letter subject

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execution of agreement for sale of unit no D704" and received a confirmation from Bajaj Housing Finance that APF is in progress and few documents were requested from Builder for APF. On Mar 3, 2023 the complainant received confirmation from Bajaj that Home Loan (90%) is approved. APF and Builder's technical verification was still in process. Subsequently, on Mar 6, 2023 the complainant received payment request letter. This was an attempt to show us defaulters on paper. On Mar 9, 2023 site technical verification was done by Bajaj.

- d. On 13 March 2023 we were informed by Bajaj (bank) that the APF had failed due to market feedback from ICICI and that the builder is on the caution list. Multiple follow-ups were done with Mr. Priyank and Mr. Sanjeev Mishra on this matter but no support was extended. I and my pregnant wife also visited the silver glades office a lot of times were continuously harassed and humiliated for making the payments. We were also threatened that our 10L token money would be forfeited if the remaining amount is not paid, although forfeiture clause is nowhere agreed in the application and Sale Agreement was also not signed.
- e. On Mar 21, 2023 we received the sanction letter from Bajaj with a condition that they will not fund this project before the registry as the builder's market feedback was not satisfactory.
- f. On Mar 22, 2023 the Issue was again taken up and discussed with Mr. Sanjeev but was declined of any support from builder. On Apr 11, 2023 the complainant visited the builder's office to discuss the same issue in person, on multiple occasions with my pregnant wife to which no help was offered. We also tried applied for Home Loan requirement with various banks and NBFCs, but no one was willing to find the builder despite our eligibility.



- g. On Apr 27 2023 written communication to Mr. Sanjeev on WhatsApp to either refund the booking amount or accept payment at the time of registry. On May 1, 2023 Payment reminder letter from Builder. On May 11, 2023 email to builder asking for refund on booking amount since we were not in a position to make the payment on our own and due to home loan not getting thorough due to the builder's feedback in the market. Multiple calls were made to the builder to make them understand about the financial situation and great deal of stress with wife bearing a new born premature baby. No response was shared.
- h. On May 31, 2023 the complainant spoke to Ms. Neha (CRM) over the call and was told that someone will get back but no response, even though continuous follow-up on email until June 13.
- i. On June 15, 2023 the complainant approached Mr Aayush (Square Yards) for solution and was suggested by Mr. Priyank to apply 90% home loan thorough their reference (Mr. Abhishek) in L&T Housing finance. Documents were shared across.
- j. On June 26, 2023 the complainant received confirmation from L&T housing finance will not be able to fund 90% loan as per their policy, although we had eligibility.
- k. On June 27, 2023 Mr. Aayush then discussed the matter with higher authorities in silver glades and finally informed us that the builder intends to forfeit the booking amount despite forfeiture clause nowhere mentioned and Sale Agreement (BBA) was also not signed.
- l. On July 18, 2023 multiple follow ups and a meeting was arranged by Mr. Aayush (square yards) at silver glades office for discussion on this matter. No solution was offered.
- m. On July 22, 2023 received a confirmation from Mr. Aayush that the builder refused to refund or make changes to payment plan and on

July 24, 2023 the complainant received cancelation of booking letter from the builder.

- n. On Aug 10, 2023 Mr Sajeew was again approached over a phone call to request for changes in payment plan or refund, and was suggested to apply in IIFL through their reference. We applied and shared the documents. On Aug 21, 2023 bank was not able to fulfil requirement of 90% home loan requirement and rejected.
- o. On Sept 1, 2023 home Loan was again applied in ICICI Bank, which was rejected on the grounds of the builder being on the caution list and the bank refused to fund the project before registry, although they were also ready to fund 90% as an exception. We were also informed by the bank that the builder is forcing customers to source loans for payment completion.
- p. On Sept 17, 2023 the issue was again discussed with Mr. Sanjeev and informed that banks are not willing to fund the project before registry and requested to refund the money or offer any solution. No solution or refund has been offered yet and builder is forcefully trying to forfeit the money.
- q. Hence, the present complaint.

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

- 4. The complainant has sought the following relief(s):
  - a. Direct the respondent to refund back the money deposited by the complainant Le. Rs.10,29,175/- as the builder buyer agreement was also not signed at the time of the refund demand made and only a provisional allotment letter was given by the respondent to the complainant.
  - b. Direct the respondent to for the payment of the interest on the blocked amount with the respondent according to the rules of the RERA, Act.



