

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

**Complaint no.:**

**4923 of 2023**

**Date of decision:**

**30.07.2025**

Ravinder Singh Kohli

**R/o:-** D-11/15, Model Town-II,  
Delhi-110099.

**Complainant**

Versus

M/s Bestech India Pvt Ltd.

**Registered Office at:** Bestech House Plot-51,  
Bhagwan Mahaveer Marg, Sector-44,  
Gurugram, Haryana-122002.

**Respondent**

**CORAM:**

Ashok Sangwan

**Member**

**APPEARANCE:**

Divyanshu Saraswat (Advocate)

Complainant

Ishaan Dang (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 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations

made there under or to the allottees as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name & Location of the project	"Orient Bestech Business Business Tower" situated at Village-Khandsa, NH-8, Gurgaon, Haryana.
2.	Nature of project	Commercial
3.	DTCP license no.	Licence no.-1128 of 2006 Dated-15.09.2006
4.	Unit no.	IT/Cyber space no.- 819, Floor-8 (As on page no. 18 of complaint)
5.	Unit area	2500 sq.ft. [Super-Area] (As on page no. 18 of complaint)
6.	Date of execution of buyer's agreement dated	13.03.2009 (As on page no. 16 of complaint)
7.	Possession clause	<b>Clause 14</b> <i>That subject to provisions of clauses 15 and 16 the possession of the said premises is proposed to be delivered by the DEVELOPER to the ALLOTTEE(S) within twenty</i>

		<p><i>four months from the date of this Agreement. If the completion of the said Building is delayed by reason of non-availability of steel and/or cement or other building materials, or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the DEVELOPER, lock-out or departmental delay or civil commotion or by reason of war or enemy action or terrorist action or earthquake, storm, flood, tempest or any act of God or any other reason beyond the control of the DEVELOPER, the DEVELOPER shall be entitled an extension of time for delivery of possession of the said premises.</i></p> <p>[Emphasis supplied]</p> <p>(As on page no. 24 of complaint)</p>
8.	Due date of possession	<p>13.03.2011</p> <p>[Calculated 24 months from date of execution of agreement]</p> <p>(As on page no. 24 of complaint)</p>
9.	Payment plan	<p>Construction linked</p> <p>[At the time of notice for possession-10% of BSP + 100% of IFMS + any other charges]</p>
10.	Total consideration	<p>Rs.46,37,500/-</p> <p>(As on page no. 32 of reply)</p> <p>[Note: Vide proceedings dated 09.07.2025, the same was inadvertently mentioned as</p>

		Rs.60,07,500]
11.	Total amount paid by the complainant	Rs.49,50,000/- (As on page no. 77 of reply)
12.	Payment requests	26.11.2013 29.11.2014
13.	Final notice	07.05.2015 (As on page no. 82 of reply)
14.	Cancellation letter	06.06.2015
15.	Occupation certificate	08.05.2013 (As on page no. 22 of reply)
16.	Offer of possession	16.07.2013 [Constructive possession]
17.	Legal notice by complainant seeking refund	29.08.2017

### B. Facts of the complaint:

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

- I. That the complainant booked a commercial space for an amount of Rs.57,62,500/- situated at Village Khandsa, NH-8, Gurugram, Haryana, in the year 2009, run by the respondent namely "Orient Bestech Business Tower".
- II. That the respondent allotted the unit bearing no. 819, 8<sup>th</sup> floor, having area admeasuring 2500 sq.ft to the complainant as per Buyer's Agreement dated 13.03.2009.
- III. That the complainant submitted that as per clause 14 of the agreement, the possession of the said premises is proposed to be delivered by the respondent within 24 months from the date of

execution of the agreement. Thus, the respondent was duty bound to handover physical possession of the unit to the complainant by 13.03.2011.

- IV. That after the completion of the unit, the assured rent of the unit of an amount of Rs.3,00,000/- was to be provided to the complainant by the respondent. The complainant had paid a sum of Rs.49,50,000/- to the respondent against the total sale consideration of the unit.
- V. The respondent failed to deliver the possession of the unit even after numerous promises and as per its contractual obligations. After the exhaustion of all the efforts to resolve the dispute and pertaining to the callous acts of the respondent, the complainant requested the respondent for a full refund of the amount paid by the complainant on account of delay in handing over of possession.
- VI. That there has been a delay of more than 10 years and the possession of the unit has still not been delivered to the complainant nor has the respondent even provided the refund.
- VII. That the complainant has also sent a Legal Notice dated 29.08.2017 to the respondent whereby the complainant again demanded the refund of the amount paid by him as the respondent has not provided possession of the unit.
- VIII. That the complainant has tried several times to establish contact with the respondent via telephonic conversations and also tried to visit the registered office of the respondent to resolve the issue but unfortunately the respondent always tried to avoid the conversation and always made false promises to the complainant.

