

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

**Date of decision: 15.07.2025**

<b>NAME OF THE BUILDER</b>		<b>VIKAS PARK PRIVATE LIMITED</b>	
<b>PROJECT NAME</b>		<b>HERO HOMES</b>	
<b>S. No</b>	<b>Case No.</b>	<b>Case title</b>	<b>Appearance</b>
1.	CR/3547/2024	JWB Corporate Solutions V/S Vikas Park Private Limited	Shri Rahul Bhardwaj Advocate for Complainant Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent
2.	CR/3548/2024	JWB Corporate Solutions V/S Vikas Park Private Limited	Shri Rahul Bhardwaj Advocate for Complainant Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent
3.	CR/3549/2024	JWB Corporate Solutions V/S Vikas Park Private Limited	Shri Rahul Bhardwaj Advocate for Complainant Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent
4.	CR/3550/2024	JWB Corporate Solutions V/S Vikas Park Private Limited	Shri Rahul Bhardwaj Advocate for Complainant Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent
5.	CR/3551/2024	JWB Corporate Solutions V/S Vikas Park Private Limited	Shri Rahul Bhardwaj Advocate for Complainant Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent
6.	CR/3552/2024	JWB Corporate Solutions V/S Vikas Park Private Limited	Shri Rahul Bhardwaj Advocate for Complainant

			Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent
7.	CR/3553/2024	JWB Corporate Solutions V/S Vikas Park Private Limited	Shri Rahul Bhardwaj Advocate for Complainant Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent
8.	CR/3554/2024	JWB Corporate Solutions V/S Vikas Park Private Limited	Shri Rahul Bhardwaj Advocate for Complainant Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent
9.	CR/3555/2024	JWB Corporate Solutions V/S Vikas Park Private Limited	Shri Rahul Bhardwaj Advocate for Complainant Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent
10.	CR/3556/2024	JWB Corporate Solutions V/S Vikas Park Private Limited	Shri Rahul Bhardwaj Advocate for Complainant Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent
11.	CR/3557/2024	JWB Corporate Solutions V/S Vikas Park Private Limited	Shri Rahul Bhardwaj Advocate for Complainant Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent
12.	CR/3558/2024	JWB Corporate Solutions V/S Vikas Park Private Limited	Shri Rahul Bhardwaj Advocate for Complainant Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent
13.	CR/3563/2024	Diksha And Paawan V/S Vikas Park Private Limited	Shri Rahul Bhardwaj Advocate for Complainant Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent
14.	CR/3564/2024	Gorav and Paawan and Amit Sachdeva V/S Vikas Park Private Limited	Shri Rahul Bhardwaj Advocate for Complainant

			Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent
15.	CR/3565/2024	Paawan Anand V/S Vikas Park Private Limited	Shri Rahul Bhardwaj Advocate for Complainant Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent
16.	CR/3829/2024	Shipra Sharma V/S Vikas Parks Private Limited	Shri Rahul Bhardwaj Advocate for Complainant Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent
17.	CR/3830/2024	Lalit Sharma V/S Vikas Parks Private Limited	Shri Rahul Bhardwaj Advocate for Complainant Shri Sumesh Malhotra & Pawan Bhardwaj Advocates for Respondent

**CORAM:**

Shri Arun Kumar  
Shri Ashok Sangwan

**Chairman**  
**Member**

**ORDER**

1. This order shall dispose of all the 17 complaints titled as above filed before the authority 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, "HERO HOMES" being developed by the same respondent/promoter

i.e., Vikas Park Private Limited. 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 refund the entire amount along with interest.

3. The details of the complaints, reply, status, unit numbers, date of agreements, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	Hero homes Tower 8", Sector-104, Dwarka Expressway, Village Dhanwapur, Gurugram
<b>Nature of Project</b>	Residential Group Housing
<b>Project area</b>	9..053 acres
<b>DTCP License No. and validity</b>	246 of 2007, 56 of 2011, 37 of 2012, 37 of 2012, 66 of 2012, 67 of 2012, 43 of 2014 and 44 of 2014.
<b>Name of Licensee</b>	M/s Juventus Estate limited & Ors.
<b>HRERA Registered</b>	RC/REP/HARERA/GGM/743/475/87 dated 28.08.2023, valid upto 30.09.2027.

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Allotment letter & Date of execution of BBA	Basic Sale Consideration / Total Amount paid by the complainant	Due date of possession	Date of cancellation



1.	<b>CR/3547/2024</b>  JWB Corporate solutions VS Vikas Park Private Limited  <b>DOF:</b> 20.01.2023  <b>Reply:</b> 12.10.2023	T-08/1701  2450 sq. ft. super area  1527.73 sq. ft. carpet area  [as per allotment at page 31 of complaint]	28.09.2023  [page 29 of complaint]  BBA  29.01.2024  [page 40 of complaint]	<b>BSP-</b>  Rs. 2,70,11,256  [as per buyer agreement on page no. 45 of complaint]  <b>AP-</b>  Rs.27,01,126/-  as per cancellation letter dated 06.06.2024 on page no. 78 of complaint	<b>30.09.2027</b>	<b>06.06.2024</b>
2.	<b>CR/3548/2024</b>  JWB Corporate solutions VS Vikas Park Private Limited  <b>DOF:</b> 20.01.2023  <b>Reply:</b> 12.10.2023	T-08/0702  2450 sq. ft. super area  1527.73 sq. ft. carpet area  [as per buyer agreement at page 44 of complaint]	28.09.2023  [page 29 of complaint]  BBA  01.03.2024  [page 41 of complaint]	<b>BSP-</b>  Rs. 2,70,11,256  [as per buyer agreement on page no. 45 of complaint]  <b>AP-</b>  Rs. 26,75,401/-  as per cancellation letter dated 06.06.2024 on page no. 77 of complaint	<b>30.09.2027</b>	<b>06.06.2024</b>
3.	<b>CR/3549/2024</b>  JWB Corporate solutions VS Vikas Park Private Limited	T-08/1702  2450 sq. ft. super area  1527.73 sq. ft. carpet area  [as per buyer agreement]	28.09.2023  [page 29 of complaint]  BBA  01.03.2024	<b>BSP-</b>  Rs. 2,70,11,256  [as per buyer agreement on page no. 45 of complaint]  <b>AP-</b>  Rs. 27,01,126/-	<b>30.09.2027</b>	<b>06.06.2024</b>



