BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**3785 of 2024**
Complaint filed on:		**28.08.2024**
Date of decision	:	**04.09.2025**

Sudhanshu Kumar Gupta
R/o: - IF – 804, Sector – 108, Raheja Vedaanta, Dwarka Express Way, Near Delhi Boarder, Experion Hearts Song, Gurugram, Haryana - 122017 **Complainant**

Versus

M/s Advance India Projects Ltd.
Office at: - 232-B, 4th Floor, Okhla Industrial Estate, Phase III, New Delhi-122002 **Respondent**

CORAM:
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Sh. Bhajan Lal Jangra (Advocate) Complainant
Sh. Dhruv Rohatgi (Advocate) Respondent

ORDER

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

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. N.	Particulars	Details
1.	Name of the project	AIPL Joy Street
2.	Project location	Badshahpur, Sector-66, Gurugram, Haryana
3.	Project area	3.9562 acres
4.	Nature of the project	Commercial Project
5.	DTCP license no. and validity status	07 of 2008 dated 21.01.2008 152 of 2008 dated 30.07.2008
6.	Name of licensee	Resolve Estate Pvt. Ltd.
7.	RERA registration details	Not registered
8.	Environment Clearance	11.07.2012
9.	Allotment letter dated	25.06.2018 [page no. 38 of the reply]
10.	Unit no.	1509, 15th Floor [page no. 38 of the reply]
11.	Unit area admeasuring	672 sq. ft. (super area) [page no. 38 of the reply]
12.	Letter sent by respondent inviting objection/ suggestion for revised building plans	16.11.2019 [Page 42 of reply]
13.	Area change	672 sq. ft. to 686.74 sq.ft. **(2.19% increased)**
14.	Letter sent by respondent for change in area	22.12.2020 [Page 23 of complaint]

15.	Date of execution of flat buyer agreement	Not executed
16.	Possession clause	**N/A**
17.	Due date of possession	25.06.2021 [In absence of buyers' agreement, calculated 3years from the date of allotment]
18.	Payment Plan	Possession Linked [Page 39 of reply]
19.	Sale consideration	Rs.48,51,131/- [As per SOA at page 55 of reply] Rs.53,76,000/- (inclusive of taxes) [as per SOA at page 55 of reply]
20.	Amount paid by the complainant	Rs. 18,02,575/- [As per SOA at page 56 of reply]
21.	Assured return paid by the respondent till 29.09.2020	Rs. 4,61,595/- [Page 41 of reply]
22.	Occupation certificate	28.09.2020 [Page 46 of reply]
23.	Offer of possession	03.08.2021 [page 49 of reply]
24.	Reminder/ Demand Letter	15.09.2021, 06.10.2021, 15.11.2021 [As mention in pre-termination letter at page 66 of reply]
25.	Pre-Termination letter	20.10.2021, 07.04.2022 [Page 65 & 66 of reply]
26.	Termination letter	28.04.2022

		[Page 67 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions: -

i. The complainant had booked a Unit no. 1509, on 15TH Floor, ad-measuring area 686.74 Sq. Feet located in the project namely "AIPL joy street Sector 66, Gurugram (Haryana)" against basic sale consideration of INR 43,70,413.36/-, out of which sum of INR 18,02,575.64/- had been received by the respondent in violation of section 13(1) of the RERA Act. The respondent, without following due process of law, forfeited the entire sale consideration sum of INR 18,02,575.64/- thereby, caused financial loss, mental agony to the complainant hence the present complaint for seeking refund along with interest as per rule 15 of RERA.

ii. The respondent (builder) approached the complainant and represented that the respondent being land owner and obtained licence from the competent authority to launch a project namely AIPL Joy street at sector - 66, Gurugram. The respondent started booking of the units in the said project. The respondent had promised and assured the complainant to pay monthly assured return sum of INR 25,238/-. In this regard the respondent sent a mail dated 21.09.2018 whereby the said undertaking was given.

iii. On the representation, promises and claims, the complainant had booked a unit no. 1509, having super area 672 Sq. Feet on 15TH Floor in the project namely AIPL joy street Sector 66, Gurugram (Haryana) against basic sale consideration sum of INR 43,70,41 /-.

iv. The complainant, at the time of signing of booking application, the complainant had paid sum of INR 1,00,000/- which was duly acknowledged and received by the respondent.