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

4. The complainant has filed the present complaint seeking following reliefs:
- i. Direct the respondent to refund the amount of Rs.49,50,000/- along with applicable interest and compensation.
  - ii. Pass an order to issue interest of 18% per annum alongwith the compensation of Rs.5,00,000/- for mental pain, torture, agony, hardships caused to the complainant for the delay of the unit.
5. On the date of hearing, the Authority explained to the respondent /promoter about the contravention 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 respondent:**

6. The respondent has contested the present complaint on the following grounds:
- I. That the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act') are not applicable to the project in question. The Occupation Certificate in respect of the project was issued by the competent authority on 08.05.2013, i.e. well before the notification of the Haryana Real Estate Regulation and Development Rules 2017. Thus, the project in question is not an 'Ongoing Project' under Rule 2(1)(o) of the Rules. The present complaint is liable to be dismissed on this ground alone.
  - II. That the **complaint is barred by limitation** and liable to be dismissed on this ground as well. Symbolic possession of the unit was offered to the complainant on 16.07.2013. Subsequently, due to willful and persistent defaults on the part of the complainant to



make payment of balance amounts, the allotment in his favour was cancelled on 06.06.2015. Pertinently, the factum of cancellation of allotment has not been challenged by the complainant before any forum competent to grant such relief. Even in the present complaint, no relief has been claimed for setting aside the order of cancellation and forfeiture of earnest money and other amounts.

- III. That the complainant had approached respondent and evinced an interest in purchasing area in the Information Technology Park known as "Orient Bestech Business Tower" located on NH8 in Village Khandsa, Gurgaon, Haryana.
- IV. That the complainant was provisionally allotted IT/cyber space no 819 on the 8<sup>th</sup> Floor of the said project admeasuring 2500 sq. ft. approximately vide letter dated 20.02.2007. The Buyer's Agreement was willingly and consciously executed by the complainant on 13.03.2009. It is pertinent to mention herein that initially the 4<sup>th</sup> floor of the project had been identified for persons who wanted to avail possession of the units booked by them for their own use. Such units have been duly partitioned by construction of intervening walls, provisioning of electrical wiring, internal fixtures, fittings etc at the cost of the allottees.
- V. That at the time of booking, it was communicated to the complainant that in case of units meant for self use, in addition to the bare shell cost of the unit for self use, the complainant would also be liable to bear the charges towards the necessary works including construction of partitions, electrical wiring, internal fixtures, fittings etc in accordance with clause 4.3 of the buyer's agreement. The complainant was not prepared to make payment for

such works and as such opted for a unit on 8<sup>th</sup> Floor, ear marked for leasing. Accordingly IT space /cyber unit bearing no 819, located on the 8<sup>th</sup> floor of the project and earmarked for leasing was allotted to the complainant, which allotment was duly accepted by the complainant by execution of the buyer's agreement in respect of the unit.

- VI. That the spaces meant for self-use and those earmarked for leasing are dealt with differently in the buyer's agreement. Units such as the unit allotted to the complainant meant to be leased out by the respondent to prospective lessees are sold on bare shell basis, without any partitions and not capable of independent use as prospective lessees prefer to take entire floors of the building on lease and carry out fit outs/interiors as per their individual convenience.
- VII. That clauses 14, 15 and 16 of the buyer's agreement deal with IT spaces/cyber units that are intended to be leased out to proposed lessees to be identified by the respondent. In such cases, physical possession of the IT space/cyber unit is not intended to be offered to the allottee. Instead, the respondent is authorised by the allottee to identify a suitable lessee, at its absolute discretion, and to negotiate the terms and conditions of lease on behalf of the allottee. Upon identification of a lessee by the respondent, the period stipulated in the contract for delivery of possession shall not apply. The allottee in such case shall be entitled to rent paid by the lessee and shall not be entitled to possession of the cyber unit.
- VIII. That clause 4.3 of the buyer's agreement provides that the price of the IT space/cyber unit includes bare shell space, chilled water pipe



upto the AHUs and single-point electric connection on each floor of the building and does not include the cost of electric fittings, internal fixtures, switches, electrical panels, electrical wiring, air handling units, fans, geysers, electric and water meters and connections etc, which shall be installed by the allottee at his/her own cost.

