

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

Complaint no. : 2657 of 2024
Date of complaint : 07.06.2024
Date of order : 20.08.2025

M/s Apex Acreages Private Limited,
Through its Managing Director, Mr. Karan Khanna,
Having its Office at: - 109, 109A, 1st Floor, Suncity
Success Tower, Sector 65, Golf Course Extension,
Gurugram-122001.

Complainant

Versus

M/s Pareena Infrastructures Pvt. Ltd.
Having Regd. Office at: - Flat no. 2, Palm
Apartment, Plot No. 13B, Sector - 6, Dwarka,
New Delhi-110075.
Also at: C-7A, 2nd floor, Omaxe City Centre Mall,
Sohna Road, Sector- 49, Gurugram-122018.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Ishaan Dang (Advocate)
Sukhbir Yadav (Advocate)

Complainant
Respondent

ORDER

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

provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.N.	Particulars	Details
1.	Name and location of the project	"Micasa", sector-68, Gurgaon
2.	Nature of the project	Group Housing
3.	Project area	12.25085 acres
4.	DTCP license no.	111 of 2013 dated 30.12.2013 valid up to 12.08.2024 (area 10.12 acre) 92 of 2014 dated 13.08.2014 valid up to 12.08.2019 (area 0.64 acre) 94 of 2014 dated 13.04.2014 valid up to 12.08.2024 (area 2.73 acre)
5.	RERA Registered/ not registered	Registered vide no. 99 of 2017 issued on 28.08.2017 up to 30.06.2022
6.	Allotment letter in favour of Mr. Karan Khanna i.e. one of director of the complainant's company	08.03.2022 (page 25 of complaint)
7.	Unit allotted	1003, Tower-2, 10 th Floor (page 25 of complaint)
8.	Unit admeasuring area	1225 sq. ft. (super area) (page 25 of complaint) Increase in super area- 1315 sq.ft (page 52 of complaint)
9.	Allotment letter of subject unit in favour of complainant	15.05.2023 (page 30 of complaint)
10.	Date of builder buyer agreement	Not executed
11.	Possession clause	Not available
12.	Due date of possession	08.03.2025

		[Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>]
13.	Total sale consideration	Rs.66,21,214/- (as per page 54 of complaint)
14.	Total amount paid by the complainant	Rs.10,00,000/- (as per page 57-58 of complaint)
15.	Occupation certificate	03.01.2023 (as per DTCP website)
16.	Offer of possession	19.05.2023 (page 52 of complaint)
17.	Cancellation letter	25.08.2023 (page 100 of complaint)

B. Facts of the complaint

3. The complainant vide complaint as well as written submissions dated 05.08.2025 has made the following submission: -
 - I. That the present complaint has been filed through Mr. Karan Khanna who is the Managing Director of the complainant company.
 - II. That the respondent had first approached Mr. Karan Khanna in the year 2022 through its officials. The respondent had conveyed to Mr. Karan Khanna that the respondent was developing a group housing colony over land admeasuring 13 acres approximately situated in revenue estate of Sector 68, Gurugram. The respondent had also assured Mr. Karan Khanna that they were in receipt of all necessary licenses, approvals, permissions etc. issued by the competent authorities for development of the project in question.
 - III. That relying upon the promises and assurances made by the respondent, Mr. Karan Khanna was induced to book an apartment bearing no. 1003 in Tower 03 admeasuring 1225 square feet (super area) along with a terrace admeasuring 90 square feet, located on the 10th Floor in the project known as "Mi Casa" situated in Sector 68, Gurugram. Vide allotment letter dated

08.03.2022, said unit was allotted by the respondent in favour of Mr. Karan Khanna.

