

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

Date of decision: 19.08.2025

NAME OF THE BUILDER		JMS BUILDTECH PVT. LTD.	
PROJECT NAME		JMS CROSSWALK	
S. No.	Case No.	Case title	APPEARANCE
1	CR/5998/2022	Sunil Thukrana V/s JMS Buildtech Pvt. Ltd.	Sh. Sunil Kumar Sh. Ravinder Singh
2	CR/5999/2022	Suman Lata V/s JMS Buildtech Pvt. Ltd.	Sh. Sunil Kumar Sh. Ravinder Singh

CORAM:

Shri. Arun Kumar
Shri Ashok Sangwan

**Chairperson
Member**

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,

namely, "JMS Crosswalk" (Commercial component in plotted colony) being developed by the same respondent/promoter i.e., M/s JMS Buildtech Pvt. Ltd. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delay possession charges along with interest.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"JMS CROSSWALK " Sector-93, Gurugram.	
Possession Clause: 15.1		
<i>"The company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the unit within thirty-six (36) months computed from the date of execution of buyer's agreement, excluding additional grace period of six (6) months, subject to force majeure circumstance and reasons beyond the control of the company ("commitment period"). In case of failure of the allottee to make timely payments of any of the instalments as per the payment plan, along with other charges and dues as applicable or otherwise payable in accordance with the payment plan or as per the demands raised by the company from time to time in this respect, despite acceptance of delayed payment along with interest or any failure on the part of the allottee to abide by any of the terms and conditions of this agreement, the time periods mentioned in this clause shall not be binding upon the company with respect to the handing over of the possession of the unit."</i>		
(Emphasis supplied)		
Occupation certificate: - 08.03.2022		
Complaint No.	CR/5998/2022	CR/5999/2022
Unit no. and area admeasuring	0201 admeasuring 219 sq. ft. [pg. 68 of complaint]	0201A admeasuring 218 sq. ft. [pg. 65 of complaint]
Allotment letter	14.01.2016 [pg. 68 of complaint]	14.01.2016 [pg. 65 of complaint]
Date of builder buyer agreement	12.08.2016 [pg. 73 of complaint]	10.08.2016 [pg. 70 of complaint]
Due date of delivery of possession	12.02.2020	10.02.2020

*The due date of possession has been inadvertently mentioned wrong in the POD dated 06.05.2025 which has been corrected vide the present order.

Sale Consideration (SC)	₹23,96,473/- [pg. 103 of reply]	₹23,88,899/- [pg. 110 of reply]
Total Amount paid by the complainant(s)(AP)	₹13,50,751/- [pg. 105 of reply]	₹13,44,583/- [pg. 113 of reply]
MoU for assured return	25.02.2016 [pg. 29 of reply]	25.02.2016 [pg. 73 of reply]
Assured return paid	₹1,52,996/- till Jan 2020 [pg. 114-125 of reply]	₹2,31,313/- [pg. 122-135 of reply]
Offer of possession	30.03.2022 [pg. 95 of complaint]	17.03.2022 [pg. 102 of reply]
Reminder letters	04.05.2022, 14.06.2022 [pg. 108-110 of reply]	25.04.2022, 14.06.2022 [pg. 116-118 of reply]
Termination letter	01.09.2022 [pg. 112 of reply]	01.09.2022 [pg. 120 of reply]

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of delay possession charges along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/5998/2022 Sunil Thukrana V/s JMS Buildtech Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges along with interest and compensation.

A. Project and unit related details

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/5998/2022 Sunil Thukrana V/s JMS Buildtech Pvt. Ltd.