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

**D.Reply by the respondent:**

6. The respondent contested the complaint on the following grounds:-
- a. The unit was booked Mrs. Aditi Mandloi and the allotment letter dated 28.02.2023 was also in favour of Mrs. Aditi Mandloi, however the complaint has been filed one Mr. Akash Khajuria, who is the husband of the Mrs. Aditi Mandloi, who has no cause of action to file the present case. That the complaint has been registered by Mr. Akash Khajuria as evident from the Perfroma-B of the complaint and the primary complaint is also Mr. Akash Khajuria however, the unit was solely booked by Mrs. Aditi Mandloi. Thus, the present complaint filed by the complainant is not maintainable in the eyes of the law for the reason of "Mis-Joinder of party" and is liable to be dismissed from the very outset.
  - b. The respondent obtained the sanction of Building Plan (BR-III) on 21.04.2015. Clause 3 of the sanctioned Plan stipulates that the Developer shall obtain clearance/NOC from the Fire Department, Gurugram before starting the construction/execution of development works at site. Furthermore clause 17 (iv) of the sanctioned Building Plan stipulated that the Developer shall obtain an NOC from the Ministry of Environment & Forests as per provisions of the Notification No. 1533 9E1 dated 14.09.2006 before starting the S.O. construction/execution of development works at site.
  - c. The Fire Clearance/NOC was obtained by company on 09.02.2016 and the same was submitted to DTCP Haryana. That Section 15 of the Haryana Fire Safety Act, 2009 makes it mandatory for a builder/developer to obtain the approval of the Fire Fighting Scheme conforming to the



National Building Code of India and obtain a No Objection Certificate (NOC) before commencement of construction. On 20.09.2016 respondent received the Environmental Clearance from State Environment Impact Assessment Authority (SEIAA). Clause 1 of the Environment Clearance stipulate that the Developer has to obtain "Consent to Establish" from the Haryana State Pollution Control Board under Air and Water Act, and a copy shall be submitted to the SEIAA before the start of any construction works at site.

- d. The project of the respondent is duly registered under the Act and the Haryana Real Estate (Regulation and Development) Rules, 2017 vide HRERA registration no. 288 of 2017 dated 10.10.2017. The respondent had applied for extension of RERA Registration Certificate before the HRERA Authority and the same is extended/renewed dated 28.11.2022 and is valid till 26.04.2025.
- e. In 2023, the Mr. Aditi Mandloi, complainant no. 2 herein, approached the respondent for booking of a unit in the project and paid a booking amount of Rs.10,29,175/- against the total sale consideration of Rs.1,02,91,751/- plus other statutory charges and taxes, as applicable.
- f. Thereafter on 28.02.2023, the respondent herein issued an allotment letter to Mr. Aditi Mandloi, complainant no. 2 wherein, a residential unit bearing No. D-704 on 7<sup>th</sup> Floor in Tower D, was allotted to the complainant.
- g. On 02.03.2023, the respondent herein sent a letter along with three copies of the builder buyer agreement to the complainant and requested them to sign the same and return the signed builder buyer agreement within 30 days from the receipt of this letter to the respondent. However, the complainant failed to return the signed. builder buyer agreement and hence has failed to execute the builder buyer agreement. The





complainant was under the obligation to execute the agreement for sale or builder buyer agreement but had failed to oblige to their obligations.

- h. The complainant while executing the application form agreed to pay further installments and other dues as stipulated in the payment plan. However, the complainant had defaulted in making timely payments to the respondent herein and on that account alone is not entitled to any equitable relief under law. That, the complainant has agreed, to pay installments on time and discharge their obligations. Pertinent to note that complainant failed to clear the installments dues despite repeated reminders given by the respondent.
- i. The complainant herein only made a payment of Rs.10,29,175/- towards the booking amount and thereafter stopped making the payments despite of the various reminders sent by the respondent.
- j. The complainant had opted for a possession linked payment plan wherein the next installment was due on the stage "within 30 days of booking" however, the complainant failed to make the payment of the next installment. The respondent had also issued payment demand letter dated 06.03.2023 and thereafter reminder dated 01.05.2023, however, the complainant did not pay any heed to the said letter and reminder.
- k. As per clause 2 of the "undertaking" and clause 5 and 8 of the payment plans attached with the application form, timely payment is the essence of the allotment and the respondent is entitled to forfeit 10% of the total sale consideration along with the due interest in the event of default committed by the buyer and subsequently terminate the application form and the allotment of the said unit. In view of the aforesaid clauses the respondent herein cancelled the tentatively allotted unit in favor of the complainant vide cancellation letter dated 24.07.2023 and forfeited the entire amount of Rs.10,29,175/- as paid by the complainant.