v. The respondent sent a mail dated 16.08.2019 claiming that project at the finishing stage and the occupation certificate will be applied within next six months and the complainant was called upon to pay INR 3,593,353 /- and it was stated in the mail that if the said amount is paid on or before 31.08.2019 the respondent shall offer a special prepayment incentive @ INR 15/- on the prepaid amount.

vi. The respondent, without taking prior approval from the complainant increased the size of the unit from 672 sq. ft. to 686.74 sq. ft. thereby the complainant was forced to bear extra cost of the unit.

vii. The respondent had assured the complaint to sign and execute agreement in respect of the booked unit, however, the same never been executed despite repeated request and messages and payment from the complainant. It is respectfully submitted that the complainant was never informed about the progress report of the project and no date of handing over of the unit was confirmed by the respondent but demands were sent regularly. That the complainant had paid demands as and when raised by the respondent.

viii. That needless to mention here that the pandemic covid-19 was spreading and Government of India had issued lockdown, therefore, the complainant was facing financial crunch and outstanding payment sum of INR 35,93,353/- could not be tendered by the complainant as demanded resultantly the respondent continued sending termination letter.

ix. The respondent had sent a pre-termination letter dated 20.10.2021 without considering the situation beyond the control of the complainant and forfeited the entire sale consideration sum of INR 18,02,575/-.

x. The complainant met to the office of the respondent for seeking refund sale consideration but the respondent refused to refund the sale consideration. The respondent committed violation of the RERA Act/Rules/Regulation, and without signing of the agreement took the money from the complainant hence the respondent is liable to be prosecuted.

xi. The respondent has sold the unit and sale consideration has been realised hence no financial loss caused but the complainant has suffered financial loss. Also, despite regular follow up, the respondents had refused to refund sale consideration on one pretext or the other pretext.

xii. The irresponsible and desultory attitude and conduct of the respondents, consequently injuring the interest of the complainant who had paid hard earned money in purchasing the said Unit in the project, thus, caused monetary loss and harassment to the complainant thus the complainant has no efficacious remedy except to file the present complaint for seeking refund along with statutory interest before the Hon`ble Authority.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

I. Direct the respondent to refund the total amount of Rs.18,02,575/- received by the respondent to the complainant along with interest as per provision of the Act of 2016.

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

D. Reply by the respondent

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

i. The present complaint is liable to be dismissed as the complainant herein has got no locus standi or cause of action to file the present complaint. Moreover, from the aforesaid facts it is apparent that the complainant has malafidely filed the present complaint with the objective to arm twist the respondent and to treat the complainant above law neglecting the applicable rules and procedures.

ii. That the complainants are not "Allottees" but "Investors" who had booked the unit in question as a speculative investment in order to earn rental income/profit from its resale.

iii. The complainant had approached the respondent and expressed an interest in booking a serviced apartment in the project developed by the respondent and booked the unit in question, bearing number "1509, 14th Floor," ('Serviced Apartment') admeasuring 672 sq. ft. (tentative area) situated in the project developed by the respondent, known as "AIPL Joy Street" at Sector 65, Gurugram, Haryana. That thereafter the complainant vide application form applied to the respondent for provisional allotment of a unit bearing number "1509, 14th Floor," in the said project.

iv. The complainant consciously and willfully opted for a flexi payment plan as per his choice for remittance of the sale consideration of the unit in question and further represented to the respondent that he shall remit every installment on time as per the payment schedule.

v. At this instance, it needs to be noted that relationship between the parties is commercial in nature and sacrosanct to the agreed terms.

That in the present case, the complainant purchased the unit only on the categorical understanding that the unit shall not be for physical possession.

vi. Pursuant to the execution of the application form, the respondent had no reason to suspect the bonafide of the complainant and the allotment letter dated 25.06.2018 was issued to the complainant.

vii. The main intent, as appears from the conduct of the complainant, for booking of the unit was to avail the benefit of the assured returns. as noted in the allotment letter as well, the complainant was entitled to assured returns against the payment made. It is a matter of record that the respondent, from time to time, has remitted the assured returns to the complainant.

viii. The unit allotted was provisional and subject to change as was categorically agreed between the parties. That the relevant clause of the application form is reiterated as under:

> *I/We clearly understand that the allotment of the unit by the Company pursuant to this Application shall be purely provisional till a* ***Unit Buyer's Agreement on the format prescribed by the Company, the copy of which has also been provided to me/ us,*** *is executed by the Company in my/ our favour. Further, the allotment of a Unit in the Project shall be subject to the terms and conditions, restrictions and limitations as contained in the licence granted by DTCP for development of the said Project land by the Company and provisions of the Real Estate (Regulation & Development) Act, 2018 and the Haryana Real Estate (Regulation & Development) Rules, 2017 and regulations made thereunder and the applicable law.*

ix. Despite getting a copy of the buyer's agreement, at the time of booking the unit in question, the complainant failed to execute the buyer's agreement. it is apparent that the complainant was only interested in availing the assured returns against the unit booked.

x. The project underwent a change/modification and upon the same being done, objections/suggestions for approval of building plans were invited from the complainant on 16.11.2019, to which the

complainant never gave any response and was deemed as an acceptance of the same.

xi. The respondent was miserably affected by the ban on construction activities, orders by the NGT and EPCA, demobilization of labour, etc. being circumstances beyond the control of the respondent and force majeure circumstances, that the construction was severely affected during this period and the same was rightfully intimated to the complainant by the letter dated 30.11.2019.

xii. Despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 16.07.2020. Occupation certificate was thereafter issued in favor of the respondent dated 28.09.2020.

xiii. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project. That since on the day when the respondent applied to the competent authority for the grant of the occupancy certificate, the said commercial unit was complete in all respect.

xiv. Pursuant to the receipt of the occupation certificate, the complainant was offered possession of the unit in question through letter of offer of possession dated 03.08.2021. The complainant was called upon to remit balance payment including delayed

payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainant.

xv. The respondent earnestly requested the complainant to obtain possession of the unit in question and to further complete all the formalities regarding delivery of possession. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation.

xvi. The complainant did not have adequate funds to remit the balance payments requisite for obtaining possession and consequently in order to needlessly linger on the matter, the complainant refrained from obtaining possession of the unit in question. The complainant needlessly avoided not only the execution of the buyer's agreement, but also the completion of the transaction with the intent of evading the consequences enumerated in the buyer's agreement. Therefore, there is no equity in favor of the complainant. That the respondent from time to time raised various demands and payment requests letters along with repeated reminders, however, the said requests were conveniently ignored by the complainant and hence, there was a continuous default in the payments on the part of the complainant.

xvii. The complainant is not entitled to contend that he is entitled for any sort of full refund even after receipt of offer for possession within stipulated time. The complainant has consciously and maliciously refrained from obtaining possession of the unit in question and failed to make the due payments.

xviii. As per the statement of account issued along with the Offer of Possession, there was an outstanding due of Rs. 36,22,450/-

towards principal dues. Further, an amount of Rs. 7,33,473/- was outstanding against other charges along with other ancillary charges towards stamp duty etc.

xix. That owing to the continuous defaults of the complainant, the complainant was firstly issued pre-termination letter dated 20.10.2021, calling upon the complainant to make the outstanding payments. When no payment was remitted by the complainant, the respondent, though not obligated, issued another pre-termination letter dated 07.04.2022, again calling upon the complainant to clear the dues. However, when the complainant had impliedly shown his ignorance and willful negligence, the respondent was constrained to issue a termination letter dated 28.04.2022 to the complainant.

xx. The respondent has rightfully forfeited the amounts of the complainant. The total sale consideration of the unit in question was Rs. 48,51,132/- against which, the complainant had merely paid a sum of Rs. 18,02,575/-, which was not even 50% of the total sale consideration. Over and above the said amount, there were delay payment interests that had accrued. It needs to be noted that despite the default of the complainant, the respondent had credited a total of Rs.5,04,190/- as assured returns. Without, prejudice, it is submitted that in case the present complaint for refund is allowed, the assured returns as paid by the respondent are liable to be adjusted against the refund amounts.

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 complainants-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 entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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

12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and*** *reiterated in case of* ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

> *"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent

F.I Objection regarding maintainability of complaint on account of complainant being investor

14. The respondent took a stand that the complainant is investor and not allottees and therefore, they are not entitled to the protection of the

Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.*

15. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant

G. I Direct the respondent to refund the total amount of Rs.18,02,525/- received by the respondent to the complainant along with interest as per provision of the Act of 2016.

18. The complainant was allotted a unit in the project of respondent "AIPL JOY SQUARE" vide allotment letter dated 25.06.2018 for a total sum of Rs. 53,76,000/- and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs. 18,02,575/-. The complainant intends to withdraw from the project and are seeking refund of the paid-up amount.