S. No.	Particulars	Details
1.	Name and location of the project	"JMS Crosswalk", Sector 93, Gurugram
2.	Project area	Commercial component in plotted colony
3.	Nature of the project	125.594 acres
4.	DTCP license no. and validity status	44 of 2010 dated 09.06.2010
5.	Name of licensee	Ramprastha Estates Pvt Ltd. & ors.
6.	RERA Registered/ not registered	GGM/313/45/2019/07 dated 18.02.2019
7.	Unit no.	SHOP0201 [pg. 68 of complaint]
8.	Unit area admeasuring	219 sq. ft. [pg. 68 of complaint]
9.	Revised area as per SOA dated 16.01.2023	315 sq. ft.
10.	Allotment letter	14.01.2016 [pg. 68 of complaint]
11.	Date of execution of buyer's agreement	12.08.2016 [pg. 73 of complaint]
12.	Possession clause	15.1 POSSESSION OF THE UNIT The company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the unit within thirty-six (36) months computed from the date of execution of buyer's agreement, excluding additional grace period of six (6) months , subject to force majeure circumstance and reasons beyond the control of the company ("commitment period"). In case of failure of the allottee to make timely payments of any of the instalments as per the payment plan, along with other charges and dues as applicable or otherwise payable in accordance with the payment plan or as per the demands raised by the company from time to time in this respect, despite acceptance of delayed payment along with interest or any

		<i>failure on the part of the allottee to abide by any of the terms and conditions of this agreement, the time periods mentioned in this clause shall not be binding upon the company with respect to the handing over of the possession of the unit.</i> [pg. 86 of complaint]
13.	Due date of possession	12.02.2020 [Note: grace period of 6 months included]
14.	Total sale consideration as per customer ledger dated 16.01.2023 at pg. 103 of reply	Rs.23,96,473/-
15.	Amount paid by the complainant as per customer ledger dated 16.01.2023 at pg. 105 of reply	Rs.13,50,751/-
16.	Assured return clause as per MoU dated 25.02.2016	Article 2.1 <i>Till the notice for offer of possession is issued (including the notice period mentioned in the said notice), the developer shall pay to the allottee an assured return @ ₹ 33.75 per sq. ft. of super area per month ('assured return'). The assured return shall become payable by the developer to allottee from the date of realization of payment from the allottee till the offer of possession is made by the developer to the allottee. Simultaneously with the realization of the payment, the developer shall handover 2 postdated cheques for an amount of assured return for a period of 2 months which will duly honored by the developer's bank on the due date. After the completion of 2 months period, the developer shall further issue 12 cheques for towards assured return for a period of next 12 month. The developer shall keep on issuing and honoring such cheques till the offer of possession is given by the developer to the allottee.</i> (Emphasis supplied) [pg. 29 of reply]
17.	Amount paid by the respondent as assured return as per sum of cheques annexed in reply at pg. 114-125	Rs.1,52,996/-
18.	Occupation certificate	08.03.2022 [pg. 94 of reply]
19.	Offer of possession	30.03.2022 [pg. 95 of complaint]

20.	Reminder letters	04.05.2022, 14.06.2022 (pg. 108-110 of reply)
21.	Termination letter	01.09.2022 (pg. 112 of reply)

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
 - a. That the respondent company advertised a sanctioned plan, model, map, lay out, specifications and designs etc. of above project and apartments/shops to be built for delivery to buyers through various advertising means, prospectus and modes to public at large and invited applications from public to invest and buy the apartments, shops etc. in above said project, layout.
 - b. That on above statements and documents produced by respondent company the complainant impressed by glitz advertisement of the project contacted to company office to get more information about the project, its prospective, future beneficial and other terms and conditions. Company office requested the allottee to come to its office. The allottee met to company agent /nominee at company office in November, 2015. During this meeting, company representative Mr. Mayank Dhoundiyal (Assistant Manager - Sales & Marketing) produced, displayed and disclosed the sanctioned plan of the said commercial project and also sanctioned layout, design, map and specifications etc. of second floor shop / unit bearing number 0201 admeasuring super area 219 sq. ft.
 - c. That the complainant booked a 2nd floor shop numbered 0201 (later renumbered as 2001) admeasuring 219 sq. ft. super area (now, at later stage company claiming increased the size to 315 sq. ft without prior knowledge and consent of the allottees) consisting large straight clear

open counter without any column /pillar or any other obstructions in between the counter, floor and adjoining front gallery/balcony/corridor, adjoining connecting bridge of concerned shop in November, 2015. basic sale price (BSP) @ ₹6,750/Sq. Ft. of Super Area i.e. 219 sq. ft. i.e. ₹14,78,250/- and in addition to EDC/ IDC, as Total Sale Consideration was fixed ₹15,93,225/- under Assured Return + Construction Linked Plan (CLP-50:50).