- IV. That the basic sale price of the said unit had been settled at Rs.3,950/- per square feet. Accordingly, the total sale consideration amount had been quantified to be Rs.64,43,035/-.
- V. That it is pertinent to mention that Mr. Karan Khanna had already made payment of Rs.5,00,000/- as booking amount by 08.03.2022 in the following manner: -
- a. An amount of Rs.1,00,000/- had been paid by Mr. Karan Khanna to the respondent on 07.03.2022 by way of NEFT bearing no. 000343765762 dated 07.03.2022 from his account at ICICI Bank.
- b. An amount of Rs.4,00,000/- to the respondent by way of RTGS bearing no.000346004805 dated 08.03.2022 from his account at ICICI Bank.
- VI. That Mr. Karan Khanna kept issuing several reminder emails and WhatsApp messages to the respondent calling upon the respondent to execute the builder buyer's agreement and take the balance payment. Thereafter, Mr. Karan Khanna upon consulting with his Chartered Accountant had come to a decision that the said unit ought to be purchased by the complainant company rather than Mr. Karan Khanna in his individual capacity due to taxation purposes. Accordingly, a request for the same had been put forth by Mr. Karan Khanna to the respondent who had accepted the same. It had been specifically conveyed to Mr. Karan Khanna that the amount of Rs.5,00,000/- paid by him shall be duly carried forward/credited to the account of the complainant. Based on the aforesaid assurances proffered by the officials of the respondent, Mr. Karan Khanna decided to transfer the allotment of the said unit in favour of the complainant.
- VII. That subsequently, a fresh allotment letter dated 15.05.2023 had been issued by the respondent in favour of the complainant. It would not be out of place

to mention that the area of the said unit in the allotment letter had been mentioned as 1245 square feet. Furthermore, the complainant had made payment of Rs.5,00,000/- as booking amount to the respondent (escrow account) vide cheque bearing no.002090 dated 15.05.2023. Thus, till May 2023, the complainant had made a total payment of Rs.10,00,000/- to the respondent after taking into account the payment of Rs.5,00,000/- made by Mr. Karan Khanna to the respondent.

- VIII. That however, for reasons best known to the respondent, the aforesaid fact did not reflect in the records maintained by the respondent. The same was evident from the issuance of letter of offer of possession dated 19.05.2023 to the complainant wherein the respondent had incorrectly mentioned that only an amount of Rs.5,00,000/- had been received by the respondent from the complainant in Annexure A appended to the aforesaid letter.
- IX. That the respondent had mentioned in the aforesaid letter of offer of possession that occupation certificate for the said project had been received by the respondent on 03.01.2023. Moreover, the area of the said unit had been shown to be 1315 square feet (super area) in the aforesaid letter. It is submitted that the respondent had intentionally refrained from mentioning the carpet area in the aforesaid letter.
- X. That upon receiving the same, the complainant issued several emails to the respondent for correction of the aforesaid error and to ensure that a total amount of Rs.10,00,000/- is reflected as the amount received by the respondent from the complainant. Moreover, the complainant/Mr. Karan Khanna had been constantly calling upon the respondent to execute the buyer's agreement.
- XI. That consequently, the respondent acknowledged the errors made by it and proceeded to issue the correct and modified letter of offer of possession dated 19.05.2023 which was delivered to the complainant on 27.06.2023

wherein it had been duly admitted by the respondent that a total amount of Rs.10,00,000/- had been received by it from the complainant pertaining to the allotment of the said unit.

- XII. That moreover, the respondent had duly rectified the error made by it by issuing payment receipt bearing no. REC/232400157 dated 27.06.2023 for the payment of Rs.5,00,000/- made by Mr. Karan Khanna which had now been adjusted into the account of the complainant.
- XIII. That furthermore, the respondent had also issued a payment receipt bearing no. REC/232400089 dated 27.06.2023 for the payment of Rs.5,00,000/- made by the complainant to the respondent.
- XIV. That however, the respondent did not share the draft of the builder buyer's agreement with the complainant. Eventually, the respondent finally shared a draft of the builder buyer's agreement/agreement for sale with the complainant on 15.07.2023 vide email dated 15.07.2023.
- XV. That despite acknowledging the receipt of Rs.10,00,000/- from the complainant on multiple occasions, the respondent intentionally mentioned the amount received from the complainant as only Rs.5,00,000/-. Upon coming across the aforesaid error, the complainant through Mr. Karan Khanna immediately sent email dated 17.07.2023 to the respondent pointing out the error. However, the respondent vide its email dated 25.07.2023 for the first time stated that the amount of Rs.5,00,000/- paid by Mr. Karan Khanna could not be adjusted into the account of the complainant and a fresh payment would be required from the complainant.
- XVI. That subsequently, the complainant was shocked to receive email dated 03.08.2023 from the respondent wherein it had been mentioned by the respondent that it had proceed to "cancel" the receipt bearing no. REC/232400157 dated 27.06.2023 for the payment of Rs.5,00,000/- made by Mr. Karan Khanna to the respondent.

