

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

Complaint no.	4921 of 2024
Date of complaint	09.10.2024
Date of order	09.10.2025

Ajay Kumar

Address at: House No. 113A, 1st Floor, Blossom 2, Sector-52, Gurugram, Haryana - 122001.**Complainant**

Versus

M/s Paryapt Infrastructure Private Limited

Registered address at: Unit No.SB/C/2L/Office/017A, M3M Urbana, Sector-67, Gurugram, Haryana - 122102.**Respondent****CORAM:**

Shri Arun Kumar

Shri Phool Singh Saini

**Chairman
Member****APPEARANCE:**

Shri Venket Rao, Advocate

Ms. Shriya Takkar, 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 there under or to the allottees as per the agreement for sale executed inter se.



A. Unit and project-related details

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

S. N.	Particulars	Details
1.	Name of the project	M3M Atrium57, Sector-57, Gurugram
2.	Nature of project	Commercial
3.	Project area	1.425 acres
4.	DTCP license no. and validity status	10-16 of 1996 dated 16.02.1996 Valid upto 15.02.2001
5.	RERA Registered/ not registered	Registered 81 of 2021 dated 29.11.2021 valid upto 15.05.2025
6.	Unit no.	R1 223, Block-1, 2 nd Floor (page 38 & 56 of complaint)
7.	Unit area	188.80 sq. ft. (carpet area) And 407.96 sq. ft. (super area) (page 38 & 56 of complaint)
8.	Allotment letter	23.02.2022 (page 35 of complaint)
9.	Date of execution of buyer's agreement	06.06.2022 (page 53 of complaint)
10.	Possession clause	5.1 <i>"The promoter shall abide by the time schedule for completing the project as disclosed at the time of registration of the project with the Authority and towards handing over the commercial space/units along with right to use 0 car parking space (if any) to the allottee on or before 15.05.2025.</i> (as per BBA at page 90 & 91 of reply) And 7.1 (ii) <i>The promoter assured to offer possession of the commercial space/ unit along with right to use 0 (zero) car parking space (if any) on or before 15.05.2025, as per agreed terms</i>

		<i>and conditions herein on or before the completion Time period unless there is delay due to force majeure event, reasons beyond the control of the promoter, non-compliance on the part of the allottee(s) including on account of any default on the part of the allottee(s)...</i> [Emphasis Supplied] (As per BBA at page 93-94 of reply)
11.	Due date of possession	15.05.2025 (As mentioned in possession clause in BBA)
12.	Basic sale consideration	Rs.1,02,65,090/- (As mentioned in allotment letter at page 38 of complaint)
13.	Total sale consideration [BSP + EDC/IDC + PLC + Car Parking + GST] + [IFMS] + [Power Back-up charges]	Rs.1,16,20,377/- [Rs.1,14,96,902/- + Rs.56,640/- + Rs.66,835/-] (As per total consideration value and payment plan annexed with BBA at page 78 of complaint)
14.	Amount paid by the complainant	Rs.45,98,847/- (As alleged at page 25 of the complaint)
15.	Occupation certificate	02.07.2024 (page 130-131 of reply)
16.	Offer of possession	Not offered (As confirmed by counsel for the respondent during proceedings dated 09.10.2025)
17.	Demand and reminder letter	21.03.2024, 24.04.2024 (page 132-140 of reply)
18.	Pre-cancellation letter	15.05.2024 (page 141-142 of reply)
19.	Cancellation letter	29.07.2024 (page 144-145 of reply)
20.	Refund cheque after deduction of 10% of earnest money	Rs.34,35,768/- Encashed by the complainant on 03.04.2025. (also confirmed by both the counsel during proceedings dated 09.10.2025)