- l. The complainant vide email dated 11.05.2023 had sought to withdraw from the project. The respondent vide email dated 16.05.2023, informed the complainant that the entire amount would be forfeited being only 10% of the total sales consideration in terms of the application form. Upon request of the complainant and defaults made by the complainant the respondent was constrained to cancel the said unit.
- m. it is relevant to mention here that as per Section 19(6) of Act 2016, the allottees are under obligation and responsibility to make necessary payments in the manner and within the time as agreed. The complainant herein were under obligation and responsibility to make necessary payments in the manner and within the time and as and when demanded by the respondent. However, till date the complainant has only paid an amount of Rs.10,29,175 against the total sale consideration of Rs.1,02,91,751/-
- n. The complainant has only paid a booking amount of Rs.10,29,175/- thereafter the complainant stopped making payments of the installment and have now filed the present complaint seeking refund of the payment made by him on baseless and frivolous grounds. Though the complainant has the right to cancel/withdraw his allotment in a project under the provisions of the Act, however same cannot be sought as a matter of right when the cancellation/withdrawal is done without any fault attributable to the developer.
- o. The respondent sent various demand letters & reminder letter to the complainant to pay the outstanding amount however the same was of no avail and the complainant keep defaulting in making payment therefore the respondent cancelled the unit vide letter dated 24.07.2023.
- p. The complainant has failed to fulfill their part of contract, obligations, commitment and payment plan. In total violation to that and in terms and



conditions agreed between the parties, the Complainant made defaults in payments dues despite the repeated request and demands of the respondent. The complainant has also clearly failed to fulfill his responsibilities under the application form as well as Section 19(6) of the Real Estate (Regulation and Development) Act, 2016.

- q. However, the complainant has paid an amount of Rs. 6,00,000/- against a total consideration of Rs.76,72,950/- constituting 7.82% of total consideration, which is less than 10% of total consideration. Hence, no direction for refund of the paid-up amount by the complainant to the respondent can be given.
- r. As per note 4 of payment plan annexed with application form entered into between the parties on 16.11.2013, promoter was required to refund the amount after deduction of 10% earnest money.
- s. In view of aforesaid circumstances, the respondent is required to refund the amount paid by the complainant after deducting 10% of the sale consideration of the unit being earnest money as per clause xii of application form for allotment dated 16.11.2013 & regulation Haryana Real Estate Regulatory Authority Gurugram [Forfeiture of earnest money by the builder] Regulations, 2018. However, the complainant has paid an amount of Rs.10,29,175/- against a total consideration of Rs.1,02,91,751/- constituting 10% of total consideration. Hence, no direction to this effect can be given to refund of any amount.
- t. The complainant has now filed the present complaint before the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram for refund of the amount paid by them by making false averments that due to the market feedback of the respondent the complainant is not getting loan against the said unit. That it is pertinent to mention herein that there was no

obligation for the approval of the loans upon the respondent hence, the obligation of the same cannot be put upon the respondent.

u. The Hon'ble Supreme Court in catena of judgments has upheld that no one can take benefit of its own wrong, here the complainant has failed to oblige their duty of making payment but are seeking refund from the respondent. Therefore, the relief sought by the complainant herein should not be granted and the complaint filed by the complainant should be dismissed.

7. 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 submissions made by the complainant-allottees.

#### **E. Jurisdiction of the Authority:**

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

##### **E. I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes 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 the allottee as per the agreement for sale. Section 11(4)(a) is reproduced as hereunder:



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

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

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

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

11. Hence, given the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the objections raised by the respondent:****F.1 Objections regarding mis-joinder of party.**

12. The respondent-promoter has raised a preliminary objection regarding the maintainability of the complaint on the ground of *misjoinder of party*, contending that the unit in question was booked solely by Mrs. Aditi Mandloi, and the allotment letter dated 28.02.2023 was issued in her favour. It has been submitted that the present complaint was initially filed by Mr. Akash Khajuria, who is the husband of Mrs. Aditi Mandloi, and who, according to the respondent, does not have the locus standi to institute the present proceedings. The respondent has pointed out that the complaint, including the Performa-B and the primary pleadings, reflects Mr. Akash Khajuria as the sole complainant.
13. However, it is noted from the record that on 18.07.2024, the complainant filed an amended memo of parties, whereby Mrs. Aditi Mandloi has been impleaded as a ~~co~~-complainant to the complaint. In view of the said



amendment, the objection raised by the respondent with respect to misjoinder of parties is rendered infructuous.