- XVII. That certain emails had been exchanged between the complainant and the respondent wherein the complainant had repeatedly called upon the respondent to execute the buyer's agreement and had also called upon the respondent to take the balance payment from the complainant. Furthermore, the complainant had also called upon the respondent vide email dated 14.08.2023 to issue a refund of Rs.5,00,000/- so that the complainant could make a fresh payment as had been instructed by the respondent in its email dated 25.07.2023. In reply, the respondent vide email dated 14.08.2023 had acknowledged the request of the complainant and had called upon its accounting team to do the needful.
- XVIII. That however, the respondent failed to take any action. Consequently, the complainant was constrained to issue a reminder email dated 23.08.2023 calling upon the respondent to execute the buyer's agreement.
- XIX. That shockingly, the respondent issued an illegal and one-sided cancellation letter dated 25.08.2023 vide which the respondent unilaterally attempted to cancel the allotment of the complainant. Besides being illegal in its essence, the aforesaid cancellation letter also contained the following errors: -
- a) That it had been stated in the cancellation letter that the same had been issued pursuant to issuance of letter of offer of possession dated 19.05.2023 by the respondent to the complainant. However, the respondent had itself acknowledged that the above-mentioned letter of offer of possession dated 19.05.2023 was erroneous and had withdrawn the same. Subsequently, the correct letter of offer of possession had been shared on 27.06.2023 by the respondent with the complainant. Thus, the earlier letter of offer of possession dated 19.05.2023 does not hold any value whatsoever and reliance of the respondent upon a letter which had been withdrawn by it on a previous occasion is extremely baffling.
 - b) That furthermore, the respondent had intentionally stated in the

cancellation letter dated 25.08.2023 that an amount of only Rs.5,00,000/- had been received from the complainant whereas the complainant had actually made a payment of Rs.10,00,000/- to the respondent. Moreover, the respondent had duly acknowledged the receipt of Rs.10,00,000/- from the complainant on several prior occasions as has been duly illustrated in the preceding paragraph. It would not be out of place to mention that the respondent had illegally forfeited the entire amount of Rs.10,00,000/- which had been paid by the complainant to the respondent.

c) That moreover, it had been incorrectly mentioned in the cancellation letter that the booking of the complainant in respect of the said unit had been made on 19.05.2023 whereas the booking in favour of the complainant had been made on 15.05.2023 upon the transfer of allotment from Mr. Karan Khanna in favour of the complainant.

XX. That upon the receipt of the aforesaid illegal and unilateral cancellation letter dated 25.08.2023, the complainant immediately issued a reply dated 01.09.2023 to the respondent reiterating its contentions pertaining to payment of Rs.10,00,000/- to the respondent and failure of the respondent to execute the builder buyer's agreement. It had further been highlighted by the complainant that the respondent, in contravention to the provisions of Real Estate (Regulation and Development) Act, 2016 had charged and received payment of Rs.10,00,000/- without executing the builder buyer's agreement which was in excess of 10% of the cost of the unit as prescribed under the Act (Section 13).

XXI. That without prejudice to the contentions of the complainant that it was always ready to make payment of the balance sale consideration amount, it would not be out of place to mention that the respondent had also not issued a single reminder letter, pre-cancellation notice and final notice after issuance of letter of offer of possession dated 27.06.2023 to the complainant.

The respondent had straightaway issued the illegal and unilateral cancellation letter dated 25.08.2023 to the complainant in complete contravention to the provisions of the Act.