		at page 44 of complaint]	[page 41 of complaint]	as per cancellation letter dated 06.06.2024 on page no. 79 of complaint		
4.	<b>CR/3550/2024</b>  JWB Corporate solutions VS Vikas Park Private Limited	T-08/2303  2450 sq. ft. super area  1527.73 sq. ft. carpet area [as per buyer agreement at page 43 of complaint]	28.09.2023  [page 29 of complaint]  BBA 29.01.2024 [page 40 of complaint]	<b>BSP-</b> Rs. 2,70,11,256 <b>[as per buyer agreement on page no. 44 of complaint]</b>  <b>AP-</b> Rs. 26,75,401/- as per cancellation letter dated 06.06.2024 on page no. 76 of complaint	30.09.2027	06.06.2024
5.	<b>CR/3551/2024</b>  JWB Corporate solutions VS Vikas Park Private Limited	T-08/1803  2450 sq. ft. super area  1527.73 sq. ft. carpet area [as per buyer agreement at page 45 of complaint]	28.09.2023  [page 29 of complaint]  BBA 01.03.2024 [page 42 of complaint]	<b>BSP-</b> Rs. 2,70,11,256 <b>[as per buyer agreement on page no. 44 of complaint]</b>  <b>AP-</b> Rs.26,75,401/- as per cancellation letter dated 06.06.2024 on page no. 77 of complaint	30.09.2027	06.06.2024

6.	<b>CR/3552/2024</b>  JWB Corporate solutions VS Vikas Park Private Limited	T-08/2602  2450 sq. ft. super area  1527.73 sq. ft. carpet area [as per buyer agreement at page 45 of complaint]	28.09.2023  [page 29 of complaint]  BBA  01.03.2024  [page 42 of complaint]	<b>BSP-</b>  Rs. 2,70,11,256/-  <b>[as per buyer agreement on page no. 46 of complaint]</b>  <b>AP-</b>  Rs.27,01,126/-  as per cancellation letter dated 06.06.2024 on page no. 79 of complaint	30.09.2027	06.06.2024
7.	<b>CR/3553/2024</b>  JWB Corporate solutions VS Vikas Park Private Limited	T-08/0501  2450 sq. ft. super area. 1527.73 sq. ft. carpet area [as per buyer agreement at page 44 of complaint]	28.09.2023  [page 29 of complaint]  BBA  01.03.2024  [page 41 of complaint]	<b>BSP-</b>  Rs. 2,70,11,256/-  <b>[as per buyer agreement on page no. 45 of complaint]</b>  <b>AP-</b>  Rs.26,75,401/-  as per cancellation letter dated 06.06.2024 on page no. 77 of complaint	30.09.2027	06.06.2024
8.	<b>CR/3554/2024</b>  JWB Corporate solutions VS Vikas Park Private Limited	T-08/1002  2450 sq. ft. super area 1527.73 sq. ft. carpet area [as per buyer agreement at page 45 of complaint]	28.09.2023  [page 29 of complaint]  BBA  25.01.2024  [page 41 of complaint]	<b>BSP-</b>  Rs. 2,70,11,256/-  <b>[as per buyer agreement on page no. 45 of complaint]</b>  <b>AP-</b>  Rs.27,01,126/-  as per customer ledger dated 24.05.2024 on	30.09.2027	22.05.2024

				page no. 77 of complaint		
9.	<b>CR/3555/2024</b>  JWB Corporate solutions VS Vikas Park Private Limited	T-08/2101  2450 sq. ft. super area 1527.73 sq. ft. carpet area  [as per buyer agreement at page 44 of complaint]	28.09.2023  [page 29 of complaint]  BBA  01.03.2024  [page 41 of complaint]	<b>BSP-</b>  Rs. 2,70,11,256/-  <b>[as per buyer agreement on page no. 45 of complaint]</b>  <b>AP-</b>  <b>Rs.5,00,000/-</b>  as per cancellation letter dated 22.05.2024 on page no. 77 of complaint	<b>30.09.2027</b>	<b>22.05.2024</b>
10.	<b>CR/3556/2024</b>  JWB Corporate solutions VS Vikas Park Private Limited	T-08/1501  2450 sq. ft. super area 1527.73 sq. ft. carpet area  [as per buyer agreement at page 43 of complaint]	28.09.2023  [page 29 of complaint]  BBA  29.01.2024  [page 40 of complaint]	<b>BSP-</b>  Rs. 2,70,11,256/-  <b>[as per buyer agreement on page no. 44 of complaint]</b>  <b>AP-</b>  <b>Rs.26,75,401/-</b>  As per cancellation letter dated 22.05.2024 on page no. 74 of complaint	<b>30.09.2027</b>	<b>22.05.2024</b>