- d. That, after impressed by the above specifications, the complainant agreed to buy the shop-0201 with assured return + CLP (50:50). As booking amount, which was 10% of Basic Sale Price (BSP), an amount of ₹1,00,000/- and ₹54,256/- was demanded by respondent on 30.11.2015 & 13.01.2016 respectively and same was paid by the allottee by Cheque bearing no. 280971 & 280976 respectively drawn on SBI Gurugram in favor of Respondent "JMS Buildtech Private Limited" company on 03.12.2015 & 14.01.2016 respectively. Thereafter, as per payment plan 40% of BSP was demanded by the company and in response on 07.01.2016 allottee issued cheque bearing no. 651861 of ₹1,00,000/- & on 22.01.2016 issued cheque bearing no.280982 of ₹5,17,021/-both drawn on 27.01.2016 at SBI Gurugram in favor of Respondent. In fact, the allottee paid ₹7,71,277/- by 27.01.2016, which was 50% of BSP.
- e. That the company also promised to pay back assured return and a MOU was signed between the respondent and the complainant vide dated 25.02.2016 in which it was agreed that, the developer shall pay to the allottee an assured return @ ₹ 33.75 per sq. ft. of super area per month (assured return) from the date of realization of payment till the date and

day of Offer of possession and to the effect an MOU was executed between builder and buyer (the allottee) on 25.02.2016.

- f. That to the effect, the company allotted the above already booked second floor shop no. 0201 (later renumbered as 2001) admeasuring 219 sq. ft. to above said buyer (allottee) made allotment on 14.01.2016 and further a builder buyer agreement was executed between the parties on 12.08.2016
- g. That the allottee paid all his instalments as per payment plan, as & when demanded but in the month of November, 2019 (after 04 years of booking), when the "construction of top floor roof" has been finished and demand letter for next instalment was issued for "Commencement of Internal Plaster", the company intimated that super area of the allotted shop has been increased from 219 sq. ft. to 315 sq. ft. and dues were made accordingly.
- h. That for the verification of increased super area, the allottee visited the site and found no sign of increased carpet area/super area. Even the shop was looking very small in size in comparison to promised/assured carpet area which was done at the time of booking and agreement. So far, due to increase in super area, which is only a part of documentary but on actual ground nothing has increased. Super Area as claimed by JMS company increased by 43.8% of previous area i.e., the measurement was increased from 219 sq. ft. to 315 sq. ft. and due to the claimed increase in super area, the cost has also increased by 43.83% of total BSP and 58.16% of total sale consideration. At the time of booking and agreement, the total BSP proposed by the respondent was ₹14,78,250/- on super area of 219 sq. ft. but due to unethical increase in super area and illegal demand raised by the respondent, the BSP has increased to ₹21,26,250/-. Further, at the time

of booking and agreement, total sale consideration was ₹15,93,225/- but due to unethical increase in super area, the total sale consideration increased to ₹25,20,000/-. Intimation regarding increase in super area was given by the respondent after 04 years in the Month of November, 2019 from the date of booking and surprisingly, at that time "Top Floor Roof Construction" has been finished and "Internal Plaster" was going to be started. Moreover, the land Area to build commercial complex is same i.e., 02 acres only.