- XXII. That it is absolutely ridiculous on part of the respondent to allege that Mr. Karan Khanna had colluded with Mr. Amit Soni and had succeeded in obtaining a fraudulent allotment letter dated 15.05.2023 in favour of the complainant. It is evident from a perusal of allotment letter dated 15.05.2023 that the same is a document generated officially by the respondent. Further, despite having levelled several serious allegations against Mr. Amit Soni, the respondent had not filed a criminal complaint against Mr. Amit Soni. The same is also evident of the fact that Mr. Amit Soni is merely being used as a scapegoat in the present controversy by the respondent. Moreover, it is evident from the emails exchanged between the complainant and the respondent that Mr. Mohit Tiwari was the concerned employee of the respondent who was regularly dealing with the complainant and not Mr. Amit Soni. The allegations levelled by the complainant with respect to be there being any confusion in the unit number as well as purported collusion with Mr. Amit Soni are absolutely frivolous and baseless.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to withdraw cancellation letter dated 25.08.2023, re-instate allotment, execute BBA, handover possession and execute conveyance deed.
 - ii. Direct the respondent to pay Rs.2,00,000/- towards litigation expenses.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent vide its reply and written submissions dated 05.08.2025 has contested the complaint on the following grounds: -
- i. That the aforementioned complainant made absolutely false and misleading allegations regarding there being a privity of contract between the complainant and the respondent with regard to unit no. 1003, located in Tower - 2 of the project in Sector-68, Gurugram. In fact, the entire complaint is a result of fraud, conspiracy, and collusion between Mr. Karan Khanna and Mr. Amit Soni. Mr. Karan Khanna is the alleged director of the complainant, and Mr. Amit Soni was a previous/former employee of the respondent.
 - ii. That a unit bearing no. 1003, located in Tower-2 of the said project, had been tentatively earmarked to be allotted to Mr. Karan Khanna. An allotment letter was issued in this regard on 08.03.2022. Mr. Karan Khanna had made payments of Rs. 1 lakh and Rs. 4 lakhs towards the initial token amount for the proposed booking of the unit. It is submitted that, as per law and rules, there can be a proper and confirmed allotment of a unit in favor of the allottee only upon making a payment of 10 percent of the sale consideration of the apartment. The sale consideration of the aforementioned apartment was Rs.64,43,035/-. Mr. Karan Khanna had made only a payment of Rs. 5 Lakhs. In these circumstances, the allotment was never finalized or confirmed, and the allotment had been made only tentatively. In fact, the issuance of the allotment letter cannot be considered to have created any privity of contract between Mr. Karan Khanna and the respondent with regard to the aforementioned unit. At this juncture, it will be pertinent to mention here that Mr. Karan Khanna is a property broker. Needless to say, the relations between a broker and a developer are maintained at a different level. The allotment letter had been issued

tentatively in favor of Mr. Karan Khanna on the premise and account of the fact that Mr. Karan Khanna is a property broker. Had Mr. Karan Khanna not been a property broker, the respondent would never have issued an allotment letter in his favor. There was a clear understanding between Mr. Karan Khanna and the respondent that the issuance of the said allotment letter would not create a confirmed booking or privity of contract between himself and the respondent.

- iii. That Mr. Amit Soni was a former employee of the company. The employment of Mr. Amit Soni was terminated on 29.06.2023. Mr. Karan Khanna, being a property broker, colluded with Mr. Amit Soni and succeeded in creating some documents pertaining to the alleged and so-called allotment of the said unit in favor of the complainant. These documents are absolutely fraudulent. Mr. Amit Soni had no authority whatsoever on behalf of the respondent to issue any allotment letter in favor of the complainant. That it is a clear case of conspiracy and fraud played by Mr. Karan Khanna upon the respondent.
- iv. That the act of fraud is duly established from the undermentioned facts and circumstances. That the allotment letter had been issued in favor of Mr. Karan Khanna on 08.03.2022, and no application or builder buyer agreement was ever executed in favor of Mr. Karan Khanna. Needless to say, in the absence of a builder buyer agreement, neither the allotment was confirmed nor finalized between Mr. Karan Khanna and the respondent.
- v. That the unusually long time gap between the date of allotment in favor of Mr. Karan Khanna and the allotment letter dated 15.05.2023, coupled with the fact that, in the intervening period of 14 months, no payment was made by Mr. Karan Khanna or by the complainant, clearly shows the fraudulent nature of the allotment letter dated 15.05.2023. It is submitted that once the fraudulent allotment letter dated 15.05.2023 was issued by Mr. Amit

Soni (former employee of the respondent), the computer records were automatically updated by Mr. Amit Soni, wherein the complainant was reflected as an allottee (even though wrongfully), and therefore, the CRM Department of the respondent kept communicating with Mr. Karan Khanna/complainant and kept issuing further letters under a bona fide belief that the allottee was, in fact, the complainant.