B. Facts of the complaint:

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

- a. That the complainant is citizens of India. The complainant upon trust and faith of the respondent had invested his entire life savings and booked a commercial space in the commercial complex project namely "M3M Atrium 57", being developed by the respondent within the territory of Gurugram.
- b. That the respondent is a company duly incorporated under the Companies Act, 1956 and validly registered under the Companies Act 2013, engaged in the business of construction and development in the real estate sector and claims to be one of the leading real estate companies.
- c. That the complainant herein has booked the commercial unit upon payment plan of total consideration value as provided under the allotment letter and the agreement for sale. That on 01.04.2022, the complainant upon the assurances of the respondent has paid a total amount of Rs.45,98,847/- aggregating to almost 40% of the total sale price of the unit, without execution of the agreement for sale, which was executed at a subsequent stage i.e., on 06.06.2022.
- d. Furthermore, as per the allotment letter dated 08.04.2022, the respondent was assured, obligated and bound itself to pay the rebate of Rs.41,061/- payable to the complainant from the completion of Rs.41,06,036/- as described in the payment plan of the allotment letter, till the application of the occupation certificate. That as per the said letter dated 08.04.2022, the complainant herein was entitled for discount/rebate payable per month w.e.f. 01.04.2022, till the alleged date for application of the OC i.e., 22.03.2022.
- e. Despite, offering to pay the rebate per month on account of the goodwill and gesture the respondent went back to the commitments and had raised a demand notice dated 22.03.2024, for the amount due upon application of



occupation certificate without adjusting/settling the discount/rebate amount which the complainant was entitled for on account of opting the payment plan of total sale consideration value.

- f. Furthermore, as on 01.04.2022, the complainant has paid a total amount of Rs. 45,98,847/- aggregating to almost 40% of the total sale price of the unit, without execution of the agreement for sale which was executed at a later stage on 06.06.2022. And, for the balance amount the complainant in several email communications w.e.f. 27.03.2024, till 14.08.2024, has raised several queries, follow-ups and requests calling upon the respondent to provide occupation certificate as was required by the bank for disbursal of the loan amount for further instalments and has also sought assistance in providing access to the surveyor for the valuation of the unit in question but the same was left unanswered.
- g. Subsequently, upon receiving several follow-ups and requests the respondent vide email dated 14.07.2024, referred to the meeting dated 09.07.2024 and informed the complainant to get in touch with Mr. Akshay Prakash, banking team or the CRM team for further assistance but failed to confirm the status of the occupation certificate. But, even after assuring the complainant has been running behind the respondent for getting the requisite documents i.e., the occupation certificate as required by the bank for further disbursing the loan against the unit in question. But, the respondent as much as in abuse of dominant position has failed to provide requisite documents required for loan disbursal and enabling the complainant to pay the instalments upon application of the occupation certificate.
- h. That post receiving several follow-ups and requests the respondent vide email dated 14.07.2024, referred to the meeting dated 09.07.2024 and informed the complainant to get in touch with Mr. Akshay Prakash, banking

team or the CRM team for further assistance but failed to confirm the status of the occupation certificate. But the respondent vide cancellation notice dated 29.07.2024, has proceeded to illegally and arbitrarily cancel the unit in question for the alleged default in payment on account of the complainant. That vide said notice dated 29.07.2024, the respondent being in dominant position has illegally forfeited the entire amount of Rs.45,98,847/- aggregating to almost 40% of the total sale price of the unit and has cancelled the allotment made in favour of the complainant.

- i. The respondent has acted in utter violation of the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, as per which the respondent in cases of genuine default was authorized to forfeit only 10% of the total sale consideration of the particular unit. Furthermore, the respondent has not only unilaterally and illegally cancelled the unit but has also forfeited the entire paid amount of Rs.45,98,847/- aggregating to almost 40% of the total sale price of the Unit and thus has acted in violation of Regulation 5 of the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018.
- j. That the respondent has illegally and unilaterally cancelled the unit in question by alleging default on account of the complainant in paying the instalments whereas, the complainant since inception has paid the instalment as and when demanded and has been chasing the respondent for necessary documents which could be submitted to the banks for disbursal of the loan amount.
- k. That by act and omissions the respondent has violated various provisions mentioned in the RERA Act, 2016. That by act of providing wrong, incorrect and misleading advertisement and information in regard to the aforesaid project by luring the complainant with discount/rebate of Rs.41,061/- in



case the complainant opts for payment plan of total consideration value, but has failed to adjust/settle/pay the same, the respondent has violated the provision of Section 12 of the Act, 2016.