- i. That on 06.12.2019, the complainant visited the JMS Buildtech Pvt. Ltd. office and put his objections on increased super area & thick pillar at entrance/front of shop in front of company's representative. The company representative informed the allottee that carpet area of shop-2001 is 150 sq. ft. and as per loading of 50-55% proportionate share of common area is 150 sq. ft. and 15 sq. ft. is the thickness of outer walls and in this manner the total super area=315 sq. ft. (150+150+15). The complainant raised his objection that according to (Assistant Manager Mr. Mayank Dhoundiyal) at the time of booking and agreement, the complainant was assured to get 90% as carpet area (including outer walls) of total super area, which is 200 sq. ft. from total super area of 219 sq. ft.) Now after illegal increase in super area by 315 sq. ft. by the respondent, and in proportionate the carpet area shall be meet 283.5 sq. ft. Further, the company is only providing 47.5% as carpet area. When the allottee demanded documentary proofs related to increased super area, he only gave verbal clarifications related to increased super area like increase in carpet area, increase in FAR from 125 to 175, change in building plans, super area increased due to increase

in common areas etc. but did not provide any documentary proofs related to above verbal clarifications.

- j. That due to company's mistake in construction, a pillar which has almost 2.5-3 ft. width and length, dividing the entrance /front of shop into two parts. It is also damaging the front look of the shop which has no resale value in near future. The allottee invested particularly in shop no.-2001 and purchased only because of its location which is the face of crosswalk project, but in the present scenario, due to defective construction plan, all purposes for which allottee invested in this particular shop has been vanished. This will be a huge financial loss to the complainant. So, kindly make any positive solution/ financially compensate for the same.
- k. In brochure/advertisements, it was shown that the 2nd floor connecting bridge was in front/adjoining of shop-2001A and accordingly the allottee invested his hard-earned money in this project, but in fact it is connected with the stairs which is almost 35-40 sq. ft. far away from shop-20001A, which results the decrease in foot-falls of customers and definitely loss to the investor. Due to the false advertisement, investment is ruined. So, kindly make any positive solution /financially compensate for the same.
- l. That in March 2020 "on commencement of flooring" without completing the previous work or brick work, internal & external plaster work was pending and the company issued demand letter for commencement of flooring. That no documents provided to the allottee related to lease agreements when demanded, but using 'name of popular brands' in their advertisements.

C. Relief sought by the complainants:

- 9. The complainant has sought following relief(s)

- a. Legal and valid possession of unit should be awarded to the complainant as per Section 18(1) of RERA Act, 2016.
- b. Revoke of illegal offer of possession by the respondent vide dated 30.03.2022 as 12th July, 2022.
- c. Award the pre allotted shop having super area i.e. 219 sq. ft. on same BSP i.e., ₹14,78,250/- & on same total sale consideration i.e. ₹15,93,225/-.
- d. Revoke the illegal and unethical demand raised by the respondent in lieu of increase in super area i.e. 315 sq. ft. from 219 sq. ft. after 04 years of booking and intimated when the construction at "top floor roof" has been completed and no consent has taken from the allottees.
- e. Seeking appoint/depute the commission along with professionals who admeasuring the actual carpet area and super area.
- f. Delayed possession charges applicable from due date of possession i.e. 12.08.2019 till legal offer of possession of unit with annual interest on deposited principal amount for delayed period, as per RERA Act, 2016.
- g. Assured returns which have been stopped by the respondent since January, 2020 till legal offer of possession with annual interest.
- h. Direct the respondent to obey the MOU, which was executed between respondent and the complainant, in which the respondent company also promised and agreed in MOU that company would pay assured returns @ ₹33.75/- sq. ft. on super area, and interest on invested money from investment date till legal offer of possession of shop. interest for every month of delay at prevailing rate of interest as applicable as per RERA Act, 2016.
- i. Revoke delayed payment charges at the rate of 18% annually which the respondent demand without reaches as per payment plan in advance,

which shall be remand back and any other charges. delayed payment charges of ₹24,162/- applied till 08.03.2022 which is illegal demanded by the respondent on objectionable offer of possession.