11.	CR/3557/2024  JWB Corporate solutions VS Vikas Park Private Limited	T-08/1001  2450 sq. ft. super area 1527.73 sq. ft. carpet area  [as per buyer agreement at page 45 of complaint]	28.09.2023  [page 29 of complaint]  BBA  04.12.2023  [page 42 of complaint]	BSP-  Rs. 2,70,11,256/-  [as per buyer agreement on page no. 44 of complaint]  AP-  Rs.26,75,401/-  As per customer ledger dated 24.05.2024 on page no. 48 of reply	30.09.2027	22.05.2024
12.	CR/3558/2024  JWB Corporate solutions VS Vikas Park Private Limited	T-08/2001  2450 sq. ft. super area 1527.73 sq. ft. carpet area  [as per buyer agreement at page 43 of complaint]	28.09.2023  [page 29 of complaint]  BBA  01.03.2024  [page 40 of complaint]	BSP-  Rs. 2,70,11,256/-  [as per buyer agreement on page no. 44 of complaint]  AP-  Rs.26,75,401/-  As per cancellation letter dated 22.05.2024 on page no. 105 of reply	30.09.2027	22.05.2024
13.	CR/3563/2024  Diksha and Paawan VS Vikas Park Private Limited	T-08/3202  2450 sq. ft. super area 1527.73 sq. ft. carpet area  [as per buyer agreement at page 44 of complaint]	28.09.2023  [page 30 of complaint]  BBA  23.01.2024  [page 41 of complaint]	BSP-  Rs. 3,47,28,760/-  [as per buyer agreement on page no. 45 of complaint]  AP-  Rs.30,00,000/-  As per customer ledger dated 24.05.2024 on page no. 73 of reply	30.09.2027	22.05.2024

14.	<b>CR/3564/2024</b> Gorav and Paawan VS Vikas Park Private Limited	T-08/3003 2450 sq. ft. super area 1527.73 sq. ft. carpet area [as per buyer agreement at page 57 of complaint]	28.09.2023 [page 31 of complaint] BBA 01.12.2023 [page 53 of complaint]	<b>BSP-</b> Rs. 2,95,83,746/- [as per buyer agreement on page no. 58 of complaint] <b>AP-</b> Rs. 53,91,752/- As per customer ledger dated 24.05.2024 on page no. 73 of reply	30.09.2027	22.05.2024
15.	<b>CR/3565/2024</b> Paawan Anand VS Vikas Park Private Limited	T-08/2202 2450 sq. ft. super area 1527.73 sq. ft. carpet area [as per buyer agreement at page 46 of complaint]	28.09.2023 [page 29 of complaint] BBA 31.10.2023 [page 42 of complaint]	<b>BSP-</b> Rs. 2,95,83,746/- [as per buyer agreement on page no. 47 of complaint] <b>AP-</b> Rs. 66,66,752/- As per customer ledger dated 24.05.2024 on page no. 83 of reply	30.09.2027	22.05.2024
16.	<b>CR/3829/2024</b> Shipra Sharma VS Vikas Park Private Limited	T-08/1902 2450 sq. ft. super area 1527.73 sq. ft. carpet area [as per buyer agreement at page 40 of complaint]	28.09.2023 [page 26 of complaint] BBA 07.11.2023 [page 37 of complaint]	<b>BSP-</b> Rs. 2,95,83,746/- [as per buyer agreement on page no. 41 of complaint] <b>AP-</b> Rs. 29,29,000/- As per customer ledger dated	30.09.2027	06.06.2024

				10.06.2024 on page no. 70 of reply		
17.	CR/3830/2024  Lalit Sharma VS Vikas Park Private Limited	T-08/1901  2450 sq. ft. super area 1527.73 sq. ft. carpet area  [as per buyer agreement at page 42 of reply]	28.09.2023  [page 26 of complaint]  BBA  07.11.2023  [page 40 of complaint]	BSP-  Rs. 2,95,83,746/-  [as per buyer agreement on page no. 44 of reply]  AP-  Rs.29,29,000/-  As per customer ledger dated 10.06.2024 on page no. 69 of reply	30.09.2027	06.06.2024

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 units for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.
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 *complaint case bearing no. 3547/2024 titled as JWB Corporate Solutions V/S Vikas Park*

*Private Limited* is being taken as a lead case in order to determine the rights of the allottee(s) qua refund the entire amount along with interest.

**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:

**3547/2024 titled as JWB Corporate Solutions V/S Vikas Park Private Limited**

Sr. No.	Particulars	Details
1	Name of the project	"Hero homes Tower 8", Sector-104, Dwarka Expressway, Village Dhanwapur, Gurugram, Haryana
2	Nature of the project	Residential Group Housing
3	RERA Registered/ not registered	RC/REP/HARERA/GGM/743/475/87 dated 28.08.2023, valid upto 30.09.2027
4	Unit no.	T-08/1701, 17 <sup>th</sup> floor [as per allotment at page 31 of complaint]
5	Unit area admeasuring	2450 sq. ft. super area 1527.73 sq. ft. carpet area [as per allotment at page 31 of complaint]
6	Date of Allotment	28.09.2023 [page 29 of complaint]
7	Date of agreement for sale	<b>Executed on: 29.01.2024</b> [page 40 of complaint]
8	Possession clause	7.1. Possession of the said apartment along with parking: "..... <b>The Promoter assures to handover possession of the said apartment along with parking (if applicable), on or before 30.09.2027, as per agreed terms and conditions unless there is delay due to force majeure, court orders, government policy/guidelines.....</b> "