- vi. That Mr. Karan Khanna has repeatedly alleged himself to be an allottee of a flat located in Tower-1 and Tower-3, whereas, in the present complaint, the allegations have been made regarding an allegedly located apartment in Tower-2 of the project. The fact of the matter remains that the complainant has never been an allottee of any unit under the respondent. The complainant is not an allottee; therefore, he cannot invoke the jurisdiction of RERA.
- vii. That paying Rs. 5 lakhs cannot create a binding contract or allotment of a unit when the price of the unit is approximately Rs. 66,21,214/-. If there had been any allotment in favour of the complainant, then naturally, as the construction progressed, the respondent would have demanded the co-related installment from the complainant. Furthermore, the respondent would have also demanded the development charges, GST, IFMS, etc., from the complainant. The fact of the matter remains that the respondent has not issued even a single such letter to the complainant. The only reason for not issuing such a demand letter is because the complainant has never been an allottee of any unit under the respondent.
- viii. That, in an email dated 29-May-2023, the complainant asked to transfer the amount from one unit to another. That said email itself clarified that Unit No. T2-1003 was never allotted to the complainant, and the documents were wrongly manipulated by Mr. Amit Soni, who unauthorizedly updated the company records. Had even a single unit been transferred from the



- name of Karan to APEX, no such email would have been sent by the complainant. That Mr. Karan Khanna mis utilized his connection with Amit Soni and created fake documents to cause wrongful loss to the respondent.
- ix. That once the company realized that Mr. Karan Khanna was trying to adjust the funds of a company with his own, the said error was rectified by the company, and the receipt issued by the company was revoked with immediate effect. Said email is also annexed by the complainant along with the present complaint, wherein the respondent specifically told Mr. Karan that "As already informed to you, I had cancelled the receipt REC/232400157 of the amount Rs.500000/-, as it was wrongly generated against your unit." That, even at that point in time, it was specifically clarified by the respondent that no such unit was ever allotted to the complainant. That the complainant has not annexed even a single document or request letter wherein he requested to change the name of Karan to APEX, which in itself clarifies the fact that it is Mr. Karan Khanna who, by mis utilizing his connection in the company, played fraud upon the respondent.
- x. That Karan Khanna paid only Rs. 5,00,000/- against the booked unit and thereafter, no payment was made by Karan Khanna against the said unit. That on 15.07.2023, a draft of BBA through email was shared with the complainant (represented through Karan Khanna) to finalize the terms and conditions for the process of execution of BBA, however, Karan Khanna again raised irrelevant concerns on the payment discrepancies, resulting in non-execution of BBA. It is pertinent to note that Karan Khanna made only one payment of Rs.5,00,000/- towards booking of the unit in his individual capacity. Despite repeated requests from the respondents to proceed with the execution of the BBA and make further payments, Karan Khanna showed no interest in pursuing the matter further.

- xi. That despite being allotted a unit, Karan Khanna neglected to execute the BBA, repeatedly citing discrepancies in tower numbers and payments, which lacked merit and hindered the progress. However, pursuant to obtaining the Occupancy Certificate for the 'Micasa' project on 03.01.2023, the respondent issued an offer of possession on 19.05.2023, in accordance with its standard business procedures. It is pertinent to mention here that as per said offer of possession, the total sale consideration of the unit was Rs. 66,21,214/- and the complainant paid only Rs. 5,00,000/-.
 - xii. That despite repeated requests, the complainant showed no interest in clearing dues or taking possession of the unit. After waiting reasonably, the respondent telephonically and in meetings held in person requested Karan Khanna (AR of complainant) to settle outstanding payments for taking possession of the complainant's unit. However, the lack of response compelled the respondent to cancel the unit via a letter dated 25.08.2023.
 - xiii. That after lawfully cancelling the allotment dated 15.05.2023, the respondent allotted flat no. 1003, in Tower No. -2, to Mr. Nishu Aggarwal on 21.02.2024. Thus, the complainant has no locus standi to file the present complaint.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and 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

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory

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

E. II Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

11. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings regarding relief sought by the complainant.