- j. Other miscellaneous charges like IFMS charges, electrification charges, energy meter charges, electricity prepaid charges, one-year advance maintenance charges are imposed on illegal offer of possession, which are objectionable.
- k. After judgment by Hon'ble Authority please transfer the complaint of the complainant to the Hon'ble Adjudicating Officer for compensation.

10. 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.

11. The respondent has contested the complaint on the following grounds:

- a. The present complaint is gross misuse of the process of law. It is respectfully submitted that complainant is guilty of "suppression veri & suggestion falsi" and the complainant has advertently not provided the correct factual background of this case. The complaint ought to be dismissed on this ground alone as the complainant has concealed vital facts & documents and with malafide intention. The complainant has not annexed all the payments reminders dated 29.12.2018, 08.03.2019, 22.03.2019, 20.06.2019, 30.09.2019, 17.01.2020, 04.02.2020, 18.07.2020 & also hide Reminder for possession payment dated 04.05.2022, Last opportunity for possession payment dated 14.06.2022 and termination letter dated 01.09.2022 which were sent by the respondent to the

- complainant for not making timely payments and also not taking the possession.
- b. That the complainant on 30.11.2015 expressed his interest in the project of the respondent and made a request for allotment of a commercial space in project being developed by respondent in terms of license issued by the Town & Country Planning Department, Haryana and deposited ₹1,00,000/- along with its application. That thereafter, commercial space being shop no. SHOP-0201 was allotted to the complainant vide Allotment Letter dated 14.01.2016. The commercial space was allotted for basic sale consideration of ₹14,78,250/-.
- c. That as the allotment was under assured return plan, the complainant and respondent executed a memorandum of understanding (MOU) dated 25.02.2016, whereby the respondent agreed to pay assured return at the rate of ₹33.75/- per sq. ft. of super area per month till the offer of possession is issued. The complainant and respondent executed buyer's agreement on 12.08.2016 for a total consideration of ₹15,93,225/- and ₹1,14,975/- as EDC/IDC and Other's charges, to which the complainant agreed to adhere.
- d. That the complainant thereafter failed to make any payment despite the fact that the complainant was required to make the payment as per payment plan. That the complainant in total paid a sum of ₹13,50,751/- which includes ₹12,56,512/- as basic sale price, ₹32151.94/- as service tax, ₹31043.25/- as CGST and ₹31,043.25 as SGST out of total sale consideration of ₹25,20,000/- and other charges (after revision of super area).

- e. That as the complainant failed to adhere the payment plan, several demand letters dated 28.12.2017, payment reminder letters dated 29.12.2018, 26.02.2019, 08.03.2019, 22.03.2019, 28.05.2019, 20.06.2019, 30.09.2019, 17.01.2020, 04.02.2020, 18.07.2020 were issued to the complainant and on receipt of which the complainant made the payments.
- f. That the respondent completed the development of the project and received occupation certificate with respect to the project vide Memo No. STP (G)/2022/1278 dated 08.03.2022. The answering OP has suffered in completion of its project due to two waves of COVID-19 pandemic (Buyer's agreement also includes Force majeure clause no. 41 which says that in the event of force majeure circumstances the company (herein the answering respondent) shall be entitled to reasonable extension of time for performance of its obligations or to put it in abeyance). Hence, the answering respondent can't be held liable for any delay in handing over the possession.
- g. That the respondent on receipt of occupation certificate of the project and after completing internal formalities, issued letter of offer of possession dated 30.03.2022 to the complainant thereby calling upon the complainant to pay the outstanding dues and take possession of the unit in question. That the complainant, however failed to make the payment of amount of ₹13,59,048/- and ₹1,60,500/- stamp value as demanded through statement annexed with the letter of offer of possession.
- h. That as the complainant failed to make the payment and take possession of Unit despite receipt of offer of possession, the respondent issued reminder letter for possession payment dated 04.05.2022 thereby calling

upon the complainant to complete the possession formalities including making payment of outstanding amount.