		[as per agreement for sale at page 49 of complaint]
9	Due date of possession	30.09.2027 [agreement for sale at page 49 of complaint]
10	Payment Plan	Construction Linked Payment Plan (as per agreement for sale - Schedule C at page 64 of complaint)
11	Total sale consideration	Rs.2,70,11,256/- [as per buyer agreement on page no. 45 of complaint]
12	Amount paid by the complainant	<b>Rs. 27,01,126/-</b> (as per cancellation letter dated 06.06.2024 on page no. 78 of complaint)
13	Occupation certificate /Completion certificate	Not received
14	Offer of possession	Not offered
15	Demand/Reminder notice dated	04.11.2023, 19.11.2023, 04.12.2023, 10.12.2023, 02.01.2024 and final notice dated 22.05.2024
16	Cancellation Letter	06.06.2024 (on account of non-payment of instalments due) (Page 77 of complaint)

### B. Facts of the complaint.

8. The complainant has made the following submissions in the complaint: -

- i. That the complainant is a partnership firm registered under the provisions of the Indian Partnership Act, 1932, and has been cheated by the malpractices adopted by the respondent(s), stated to be a builder, allegedly carrying out real estate development for many years. The complainants are "Allottees" within the ambit of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016.
- ii. The respondent company is a "promoter" as per Section 2(zk) of the Act, who approached the complainants through its authorized representatives to dupe

them out of their hard-earned money in the name of development by making several false promises

- iii. The respondent, M/s Vikas Parks Private Limited is a company incorporated under the provisions of the Companies Act, 1956, with its registered office at 264, Industrial Estate, Phase-III, New Delhi - 110020, India, and is engaged in the construction, development, marketing, and sales of various types of real estate projects.
- iv. In 2023, the respondent started the development work of its ultra-luxury residential group housing project known as "**HERO HOMES**", Sector-104, Dwarka Expressway, Village Dhanwapur, Gurugram, Haryana. The respondent advertised the aforesaid real estate project as a one-of-a-kind development with impeccable facilities and promised to complete the project within a reasonable amount of time. The complainant induced by the attractive advertisements, assurances, representations, and promises made by the respondent, and believing them to be correct and true, the complainant sought an allotment of a flat/apartment in the said project of the respondent via an allotment letter dated 28.09.2023, the complainant booked the unit by paying the booking amount of Rs. 5,00,000/-, which was duly acknowledged by the respondent.
- v. That the complainant allotted Flat No. T-08/1701, having a super area of 2450 sq. ft., admeasuring a carpet area of 1527.73 sq. ft., in Tower No. T-8, Floor 17<sup>th</sup>, at Rs. 11,025/- per sq. ft. (excluding taxes) for a total sale consideration of Rs. 2,70,11,256/-. Furthermore, it is pertinent to note that the complainant chose a construction-linked payment plan to purchase the said unit from the Respondent.
- vi. That after execution of the allotment letter with the complainant, the respondent executed an agreement for sale dated 01.03.2024 with the

complainant. The said agreement contained various one-sided and arbitrary clauses, but the complainant could not negotiate any of the clauses since any disagreement or cancellation would have led to the forfeiture of the earnest money. The Complainant was only required to sign on the dotted line. That prior to the execution of the agreement for sale, the respondent had already raised multiple demands amounting to more than 10% of the total sale consideration of the unit despite the complainant had opted for a construction-linked payment plan, which in itself is a breach of terms and conditions mentioned in the apartment buyer agreement.

- vii. That as per Schedule C of the BBA, after the booking of the unit, the respondent was supposed to raise demands within 30 days, 90 days, and 150 days. However, neglecting the terms and conditions set by the Respondent itself, the demand which was due on 28.10.2023 was raised on 11.10.2023 vide invoice dated 11.10.2023, thereby breaching the terms of the BBA. The respondent has miserably failed to comply with the terms and conditions of the BBA, despite receiving more money than the complainant was obligated to pay according to the construction-linked payment plan. However, threatened by the cancellation of its unit the complainant agreed to pay more than 10% of the sale consideration before the due date of payment.
- viii. That the respondent, since the inception of the allotment letter and in the absence of the agreement for sale, started insisting and pressurizing the complainant to make further payments as per the construction-linked payment plan. The provisions of the RERA Act, 2016, promoters in the absence of the agreement for sale are prohibited from demanding or charging more than 10% of the total sale consideration as per the provision of Section 13 of RERA Act. However, the respondent, without the execution of the registered agreement for sale, started harassing and pressurizing the

complainant by demanding amounts towards the sale consideration of the unit

- ix. The terms and conditions enunciated in the allotment letter, which was supposed to be a preliminary understanding between the parties, surprisingly contained the final understanding. This clearly exhibits the fact that from the very inception, the Respondent was in a superior position with higher negotiating power, which constrained the Complainant to sign the agreement without any negotiation. That such terms and conditions for payment have never been seen in any agreement, including the model agreement provided by RERA, which aims to balance the rights between the parties. Therefore, in view of the aforementioned, such a payment plan and terms and conditions are in violation of *Pioneer Urban Land and Infrastructure Ltd. vs. Union of India, AIR 2019 Supreme Court 4055*, and in violation of the provisions of the RERA Act, 2016
- x. That the complainant that as per Schedule C of the agreement for sale, the payment plan is not only arbitrary but rather illegal as it is completely ambiguous, mentioning only that subsequent payments have to be made from the time of booking. The said Schedule-C enunciating the payment plan is not only wrong but rather unreasonable, ambiguous, and illegal.
- xi. The complainant entered into the agreement and showed a complete intention to purchase the said unit. The complainant wishes to continue with the project and wishes to clear the dues as and when asked by the respondent in the presence of this Authority due to the fact that the said payment plan is not transparent in nature.
- xii. That as per clause 5 of the agreement for sale, possession of the flat/apartment is to be delivered by 30.09.2027, with a maximum grace period, if necessary, of 6 months or 180 days for the respondent(s) to obtain