F. I Direct the respondent to withdraw cancellation letter dated 25.08.2023, re-instate allotment, execute BBA, handover possession and execute conveyance deed.

12. In the present complaint, complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

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)

13. **Due date of possession:** The Hon'ble Supreme Court in the case of ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018*** observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that ***when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.***
14. In view of the above-mentioned reasoning, the date of allotment i.e. 08.03.2022 is ought to be taken as the date for calculating due date of possession. Therefore, the due date of possession comes out to be 08.03.2025.
15. The complainant has submitted that vide allotment letter dated 08.03.2022, Mr. Karan Khanna was allotted an apartment bearing no. 1003 admeasuring 1225 square feet (super area) along with a terrace admeasuring 90 square feet, located on the 10th Floor in the project of the respondent named "Mi Casa" situated in Sector 68, Gurugram for a total sale consideration of Rs.64,43,035/- against which Mr. Karan Khanna had made a payment of Rs.5,00,000/- as booking amount by 08.03.2022. Thereafter, Mr. Karan Khanna upon consulting with his Chartered Accountant had come to a decision that the said unit ought to be purchased by the complainant company rather than Mr. Karan Khanna in his individual capacity due to taxation purposes. Accordingly, a request for the same had been put forth by Mr. Karan Khanna to the respondent who had accepted the same and it was specifically conveyed to Mr. Karan Khanna that the amount of Rs.5,00,000/-

paid by him shall be duly carried forward/credited to the account of the complainant. Subsequently, a fresh allotment letter dated 15.05.2023 had been issued by the respondent in favour of the complainant and the area of the said unit in the allotment letter had been mentioned as 1245 square feet. Furthermore, the complainant had made payment of Rs.5,00,000/- as booking amount to the respondent (escrow account) vide cheque bearing no.002090 dated 15.05.2023. Thus, till May 2023, the complainant had made a total payment of Rs.10,00,000/- to the respondent after taking into account the payment of Rs.5,00,000/- made by Mr. Karan Khanna to the respondent. However, for reasons best known to the respondent, the aforesaid fact did not reflect in the records maintained by the respondent. The same was evident from the issuance of letter of offer of possession dated 19.05.2023 to the complainant wherein the respondent had incorrectly mentioned that only an amount of Rs.5,00,000/- had been received by the respondent. Further, it was also mentioned in the aforesaid letter of offer of possession that occupation certificate for the said project had been received by the respondent on 03.01.2023. Moreover, the area of the said unit had been shown to be 1315 square feet (super area) in the said letter. Upon receiving the same, the complainant issued several emails to the respondent for correction of the aforesaid error and to ensure that a total amount of Rs.10,00,000/- is reflected as the amount received by the respondent from the complainant. Consequently, the respondent acknowledged the errors made by it and proceeded to issue the correct and modified letter of offer of possession dated 19.05.2023 which was delivered to the complainant on 27.06.2023 wherein it had been duly admitted by the respondent that a total amount of Rs.10,00,000/- had been received by it from the complainant pertaining to the allotment of the said unit. However, the respondent despite acknowledging the receipt of Rs.10,00,000/- from the complainant on