- IX. That Clause 14 of the buyer's agreement provides that subject to timely payment of sale consideration by the complainant and subject to delays caused due to reasons beyond the power and authority of the respondent, possession of the unit was proposed to be offered within 24 months from the date of execution of the buyer's agreement. However, the complainant deliberately refrained from making payment of sale consideration as per the applicable payment plan and delayed the same which is evident from reminder letters/call notices dated 02.04.2009, 12.06.2009 and 06.11.2009 issued by the respondent.
- X. That after completion of construction, the respondent made an application for issuance of occupation certificate on 26.10.2012 and the same was issued on 08.05.2013. Upon receipt of the occupation certificate dated 08.05.2013, symbolic possession of the unit was offered to the complainants vide letter dated 16.07.2013. The complainant was called upon to make payment of outstanding amount as per the attached statement of account. It was also mentioned in the said letter that as a gesture of goodwill, maintenance charges had been reduced from Rs 15/- per sqft to Rs 3/- per sq.ft w.e.f 01.09.2013 till 31.08.2014 or date of lease which

ever was earlier. However, even after receipt of the said letter, the complainant failed to make payment of the outstanding amount.

- XI. That the complainant addressed a legal notice dated 23.01.2013 to the respondent seeking, *inter alia*, possession of the allotted IT/Cyber space. The respondent replied to the said notice whereby the allegations made in the notice were denied and the complainant was informed that the respondent had already made an application to the competent authority for issuing the occupation certificate, without which possession could not be offered.
- XII. That upon receipt of the Occupation Certificate dated 08.05.2013, symbolic possession of the unit was offered to the complainants vide letter dated 16.07.2013. The respondent, on its part, made diligent efforts to identify a suitable lessee to take on lease the cyber unit allotted to the complainant as well as other units located in the building but was unable to do so due to prevailing market conditions/water logging on the service road leading to access to the project.
- XIII. That after considerable delay, the complainant approached the respondent and requested that possession of the unit be given to them for his own use. Since the unit booked by the complainant is not earmarked for self-use and hence could not be handed over to the complainant, although under no obligation to do so and as a gesture of goodwill, the respondent communicated its willingness to accommodate the complainant by allotment of another cyber unit on a different floor which is meant for self-use.
- XIV. The respondent has also communicated to the complainant that possession of the unit in bare shell condition cannot be handed over

to the complainant and the respondent is willing to construct partitions, electrical wiring , fittings, fixtures and other works necessary to make the unit suitable for self use, provided the complainant makes payment for the said work in accordance with clause 4.3 of the buyer's agreement. The complainant was also reminded that the project being a Cyber Park, the unit could only be utilized for the IT/Cyber usage purposes in accordance with the usage as permitted by Government Authorities. However, the complainant refused to accept the genuine and bona fide offer made by the respondent and also defaulted in payment of balance amounts as per the applicable payment plan despite repeated reminders. Hence the respondent was constrained to cancel the allotment in favour of the complainant on 06.06.2015. Pertinently, the cancellation order has not been set aside in any proceedings and have attained finality.

- XV. That the complainant filed a complaint before the State Consumer Disputes Redressal Commission, Panchkula being Complaint No 445 of 2018. The said complaint was dismissed as withdrawn by the complainant on 04.09.2018 with liberty to file a fresh complaint. However, the complainant did not file any fresh complaint thereafter. Instead, the complainant filed false and frivolous police complaints against the respondent and its officials. It is submitted that both police complaints have been closed and no action has been initiated against the respondent on the basis thereof.
- XVI. That despite the cooperation extended, the complainant has failed to discharge his contractual obligations in accordance with the terms and conditions of the Buyer's Agreement. The allegations

levelled by the complainants against the respondent are totally baseless and do not merit any consideration by the Hon'ble Authority. The complainant has admittedly till date only made payment of Rs.49,50,000/- against the consideration amount of Rs.57,62,500/- (excluding taxes) and other charges at the time of possession. The respondent has rightly cancelled the allotment in favour of the complainant.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

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

**E. I Territorial jurisdiction**

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**

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)(a)**

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

9. 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.
10. 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. 2021-2022 (1) RCR (Civil), 357*** 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."*

11. 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.1 Whether the complaint is barred by limitation?**

12. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim that the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
13. In the present compliant, the cause of action is ongoing, as the respondent has cancelled the unit but failed to refund the amount paid by the complainant till date. Although the complainant filed the present complaint on 17.11.2023<sup>16</sup>, which is over nine years from the date of offer of possession, the cause of action continues due to the respondent's retention of the complainant's payments without refund.

**G. Findings on the reliefs sought by the complainant**

**G.I.Direct the respondent to refund the amount of Rs.49,50,000/- along with applicable interest and compensation.**

14. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

***"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 to 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."*

*(Emphasis supplied)*

15. The complainant made an application for provisional allotment of a IT/cyber space in the project "Orient Bestech Business Tower" located on Nh-08 in Village Khandsa, Gurugram. An allotment letter was issued in favour of the complainant on 20.02.2007.
16. The Buyer's Agreement has been executed between the complainant and respondent on 13.03.2009. As per clause 14 of the Buyer's Agreement dated 13.03.2009, the possession of the said premises was to be handed over to the complainant within a period of 24 months

from the date of the agreement. Thus, the due date of handing over possession was 13.03.2011.