- the occupation certificate in respect of this group housing complex and provide possession to the complainants.
- xiii. That despite paying more than 10% of the total sale consideration of the unit prior to the execution of the BBA, the respondent herein continued to raise multiple demands for payment towards the sale consideration of the unit. Several reminder letters dated 04.11.2023, 19.11.2023, 04.12.2023, and 10.12.2023 were issued by the respondent prior to the execution of the BBA. The respondent issued a final notice dated 02.01.2024 to the complainant, pressurizing them to pay the remaining sale consideration. The final notice was also issued prior to the execution of the BBA. Upon the Complainant's protest that not executing the BBA and seeking payments in the absence of the BBA is against the scheme of the RERA Act, the Respondent agreed to execute the BBA dated 01.03.2024.
- xiv. That the complainant has been diligently following the payment plan (construction-linked payment plan) as per which the complainant has already paid more than 10% of the total sale consideration. However, without any due process of law and without any prior notice or raising any final demand notice to the complainant, the respondent cancelled the complainant's unit via a cancellation letter dated 06.06.2024, citing non-compliance with the payment plan.
- xv. That the said cancellation letter was not only illegal but also arbitrary and unreasonable, as it was sent to the complainant by the respondent without any application of mind. The respondent never gave a 30-day time period as per the law or any final reminders but rather straight away cancelled the unit.
- xvi. That due to cancellation of the unit, the complainant approached the respondent seeking restoration of their unit. Upon meeting with the respondent, the complainant was assured that the unit would be restored

- upon payment of the remaining sale consideration. Based on the assurances given by the respondent, the complainant paid Rs. 25,00,000/- to the respondent for each and every unit purchased by the complainant. The aforesaid payment towards the purchased unit was duly sent by the respondent which was intimated via email dated 29.06.2024.
- xvii. That despite receiving more than 10% of the basic sale consideration and not providing adequate time, the respondent arbitrarily and unreasonably sent a cancellation letter for the said unit to the complainant for failing to comply with the unreasonable demands of the respondent. The complainant is the lawful owner of the said unit in the eyes of the law but is being harassed by the mala fide acts of the respondent, who has only been trying to extort extra money from the complainant in order to gain monetarily at the complainant's peril. This act of charging and demanding money untimely is clearly a prima facie case of unfair trade practices as per Section 7(1)(c) and 7(1)(d) of the RERA Act, which have been adopted by the respondent and are against the provisions of Section 11(4) as well as Section 11(5) of the RERA Act, 2016.
- xviii. That section 11(5) of the RERA Act, clearly stipulated that the promoters may cancel the allotment only as per the terms stipulated in the agreement for sale. The said cancellation can only be held valid provided that the allottee has failed to perform his duties as per the terms and conditions of the agreement executed between the parties. Herein, due to the above facts and circumstances narrated, the complainant has committed no breach of any terms and conditions of the agreement for sale rather it is the respondent who has been at default to perform his obligations from the very inception of execution of the agreement.
- xix. That the complainant is seeking and is entitled for the possession of their unit along with the delayed possession charges or any other damages, as per the

provisions of the RERA Act, 2016. Furthermore, the complainant herein reserves the right(s) to add/ supplement/ amend/ change/ alter any submission made in the complaint, as well as the right to produce additional document(s) or submissions as and when required or directed by this Authority.

- xx. That the Complainants being aggrieved persons, are filing the present complaint under Section 31 of the RERA Act before the Authority for violation/ contravention of provisions of the RERA Act.
- xxi. That the Hon'ble Authority has jurisdiction to entertain the present Complaint since the project is situated in Gurugram which is well within the jurisdiction of this Hon'ble Authority

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

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

- I. Direct the respondent to restore the allotment of Flat No. T-08/1701, having a super area of 2450 sq. ft., admeasuring a carpet area of 1527.73 sq. ft., in Tower No. T-8, Floor 17<sup>th</sup>, allotted to the complainant vide allotment letter dated 28.09.2024 and subsequently vide agreement to sell dated 01.03.2024.
- II. Direct the respondent to terminate and withdraw the cancellation letter dated 06.06.2024 issued to the complainant, as the same is against the provisions of the RERA Act, 2016;
- III. Direct the respondent to complete the development of the project within the stipulated time period as promised in the agreement to sell and offer valid physical possession to the complainant along with all the basic amenities and facilities as were promised in the agreement to sell.
- IV. Direct the respondent to abstain from charging other and more than what has been agreed as per the terms and conditions of the agreement to sell.

V. Direct the respondent(s) to pay a sum of Rs. 1,00,000/- to the complainants towards litigation costs.

VI. Grant any other relief that may be justified, necessary and due in the interests of justice, equity and good conscience

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.

- i. That the complainant has filed the captioned complaint under Section 31 of Real Estate (Regulation and Development) Act, 2016 ("Act") replete with misleading statements, false and concocted averments and submissions with a clear intent to abuse the process of law and exploit the benevolence of the Hon'ble Authority by dragging the Respondent before present forum without any just cause of action or right and to cull out reliefs which are legally not tenable.
- ii. That the respondent further humbly submits that the averments and contentions, as stated in the complaint under reply, may not be deemed to have been admitted by the respondent, save and except what are expressly and specifically admitted and the rest may be read as travesty of facts and expressly denied.
- iii. That the complainant, out of its own free will, analysis, research and prudence had booked a unit bearing no. T-08/1701 (Tower No. T-08) on 17<sup>th</sup> Floor, admeasuring 2450 sq.ft super area and carpet area of 1527. 73 sq. ft. for total sale consideration of Rs. 2,70,11,256/- including IDC, EDC, parking charges, govt. fees/taxes/levies, common areas as mentioned in the

allotment letter, in the project '**HERO HOMES GURUGRAM**' and the said unit was allotted to the complainant vide allotment letter dated 28.09.2023.