multiple occasions, intentionally mentioned the amount received from the complainant as only Rs.5,00,000/- in the draft of the builder buyer's agreement/agreement for sale shared with the complainant vide email dated 15.07.2023. Upon coming across the aforesaid error, the complainant through Mr. Karan Khanna immediately sent email dated 17.07.2023 to the respondent pointing out the error. However, the respondent vide its email dated 25.07.2023 for the first time stated that the amount of Rs.5,00,000/- paid by Mr. Karan Khanna could not be adjusted into the account of the complainant and a fresh payment would be required from the complainant. Furthermore, the complainant had also called upon the respondent vide email dated 14.08.2023 to issue a refund of Rs.5,00,000/- so that the complainant could make a fresh payment as had been instructed by the respondent in its email dated 25.07.2023. In reply, the respondent vide email dated 14.08.2023 had acknowledged the request of the complainant and had called upon its accounting team to do the needful, however, the respondent failed to take any action and shockingly, the respondent issued an illegal and one-sided cancellation letter dated 25.08.2023, without issuing a single reminder letter, pre-cancellation notice and final notice after issuance of letter of offer of possession dated 27.06.2023 to the complainant which is in complete contravention to the provisions of the Act. The respondent has submitted that a unit bearing no. 1003, located in Tower-2 of the said project had been tentatively earmarked to be allotted to Mr. Karan Khanna. An allotment letter was issued in this regard on 08.03.2022. Mr. Karan Khanna had made payments of Rs. 1 lakh and Rs. 4 lakhs towards the initial token amount for the proposed booking of the unit. It is submitted that, as per law and rules, there can be a proper and confirmed allotment of a unit in favour of the allottee only upon making a payment of 10 percent of the sale consideration of the apartment. The sale consideration of the

aforementioned apartment was Rs.64,43,035/-. Mr. Karan Khanna had made only a payment of Rs. 5 Lakhs. In these circumstances, the allotment was never finalized or confirmed, and the allotment had been made only tentatively. It is submitted that the fraudulent allotment letter dated 15.05.2023 was issued by Mr. Amit Soni (former employee of the respondent) in favour of the complainant, the computer records were automatically updated by Mr. Amit Soni, wherein the complainant was reflected as an allottee (even though wrongfully), and therefore, the CRM Department of the respondent kept communicating with Mr. Karan Khanna/complainant and kept issuing further letters under a bona fide belief that the allottee was, in fact, the complainant. Once the company realized that Mr. Karan Khanna was trying to adjust the funds of a company with his own, the said error was rectified by the company, and the receipt issued by the company in favour of the complainant was revoked with immediate effect. On 15.07.2023, a draft of BBA through email was shared with the complainant (represented through Karan Khanna) to finalize the terms and conditions for the process of execution of BBA, however, Mr. Karan Khanna again raised irrelevant concerns on the payment discrepancies, resulting in non-execution of BBA. It is pertinent to note that Mr. Karan Khanna made only one payment of Rs.5,00,000/- towards booking of the unit in his individual capacity. Despite repeated requests from the respondents to proceed with the execution of the BBA and make further payments, Mr. Karan Khanna showed no interest in pursuing the matter further. However, pursuant to obtaining the Occupancy Certificate for the 'Micasa' project on 03.01.2023, the respondent issued an offer of possession on 19.05.2023, in accordance with its standard business procedures. The complainant showed no interest in clearing dues or taking possession of the unit, despite repeated requests. After waiting reasonably, the respondent telephonically and in

meetings held in person requested Karan Khanna (AR of complainant) to settle outstanding payments for taking possession of the complainant's unit. However, the lack of response compelled the respondent to cancel the unit via a letter dated 25.08.2023. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 25.08.2023 is valid or not.

16. On consideration of documents available on record and submissions made by both the parties, it is determined that the occupation certificate for the tower in question was obtained by the respondent on 03.01.2023 and allotment of the unit in question was made in favour of the complainant on 15.05.2023 and thereafter possession of the apartment was offered to the complainant vide offer of possession letter dated 19.05.2023. Subsequently, on 15.07.2023, a draft of BBA through email was shared with the complainant to finalize the terms and conditions for the process of execution of BBA, wherein it was mentioned that the complainant has paid an amount of Rs.5,00,000/- as booking amount towards sale consideration of the unit. The complainant upon coming across the aforesaid error, vide email dated 17.07.2023 pointed out the same to the respondent, however, the respondent failed to take any action and thereafter issued a cancellation letter dated 25.08.2023 to the complainant. The Authority observes that the unit in question was previously allotted to Mr. Karan Khanna (Managing Director of complainant) vide allotment letter dated 08.03.2022 against which he has paid a sum of Rs.5,00,000/- through NEFT to the respondent at the time of allotment. Subsequently, the unit was transferred in the name of complainant vide allotment letter dated 15.05.2023 and a sum of Rs.5,00,000/- was paid to the respondent through cheque on 15.05.2023 which was encashed in the account of the respondent on 19.05.2023. The respondent has contended that the receipt of Rs.5,00,000/- issued by it in favour of the complainant was