17. The respondent has obtained the Occupation Certificate from the competent Authority in respect of the said project on 08.05.2013. The complainant had paid a sum of Rs.49,50,000 /- out of the sale consideration of Rs.46,37,500/- (As on page no. 32 of the reply)
18. The complainant submitted that he booked a commercial space in the project of the respondent and had complied with the payment plan and made a payment of Rs.49,50,000/- to the respondent but the respondent failed to provide possession of the subject unit to the complainant. Thus, the respondent is seeking refund of the amount by him to the respondent alongwith interest.
19. The counsel for the respondent submitted that after receiving the Occupation Certificate on 08.05.2013, the respondent offered possession of the IT/Cyber space to the complainant on 16.07.2013. Through the offer of possession letter dated 16.07.2013, the complainant was requested to pay the outstanding amount and complete the required formalities and documentation. Further, the respondent stated that the respondent company is sincerely making efforts to source a prospective lessee for the premises.
20. The complainant issued a legal notice to the respondent on 23.01.2013, demanding delivery of physical possession of the commercial unit as per the booking, along with completion of construction. In response, the respondent, vide reply dated 21.02.2013, referred to Clause 22 of the agreement, which stipulates that even upon completion of the building, the allottee is not entitled to seek possession of the unit unless the entire sale consideration

stands paid. It was further asserted that an amount of ₹1,35,054.10/- remained outstanding on the part of the complainant, and the final installment was payable at the time of delivery of possession. Subsequently, the respondent issued a cancellation letter, thereby cancelling the complainant's allotment. Notably, the said cancellation has not been challenged or set aside in any legal proceedings and has, thus, attained finality.

21. The complainant thereafter instituted Complaint No. 445 of 2018 before the State Consumer Disputes Redressal Commission, Panchkula. However, the said complaint was dismissed as withdrawn on 04.09.2018, with liberty granted to file a fresh complaint. Despite this liberty, the complainant did not pursue the remedy of filing a fresh complaint before the appropriate forum. Instead, the complainant lodged police complaints against the respondent, all of which were subsequently closed.
22. Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession, the allottee wishes to withdraw from the project and demand return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.
23. After taking into consideration, the documents on record and the submissions made by the parties, the Authority observes that the respondent obtained the Occupation Certificate for the complainant's



unit on 08.05.2013. The due date for possession, as per the buyer's agreement, was 13.03.2011, and the respondent obtained the Occupation Certificate after the stipulated date.. The complainant did not express any intention to withdraw from the project prior to the offer of possession. It was only when the offer of possession was made and the demand for payment was raised that the complainant expressed his desire to withdraw, citing certain concerns regarding non handing over of possession of the commercial space to the complainant. The commercial space allotted to the complainant was terminated by the respondent vide Cancellation Letter dated 06.06.2015. The right under section 18(1)/19(4) accrues to the allottee on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein.

24. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per Buyer's Agreement. In case the allottee wishes to withdraw from the project, the promoter is liable on demand to return the amount received by it with interest at the prescribed rate if it fails to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale. The words liable on demand need to be understood in the sense that the allottee has to make intentions clear to withdraw from the project and a positive action on his part to demand return of the amount with prescribed rate of interest if he has not made any such demand prior to receiving occupation certificate and unit is ready then he impliedly agrees to continue with the project.



Here, the unit was terminated by the respondent on account of Non-payment of outstanding dues by the complainant and the said termination has not been challenged by the complainant anywhere before any forum. The cancellation was done by the respondent way back in 2015 and the Authority is of the view that the validity of the cancellation cannot be challenged at this belated stage. However, the respondent has failed to return the amount paid by the complainant after the said cancellation and has been using the amount since almost ten years from the date of cancellation of the unit.

25. 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. 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 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."*

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 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 complainant after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 10.90% (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 06.06.2015 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*

**F.II. Pass an order to issue interest of 18% per annum alongwith the compensation of Rs.5,00,000/- for mental pain, torture, agony, hardships caused to the complainant for the delay of the unit.**

27. The complainant is seeking the above mentioned reliefs w.r.t. compensation. The Hon'ble Supreme Court of India in Civil Appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.(supra)* has held that an allottee is entitled to claim compensation and litigation charges 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 and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation

**G. Directions of the Authority:**

28. 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) of the Act.

- i. The respondent/promoter is directed to refund the paid-up amount of Rs.45,50,000/-, after deducting 10% of the sale consideration being earnest money along with interest on such balance amount at the rate of 10.90% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation i.e., 06.06.2015 till its actual realization.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

29. Complaint stands disposed of.
30. File be consigned to the registry.

Dated: 30.07.2025



**(Ashok Sangwan)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram



**HARERA**