- iv. That the complainant in the purported complaint has made baseless assertions regarding the terms of the agreement for sale being one-sided and arbitrary. The respondent informed the complainant of having dispatched copies of the agreement for sale vide email dated 12.10.2023, soon after the issuance of the allotment letter dated 28.09.2023 and provided instructions in the said email for execution and return of the agreement. After pursuing the complainant to execute the agreement on several occasions, the complainant and respondent executed the agreement on 29.01.2024 to set out the terms for allotment of the unit and the parties registered the agreement on 01.03.2024. The respondent would like to state here that the complainant executed the agreement out of its own free will and was not under any duress to execute the agreement. Further, the complainant had ample time to read and understand the provisions of the agreement and still did not raise any objection pertaining to any provision of the agreement.
- v. The complainant has blatantly lied while stating that it had paid more than 10% of the total sale consideration of the unit prior to the execution of the agreement. As is evident from the customer ledger of the complainant maintained by the respondent till the date of cancellation of the allotment of the unit, complainant prior to execution of the agreement dated 29.01.2024 had only paid an amount of Rs. 5,00,000/- at the time of booking of the unit. Apart from the said payment, the Complainant remitted Rs21,75,401/- on 19.02.2024, totalling to less than 10% of the total sale consideration, upon receiving several demand notices, reminder letters and

final demand notice and after the execution and registration of the agreement for sale. Further, an amount of Rs.25,00,000/-, were clandestinely transferred by the complainant on 18.06.2024, after issuance of cancellation letter dated 06.06.2024, in order to cover its tracks and mislead the Authority by filing the present complaint. That the assertions of payment of more than 10% of the total sale consideration of the unit before the execution of the agreement for sale is contrary to the contents of the complaint where the complainant admits to have paid more than 10% of the total sale consideration. The complainant in the purported complainant had repeatedly said that the demands raised by the respondent before execution of the agreement were against the agreed payment plan.

- vi. That the complainant who has, on various instances, breached the terms of the allotment letter and the agreement, by defaulting on payment of pending installments as per the agreed payment plan as stated in clause 1.4 of the agreement. The respondent, in strict compliance of the payment plan, issued demand notice dated 12.10.2023, intimating the complainant to make the payment of Rs.22,01,126/- (including payment of balance amount) by 28.10.2023. However, the complainant did not oblige by its responsibility and failed to make the payment by 28.10.2023. Accordingly, the respondent had to issue reminder letters dated 04.11.2023, 19.11.2023, 04.12.2023 and 10.12.2023, requesting the complainant to make the payment against the installment which became due on 28.10.2023. The complainant continued to disregard the reminder letters, pursuant to which the respondent was forced to issue a final notice dated 02.01.2024, requesting the complainant to clear the outstanding amount within 15 days

from receipt of the final notice, failing which the allotment of the Unit shall stand cancelled.

- vii. That the complainant was also not executing the agreement for sale and the respondent had to issue a final notice dated 21.12.2023, requesting the complainant to execute the agreement for sale within 30 days from the receipt of the notice or otherwise the respondent will have to cancel the allotment of the unit. Consequent to the receipt of the final notice, the complainant executed the agreement for sale on 29.01.2024 and the same was registered on 01.03.2024 as the complainant had only paid Rs.5,00,000/- till the date of execution of the agreement even after receiving numerous communications to clear the outstanding payments. Regardless, the respondent did not cancel the allotment of the unit and being a customer-friendly business group, it allowed the agreement to remain effective. After receiving multiple demand letters and reminder letters, that the complainant made a payment against one installment which was to be paid within 30 days from booking, of an amount of Rs.21,75,401/-, on 19.02.2024 and the remaining amount still remained unpaid. In accordance with the agreement, the respondent issued a demand letter dated 29.02.2024 seeking payment Rs.54,99,753.76/- towards instalments which were to be paid within 90 days and 150 days from the booking, i.e., by 15.03.2024, along with the outstanding unpaid amount. The respondent also issued a final notice dated 22.05.2024 seeking payment of Rs.54,02,252/- within 15 days of receipt of the final notice and informed the complainant that if payment was not received within the stipulated time period, the allotment of the unit shall stand cancelled. As the non-payment impeded the respondent's ability to complete the construction of the unit,

the respondent was forced to issue the cancellation letter on 06.06.2024, cancelling the allotment of the unit and the agreement thereof.

- viii. That the complainant till 06.06.2024 had only paid an amount of Rs.26,75,401/- to the respondent against the last demand of Rs.54,02,252/-. The complainant's continuous and deliberate default is apparent from the fact that vide purported emails inter-alia dated 26.05.2024, the complainant admitted to be in default and made flimsy excuses of general elections to justify its continuous default.
- ix. That all demands were made from the complainant in terms of the payment plan opted and chosen by the complainant. The complainant deliberately did not come forward and executed the agreement with *malafide* intent. The fact that the stamp paper used for execution of the agreement is dated 10.10.2023, clearly reflects that the agreements were shared with the complainant and the complainant in order to avoid its legal liability avoided execution of the same, despite several requests and reminders from the respondent. Further, the agreement was executed on 29.01.2024 and thereafter, it was its registration which was delayed by the complainant citing various excuses, which was finally registered on 01.03.2024.
- x. That the respondent had throughout the allotment of the unit in favour of the complainant have strictly adhered to the terms laid down in the allotment letter and thereafter the agreement, which are drafted and executed in the strict compliance to the Real Estate (Regulation and Development) Act, 2016 and the modal agreement set out in the Act. Further, the Act permits the respondent to make necessary variance according to the circumstances and situation from the model agreement and the respondent pursuant to that had got the said draft of agreement for



sale approved from the Authority. The terms of the allotment letter stated that there shall be no variation in the terms and conditions set out in the allotment letter and the agreement for sale.