cancelled by the respondent and the same has been intimated to the complainant vide email dated 03.08.2023. However, the said amount has not been refunded to the complainant and the same lies with the respondent till date. In view of the above, the Authority is satisfied that on the basis of provisions of allotment, the complainant has paid a sum of Rs.10,00,000/- against the sale consideration of Rs.66,21,214/-. It is further observed that the respondent has not issued any demand letter against the outstanding dues towards the unit in question prior to cancellation of the unit of the complainant. The Authority is of the view that while cancelling the unit, the respondent has not followed the due procedure as prescribed under clause 9.3 of the agreement for sale annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017 and the said act of the respondent is in contravention to the provisions of the Act, 2016 as well as Rules, 2017. Furthermore, the super area of the unit has been unilaterally increased to 1315 sq.ft. from 1245 sq.ft. without any justification and prior intimation to the complainant. Thus, seeing various illegalities on part of the respondent in this particular case, the Authority is of considered view that the respondent should not be allowed to get unfair advantage of its own wrong. In view of the above, the cancellation letter dated 25.08.2023 cannot be held valid in the eyes of law and is hereby set-aside.

17. In the instant case, the respondent vide reply has submitted that after cancelling the allotment dated 15.05.2023, the respondent has allotted the unit in question to Mr. Nishu Aggarwal on 21.02.2024. Thus, keeping in view of the fact that the respondent has already created third party rights on the unit in question, the respondent is directed to offer possession of a similarly located unit/flat of same size and specifications at same rate as per the allotment letter dated 15.05.2023 in the said project to the complainant within a period of 30 days.

18. The complainant is seeking relief with respect to execution of buyer's agreement. The Authority observes that as per Section 13(1) of the Act, 2016, the promoter is obligated to not to accept more than 10% of the cost of the apartment, plot or building as the case may be, as an advance from a person without entering into a written agreement for sale with such person and register the said agreement for sale. Thus, in view of Section 13 of the Act of 2016, the respondent is directed to enter into a registered buyer's agreement with the complainant as per the 'agreement for sale' annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017 within a period of 60 days from the date of this order.
19. The complainant is seeking further relief with respect to handover of possession an execution of conveyance deed in its favour. The Authority observes that Section 19(6) of the Act provides that every allottee shall be responsible to make necessary payments as per agreement for sale to take physical possession of the apartment. Further, as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to handover possession of the unit and get the conveyance deed executed in favour of the complainant. Whereas, as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. It is further observed that the occupation certificate for the project in question has already been obtained by the respondent. Therefore, in view of the above, the complainant is liable to pay the outstanding dues and take possession of the unit.
20. In view of the above, the respondent is directed to supply an updated statement of account within a period of 30 days to the complainant. Thereafter, the complainant shall pay outstanding dues within a period of 30 days from the date of receipt of updated statement of account.

21. The respondent is further directed to handover possession of the allotted unit/flat and to get the conveyance deed of the allotted apartment executed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

F.II Cost of litigation.

22. 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.* 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 regard 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 is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

G. Directions of the authority: -

23. Hence, the Authority hereby passes this order and issue 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) of the Act: -

- i. The cancellation is set aside. Keeping in view of the fact that the respondent has already created third party rights on the unit in question, the respondent is directed to offer possession of a similarly located unit/flat of same size and specifications at same rate as per the

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allotment letter dated 15.05.2023 in the said project to the complainant within a period of 30 days.

- ii. The respondent is directed to enter into a registered buyer's agreement with the complainant as per the 'agreement for sale' annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017 within a period of 60 days from the date of this order.
- iii. The respondent is directed to supply a copy of the updated statement of account within a period of 30 days to the complainant.
- iv. The complainant is directed to pay outstanding dues within a period of 60 days from the date of receipt of updated statement of account.
- v. The respondent is directed to handover possession of the allotted unit/flat and to get the conveyance deed of the allotted apartment executed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.
- vi. 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.

24. Complaint stands disposed of.

25. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.08.2025