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

**G.I Direct the respondent to refund back the money deposited by the complainant Le. Rs.10,29,175/- as the builder buyer agreement was also not signed at the time of the refund demand made and only a provisional allotment letter was given by the respondent to the complainant.**

14. The complainant was allotted a unit in the project of respondent "The Melia" in at sector 35, Gurgaon vide allotment letter dated 28.02.2023 for a basic sale consideration of Rs. 91,89,063/- and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs. 10,29,175/-. The complainant intend to withdraw from the project and are seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec. 18(1) proviso reads as under:

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

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

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

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

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

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

15. Furthermore, the respondent, in its reply, has submitted that the allotment of the unit in question was cancelled on account of non-payment of dues by the complainant, despite issuance of multiple reminders. It was further contended by the respondent that a total amount of Rs.10,29,175/- has been paid by the complainant till date, which constitutes 10% of the total



sale consideration. The respondent has argued that in view of the said cancellation, and after deduction of the earnest money, no amount remains refundable to the complainant.

Now, the question arises whether the cancellation is valid or not?

16. The complainant has opted for possession linked payment plan annexed with the allotment letter at page no. 21 of the complainant. As per the opted payment plan, the complainant has to pay any amount at time of booking, 10% from 15 days from the booking date, 15% from 30 days from date of booking, and so on. The complainant was required to pay as per the demands raised by the respondent as per the payment plan opted by them.
17. Further, as per clause 3 the abovesaid allotment letter the promoter is entitled to forfeit the booking amount in case of any default. The clause 3 of allotment letter is reproduced below for ready reference:

*3. "Booking amount along with interest can be forfeited by the promoter in the event of any default in accordance with the terms and conditions of this agreement"*

18. As per the documents placed on record, it is observed that the complainant failed to adhere to the payment schedule as per the payment plan opted by them. The reason cited for non-payment is the non-sanction of home loan by the concerned financial institution. However, it is a settled position in law that the responsibility to arrange requisite funds for payment towards the allotted unit rests solely with the allottee.
19. The learned counsel for the respondent, during the proceedings held on 07.08.2025, submitted that the subject project is enlisted under the Approved Project Finance (APF) category by financial institutions, and loans have been duly sanctioned and disbursed to other allottees within the same project. Therefore, the project per se does not suffer from any deficiency or disqualification in terms of loan eligibility. The rejection of loan sanction to the complainant was due to reasons personal to them, and

not attributable to any fault or shortcoming on the part of the promoter or the project.

20. It is an admitted fact that on 02.03.2023, the respondent had dispatched three copies of the buyer's agreement to the complainant, with a request to duly sign and return the same within 30 days of receipt. This fact has also been accepted by the complainant in the present complaint. However, the complainant failed to execute and return the signed copies of the said agreement to the respondent. Therefore, the respondent cannot be held solely liable for the non-execution of the buyer's agreement.
21. Section 19(6) of the Act of 2016 obligates the allottee who has entered into an agreement to make timely payments as per the terms and conditions of the agreement. In light of the above, this Authority is of the considered view that the cancellation of allotment by the respondent on account of default in payment is valid and forfeiture of earnest money can be made in terms of clause 7.5 of model BBA appended and Rules, 2017.
22. Now when the complainant approached the Authority to seek refund, the issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that 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.*

23. **Admissibility of refund at prescribed rate of interest:** The complainant is seeking refund of amount at the prescribed rate of interest on the amount already paid by them. However, allottees intends to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rule, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable



and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

24. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 07.08.2025 is 8.85 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
25. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default.
26. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent/builder can't retain more than 10% of basic sale consideration as earnest money on cancellation. So, the respondent/builder is liable to refund the amount received from the complainant i.e., Rs.10,29,175/- after deducting 10% of the basic sale consideration of Rs.91,89,068/- 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 cancellation (24.07.2023) till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

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

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



- I. The respondent is directed to refund the paid-up amount of Rs.10,29,2023/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration of Rs.91,89,068/- along with prescribed rate of interest @ 10.85% p.a. on such balance amount from the date of cancellation i.e., 24.07.2023 till the actual date of realization.
- II. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

28. Complaint stands disposed of.

29. File be consigned to the Registry.

  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 07.08.2025**