- i. That even after receipt of reminder letter dated 04.05.2022, the complainant failed to clear the dues and take possession of the allotted unit and as such the respondent just in good gesture and being customer friendly, issued another letter being last & final opportunity for possession payment dated 14.06.2022 thereby requiring the complainant to clear the dues and take possession of the allotted unit.
 - j. That as the complainant despite receipt of reminder letter dated 04.05.2022 followed by last and final opportunity letter dated 14.06.2022 failed to make the payment of outstanding dues and take possession of the unit, respondent terminated the allotment vide termination letter dated 01.09.2022. The respondent through the said Letter cancelled/terminated the allotment in favour of the complainant and advised him to visit the office and settle his account after returning the original documents. That the respondent in compliance of the MOU executed for payment of assured return, issued cheques of assured regularly against acknowledgment.
 - k. All other averments made in the complaint were denied in toto.
12. 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

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

E.1 Territorial jurisdiction

14. 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

15. 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) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

F. Findings on the relief sought by the complainants.

F.I. Legal and valid possession of unit should be awarded to the complainant as per Section 18(1) of RERA Act, 2016.

F.II. Revoke of illegal offer of possession by the respondent vide dated 30.03.2022 as 12th July, 2022.

F.III. Award the pre allotted shop having super area i.e. 219 sq. ft. on same BSP i.e., ₹14,78,250/- & on same total sale consideration i.e. ₹15,93,225/-.

F.IV. Revoke the illegal and unethical demand raised by the respondent in lieu of increase in super area i.e. 315 sq. ft. from 219 sq. ft. after 04 years of booking and intimated when the construction at "top floor roof" has been completed and no consent has taken from the allottees.

F.V. Seeking appoint/depute the commission along with professionals who admeasuring the actual carpet area and super area.

F.VI. Delayed possession charges applicable from due date of possession i.e. 12.08.2019 till legal offer of possession of unit with annual interest on deposited principal amount for delayed period, as per RERA Act, 2016.

F.VII. Assured returns which have been stopped by the respondent since January, 2020 till legal offer of possession with annual interest.

F.VIII. Direct the respondent to obey the MOU, which was executed between respondent and the complainant, in which the respondent company also promised and agreed in MOU that company would pay assured returns @ ₹33.75/- sq. ft. on super area, and interest on invested money from investment date till legal offer of possession of shop. interest for every month of delay at prevailing rate of interest as applicable as per RERA Act, 2016.

F.IX. Revoke delayed payment charges at the rate of 18% annually which the respondent demand without reaches as per payment plan in advance, which shall be remand back and any other charges. delayed payment charges of ₹24,162/- applied till 08.03.2022 which is illegal demanded by the respondent on objectionable offer of possession.

F.X. Other miscellaneous charges like IFMS charges, electrification charges, energy meter charges, electricity prepaid charges, one-year advance maintenance charges are imposed on illegal offer of possession, which are objectionable.

17. The complainant in the present matter was allotted a shop bearing no. 0201, admeasuring 219 sq. ft. for a total sale consideration of ₹23,96,473/- vide allotment letter dated 14.01.2016. Thereafter, respondent executed builder buyers' agreement dated 12.08.2016 wherein the complainant agreed to pay the instalments as per the construction linked payment plan annexed with the buyer's agreement. The complainants had paid an amount of ₹13,50,751/- against the sale consideration of the unit. As per clause 15.1 of the BBA executed between the parties the respondent was obligated to complete the construction of the said unit and hand over possession of the unit within a period of 36

months from the date of execution of this Agreement with a grace period of 6 months. The period of 36 months expires on 12.08.2019. As far as grace period of 6 months is concerned the same is allowed being unqualified. Accordingly, the due date of possession comes out to be 12.02.2020.