- xi. That the complainant concealed a material fact that respondent has been requesting the complainant to execute the agreement and the same is evident from the email sent by the respondent on 12.10.2023 wherein the respondent shared the agreement for sale and authority letter and requested the complainant to sign the two sets of the agreement for sale and authority letter and share the signed copies with the respondent. However, the complainant conveniently chose to pay no heed to the email. Further, the respondent sent a final notice dated 21.12.2023 wherein it requested the complainant to sign the agreement. The agreement was finally executed on 29.01.2024 and the signed copies of the same were returned by the complainant to the respondent and the registration of the same was thereafter delayed by the complainant. Hence, due to the disregard of the email by the complainant, the agreement couldn't be executed sooner to the date of issuance of the allotment letter. The agreement was registered on 01.03.2024.
- xii. That the complainant had explicitly agreed to the payment plan which was enumerated in the allotment letter and the agreement. The allegations made by the complainant with regards to the payment plan being arbitrary, is a mere tactic to overshadow their payment obligations, as they are unable or unwilling to make payments in accordance with the established plan. The agreement with exact number of days within which an instalment has to be paid, is not transparent in nature which has impeded the complainant from paying the outstanding dues.

- xiii. That the respondent has strictly complied with the provisions of the allotment letter and the agreement, to which the complainant is a party to, and had only issued demand letters and reminder letter in accordance with the agreement payment plan. Also, the respondent at various instances have extended the repayment timeline to allow the complainant to pay the outstanding dues and thus, had given ample time to the complainant to pay its dues. The respondent has only cancelled units of the allottees who had defaulted in making payments as per the agreed payment plan after allowing them ample opportunity to clear their outstanding dues. The respondent has at all times been in strict compliance with the agreed terms and the provisions of the RERA Act and has not indulged in an any unfair or fraudulent practices.
- xiv. That the respondent had issued the cancellation letter dated 06.06.2024 in accordance with the terms of the agreement and the provisions of the RERA act. clause 9.3 of the agreement states that if the allottee fails to make payments for two consecutive demands made by the promoter as per the payment plan, the same shall be considered as a default, and under clause 9.3(ii), in the event the default continues for a period of 90 (ninety) days, the Promoter may cancel the allotment of the said apartment and refund the money paid by the allottee by forfeiting the earnest money, i.e., 10% of the total sale price of the said unit. The respondent was well within its right accruing from the agreement, to cancel the allotment of the unit vide issuing the cancellation letter dated 06.06.2024, as the complainant had failed to pay the outstanding amount for a period of more than 90 days, after affording several opportunities *inter-alia* vide reminders dated 04.11.2023, 19.11.2023, 04.12.2023, and 10.12.2023 and final demand notices dated

- 02.01.2024 and 22.05.2024 to the complainant, all of which have been concealed by the complainant.
- xv. That the complainant was well-aware that by defaulting of various outstanding instalments, the allotment of the unit is liable to be cancelled and yet, it did not carry out its obligation to payment the outstanding dues.
- xvi. That the allotment of the unit in favour of the complainant shall be restored if the complainant pays a sum of Rs.25,00,000/-. The complainant had submitted no documentary evidence to substantiate its claim. The complainant has not proof to substantiate that the respondent asked the complainant to remit an amount of Rs.25,00,000/- after cancelling the allotment of the unit and it is a mere unwarranted averment against the respondent to malign the reputation of the respondent in the market. On 19.07.2024, the respondent issued an email to the complainant thereby mentioning that the unit has already been cancelled and complainant shall refrain from depositing any amount towards the unit and submit the original documents back to the respondent. The cancellation letter dated 06.06.2024 was also attached in the email.
- xvii. That as per the agreement, possession of the unit is scheduled to be delivered on 30.09.2027 and the construction of the unit is ongoing as per the stipulated timeline, therefore, the complainant has no ground to allege that the respondent has failed to complete the construction. Further, the complainant has absurdly demanded delayed possession charges on no legitimate ground. As the possession was to be delivered on 30.09.2027, the issue of possession is not in dispute. Because of the breach of provisions of the agreement by the complainant, that forced the respondent to cancel the allotment of unit.

xviii. The there is no deficiency of service on the part of the respondent and the respondent has throughout its engagement with the complainant, kept the complainant informed about the status of the unit.