19. The respondent vide it's reply stated that the unit was cancelled on account of non-payment after issuance of multiple reminders. Further vide proceedings dated 04.09.2025 counsel for the respondent stated that an amount of Rs.5,04,190/- has been paid to the complainant till September 2020 and the same has been confirmed by the complainant.

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

20. The complainant has opted for possession linked payment plan annexed with the allotment letter at page no. 39 of the complaint. As per the opted payment plan, the complainant has to pay any amount at time of booking, 35.61% from 90 days from date of booking and 64.39% on offer of possession. The complainant were required to pay as per the demands raised by the respondent as per the payment plan.

21. As per clause (j)of the application form provides for handing over of possession and is reproduced below:

> *"The company shall subject to force majeure conditions proposes to* ***handover possession of the unit on or before December 2022*** *notified by the company to the authority at the time of registration of the project....xxxx"*

22. The due date of possession as per application form is 31.12.2022 and the respondent has obtained the OC on 28.09.2020. Though the respondent has raised a demand letter dated 15.09.2021, 06.10.2021 and 15.11.2021 for payment of outstanding dues and after that a pre-

termination letter dated 20.102021 and 07.04.2022 was issued by the respondent but the complainant never responded to the same. Thereafter, the respondent issued cancellation notice of the unit on 28.04.2022. As per documents placed on record it is evident that the complainants have failed to make the payments as per the opted payment plan. In view of the afore-mentioned facts, the cancellation of the unit dated 12.05.2023 stands valid.

23. However, now when complainant approached the Authority to seek refund, it is observed that as per clause (h) of application at page 29 of the reply i.e., booking application form, the respondent-builder is entitled to forfeit the earnest money of the total sale consideration. The relevant portion of the clause is reproduced herein below:

> *After allotment of the Unit, I/we may at my/our option raise finance or loan for purchase of the Unit. However, getting the loan sanctioned and disbursed shall be my/our obligation. In the event loan is not being sanctioned/disbursed or the same gets delayed for any reason whatsoever, the payment to the Company as per payment plan shall not be delayed. I/We confirm and agree that delay in sanction/disbursement or non-sanction of the loan shall not be a ground for delay in payment of the outstanding dues to the Company, and any such delays* ***may result in levy of interest by the Company or cancelation/termination of the Allotment Letter and forfeiture of the entire Earnest Money (10% of the Total Consideration of the Unit)*** *together with interest on delayed payment, brokerage if paid etc.*

24. 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 unit 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 farmed providing as under:

> ***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.*

25. **Admissibility of refund at prescribed rate of interest:** The complainants intend to withdraw from the project seeking refund amount on the amount already paid by them in respect of the subject unit at the prescribed rate of interest 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]***

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.

26. 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.

27. 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., 04.09.2025 is 8.8510%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

28. The respondent company has already obtained the occupation certificate of the project on 28.09.2020. Thereafter, the respondent/promoter issued offer of possession dated 03.08.2021 and further, issued pre-termination latter dated 20.10.2021 and 07.04.2022, however no heed was paid by the complainant to that letter. Thereafter the respondent issued a termination letter dated 28.04.2022 to the complainants. The cause of action arose on 28.04.2022 when the unit got terminated due to default (non-payment) on the part of the allottees as only an amount of Rs. 18,02,575/- has been paid out of sale consideration of Rs. 53,76,000/- which consists only 34% of sale consideration. Thus, the cancellation of the unit is valid. Further, the complainants/ allottees have violated the provisions of section 19(6) & (7) of the Act of 2016.

29. 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 liable to refund the amount received from the complainant i.e., Rs. 18,02,575/- after deducting 10% of the sale consideration. The amount already paid towards assured returns (Rs.5,04,190/-) in respect of the said unit be also adjusted from above refundable amount 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 i.e., 28.04.2022 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

30. 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/promoter is directed to refund the paid-up amount of Rs.18,02,575/- after deducting the earnest money which shall not exceed the 10% of the sale consideration along with prescribed rate of interest. The amount already paid towards assured returns (Rs.5,04,190/-) in respect of the said unit be also adjusted from above refundable amount.

b. The respondent is directed to refund the remaining balance amount to the complainant along with interest at the prescribed

rate of 10.85% per annum from the date of cancellation (28.04.2022) till actual realization of amount.

c. 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.

31. Complaint stands disposed of.

32. File be consigned to registry.

V. I 3

(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 04.09.2025