18. 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 complainant and thereafter the unit was cancelled vide letter dated 01.09.2022. The authority before illustrating upon the relief sought by the complainants shall observe whether the cancellation letter dated 01.09.2022 issued by the respondent is valid or not?
19. The authority has gone through the payment plan, which was duly signed by both the parties. Furthermore, it is matter of record that the complainants booked the aforesaid unit under the above-mentioned payment plan and paid an amount of ₹13,50,751/- towards total consideration of ₹23,96,473/- which constitutes 56% of the total sale consideration and have paid the last payment on 19.02.2020.
20. It is pertinent to mention here that the respondent raised the demand of ₹82,781/-, instalment due on commencement of flooring on 02.03.2020 followed by reminder letter dated 18.07.2020. Thereafter, the respondent issued offer of possession dated 30.03.2022 along with the statement of account after receiving occupation certificate from the competent Authority on 08.03.2022. Thereafter, a reminder for final possession payment and physical handover of unit was issued after the said offer of possession on 04.05.2022 & 14.06.2022. But the complainant even after the said reminder did not come forward to take the possession of the unit. The complainant in its complaint pleaded that the increased area was not acceptable to the complainant. The

Authority after due consideration of the documents placed on record observes that even if there was any dispute regarding any arbitrary demand that must have been resolved after taking the possession or the proper legal course could have been adopted for the same. The fact that the complainant was obligated under the provisions of section 19(6) & (7) of Act of 2016 to make the timely payment of the installments due cannot be ignored. Moreover, the respondent's goodwill can be traced from the mail dated 08.07.2022 wherein the respondent has given an option to the complainant for offering the alternate unit for same area and similar location. But that could not be turned fruitful and consequent to that a termination letter dated 01.09.2022 was issued by the respondent. The Authority opines that the respondent has given sufficient opportunity to the complainant before proceeding with termination of allotted unit.

21. Also, as per clause 7.2 of the agreement dated 12.08.2016, the respondent/promoter has a right to cancel the unit in case the allottee makes default in making the payment. Clause 7.2 is reproduced as under for a ready reference:

"In the event of failure of the allottee to perform the obligations or to fulfil the terms and conditions as set out in the allotment letter and this agreement including but not limited to the occurrence of any event of default described herein the company may cancel this agreement and forfeit the earnest money and other amount including any commission brokerage margin paid and payable by the company to a channel partner in case the booking is made by the allottee through a channel partner unless a credit note no objection certificate from such channel partner foregoing its right to claim such brokerage commission margin incentives is submitted and thereafter refund the balance amount if any without interest in the manner described...."

22. That the above-mentioned clause provides that the promoter has right to terminate the allotment in respect of the unit upon default on part of the complainants including timely payment of consideration. Further, the allottee is under obligation to make payments towards consideration of allotted unit as

per payment plan annexed with BBA dated 12.08.2016 as per section 19(6) & 19(7) of Act of 2016. Thereafter, the respondent/promoter issued demands letter and further, issued termination letter to the complainant. The respondent cancelled the unit of the complainant after giving adequate demands notices. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainant is hereby declined as the complainant-allottee has violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainant after certain deductions as prescribed under law.

23. 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 Ors. VS. Sarah C. Ors., (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 a reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest

money by the builder) Regulations, 11(5) of 2018, was framed providing as under:-

"5. AMOUNT OF EARNEST MONEY

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

24. 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 sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainants after deducting 10% of the sale consideration i.e., ₹23,96,476/- 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 termination/cancellation 01.09.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*. The amount of assured return already paid by the respondent shall also be adjusted in the amount payable.

F.XI. After judgment by Hon'ble Authority please transfer the complaint of the complainant to the Hon'ble Adjudicating Officer for compensation.

25. The complainant is also seeking relief w.r.t. compensation. It is observed that the Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* 2021-2022(1) RCR(c),357 has held that an allottee is entitled to claim compensation under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

G. Directions of the authority:

26. 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):

- a. The respondent/builder 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 termination/cancellation 01.09.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*. The amount of assured return already paid by the respondent shall also be adjusted in the amount payable.

- b. 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.
27. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
28. The complaints stand disposed of.
29. Files be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.08.2025