12. All other averments made in the complaint were denied in toto.

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

### **E. Jurisdiction of the authority**

14. 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**

15. 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.**

16. 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.*

17. 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.
18. 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) R.C.R. (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."*

19. 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 relief sought by the complainant.**

**F.I The respondent charge more than 10% of sale consideration in absence of agreement for sale.**

20. That the complainant has raised a contention that the respondent has demanded more than 10% of the consideration amount payable for the unit before execution of agreement for sale which is grave violation of Section 13 of RERA Act, 2016. However, as per documents submitted by the complainant, referring to the said demand at annexure C-4 (page 71-74 of the complaint), it is observed that the respondent has raised an invoice dated 11.10.2023 for an amount of Rs.5,25,000/- against the said unit mentioning the stage at which the payment to was to be made as "at the time of booking". The due date in this regard has been shown as 11.10.2023. Further, another demand has been annexed at page 73 of the complaint showing an invoice dated 11.10.2023 for an amount of Rs.21,76,126/- which clearly states that the same is to be made "within 30 days from booking" and the due date has been mentioned as 28.10.2023. Therefore, the contention of the complainant that the demand was raised before time is misplaced as the due date reflected in the invoice was 28.10.2023. It is further observed that a payment of Rs.5,00,000/- was made by the complainant vide cheque dated 06.09.2023 with the booking application & the same was credited as per the customer ledger appended by the respondent at annexure R-4 of the reply on 28.09.2023 and further a payment of

Rs.21,75,401/- was made vide RTGS/NEFT/IMPS on 14.02.2024 which was credited as shown in the customer ledger on 19.02.2024. It is observed that while the agreement was executed on 29.01.2024 & same was duly registered on 01.03.2024. The complainant had made a payment of only Rs.27,01,126/- even at the time of cancellation i.e. 06.06.2024. It is therefore incorrect that the complainant was coerced to make payment of more than 10% of the consideration amount before execution of the agreement for sale.

**F.II Direct the respondent to restore the allotment and to terminate & withdraw the cancellation letter dated 06.06.2024**

21. In this regard, reference needs to be made to the payment plan, as mentioned in the Schedule-C of the agreement dated 29.01.2024 duly registered on 01.03.2024. The payment plan is given below in tabular form for ready reference:-

Sr. No.	Installments	Revenue Head	Total Amount(Rs.)
1.	At the time of booking	Price of Apartment	Rs.5,00,000/-
2.	Within 30 days from booking	Price of Apartment	Rs.20,72,500/-
3.	Within 90 days from booking	Price of Apartment	Rs.25,72,500/-
4.	Within 150 days from booking	Price of Apartment	Rs.25,72,500/-
5.	On Completion of ground floor slab	Price of Apartment	Rs.12,86,250/-
6.	On Completion of 8th floor slab	Price of Apartment	Rs.12,86,250/-
7.	On Completion of 16th floor slab	Price of Apartment	Rs.12,86,250/-
8.	On Completion of 24th floor slab	Price of Apartment	Rs.25,72,500/-
9.	On Completion of 32th floor slab	Price of Apartment	Rs.25,72,500/-
10.	On Completion of top floor slab	Price of Apartment	Rs.25,72,500/-

11.	On Completion of internal plaster	Price of Apartment	Rs.25,72,500/-
12.	On application of OC	Price of Apartment	Rs. 25,72,500/-
13.	On offer of possession	Price of Apartment	Rs.12,86,250/-
		GST and Other Taxes	Rs.12,86,256/-
		Total Price(Rs.)	Rs.2,70,11,256/-
		IFMS	Rs.1,22,500/-
		Total including IFMS	Rs.2,71,33,756/-

The allotment of the subject apartment was made by the respondent on 28.09.2023 and an amount of Rs.5,00,000/- was paid by the complainant by cheque in lieu of the booking amount on the same date. As per the agreed payment plan, the complainant was required to make a payment of Rs.20,72,500/- (plus taxes) within 30 days of the booking and further Rs.25,72,500/- (plus taxes) within 90 days of booking. However, the complainant failed to make the balance payments in terms of the above payment plan as discussed in para 20 above.

22. The respondent sent various reminders letters dated 04.11.2023 19.11.2023, 04.12.2023, 10.12.2023, 02.01.2024 & final notice on 05.05.2024 and asking the allottee to make payment of the amount as per payment plan but having no positive results, the respondent cancelled the unit vide letter dated 06.06.2024. An amount of Rs.25,00,000/- is stated to have been paid by the complainant after the cancellation of the unit through electronic transfer which cannot be taken into consideration towards fulfillment of the covenants of the agreement. The Authority is of view that as per section 19(6) and (7) of the Act of 2016, the allottee is under obligation to make timely payment as per payment plan towards consideration of the allotted unit. In view of the above, the Authority



is of considered that the cancellation done by respondent is valid in the eyes of 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 Urs. VS. Sarah C. Urs., (2015) 4 SCC 136*, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 *Ramesh Malhotra VS. Emaar MGF Land Limited* (decided on 29.06.2020) and *Mr. Saurav Sanyal VS. M/s IREO Private Limited* (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as *Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022*, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

**"5. AMOUNT OF EARNEST MONEY**

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

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, and the respondent/builder can not 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 i.e. 8.90%)+2% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**F.III Direct the respondent to pay litigation cost.**

25. The complainant is seeking above mentioned relief w.r.t. compensation. 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. (supra)*, has held that an allottee is entitled to claim compensation & 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 & litigation expense 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 & legal expenses.

**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

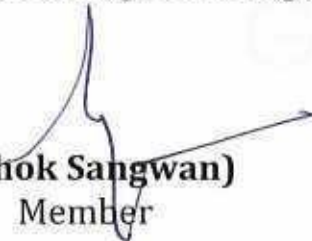
upon the promoter as per the functions entrusted to the authority under section 34(f):

- a) The cancellation is upheld. The respondent is liable to refund the paid-up amount to the complainant upto the date of cancellation after deducting 10% of the sale consideration being earnest money along with interest at the rate of 10.90% as prescribed under Rule 15 of the Rules, 2017, on such balance amount from the date of each cancellation/termination till its realization.
- b) The respondent is directed to refund the amount, if any received by it post cancellation of the unit to complainant. However, no interest shall be payable on such amount.
- c) 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. True certified copies of this order be placed on the case file of each matter.

29. Files be consigned to registry.

  
**(Ashok Sangwan)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Date: 15.07.2025**