- l. That the respondent has executed the agreement for sale on 06.06.2022, but as on 09.04.2022, the respondent has raised demands and received almost 40% of the total sale consideration i.e., Rs. 45,98,847/- without first entering into the Agreement for Sale and thus the respondent has violated the provision of Section 13 of the Act of 2016.
- m. That the respective unit allotted to the complainant has already been changed, whereby, the respondent has demolished the inner walls of the unit and has converted three units, including the unit of the complainant into one big space for the purpose of leasing out the same to the third party and thus has changed the building plans without consent or prior intimation to the complainant-allottee and thus has violated the provision of Section 14 of the Act of 2016.
- n. As per the registration certificate 81 of 2021, granted by the Authority, the respondent was bound to abide by the terms of the registration i.e., enter into agreement for sale with the allottee(s) as notified in the Haryana Real Estate Regulation and Development Rules but the Agreement for Sale executed in the present case includes the unilateral terms of holding charges and other unilateral terms which are not in the model agreement and thus the respondent has violated with the terms of the registration.
- o. The respondent has failed to adhere the provisions of the RERA Act, 2016 and thus liable to be punished under the provisions of the RERA Act. Hence, as per the facts and averments the complainant herein is entitled for the relief of restoration of the allotment of the complainant by setting aside the illegal cancellation and to provide occupation certificate along with other necessary documents as may be required by the banks or the financial



institutions for disbursal of the loan amount and enabling the complainant to make future instalments.

- p. That the respondent has made false and frivolous assurances and promises to the complainants. The complainants had already faced a lot of financial distress due to the malafide act of the respondent. The present case is a clear exploitation of innocence and beliefs of the complainant and an act of the respondent to arbitrarily, illegally and unilaterally cancelling the unit in question upon alleged default on account of the complainant in paying the instalments and forfeiting the entire amount paid by the complainant which is more than 10% of the total sale consideration. The complainant is under strong believe the unit which was to be handed over to the complainant, is sold to some other buyer by the respondent with malafide intention to gain unlawful enrichment which has caused immense loss to the complainant.
- q. That the respondent is a habitual defaulter and has defaulted in his obligations and responsibilities since inception of booking of the unit. That the respondent to cheat and dupe the innocent and gullible buyers by diverting the money collected from them for their own use or benefits.

C. Relief sought by the complainant:

4. The complainant has sought the following relief(s):
- Direct the respondent to handover the possession of the unit bearing no. R1 223, allotted to the complainant in the project "M3M Atrium 57" at Block-H at Sector-57, Gurugram.
 - Direct the respondent to set-aside the cancellation notice dated 29.07.2024 and to restore the allotment of the complainant.
 - Direct the respondent to issue revised SOA after adjustment/deducting the discount/ rebate offered and assured vide letter dated 08.04.2022.
 - Direct the respondent to provide relevant documents including OC and other necessary documents required by the banks for disbursal of the loan.
 - Direct the respondent to execute a conveyance deed in favour of the complainant for the unit no. R1 223, Retails, 2nd floor, block-01.

- vi. Direct the respondent to execute a fresh agreement for sale as per the model agreement notified as RERA Act & Rules made thereafter having no unilateral and one-sided terms.
 - vii. To pass such direction, as may be deemed fit, u/s 37 & 38 of the Act, towards giving effect to any one or more of the above sought reliefs
5. Further on 18.04.2025, the complainant has filed an application for amendment in relief and amended the relief's accordingly:
- i. Direct the respondent to refund the amount received against the unit no. R1-223, allotted to the complainant in the project "M3M Atrium 57" at Block-H, Sushant Lok-III, Sector-57, Gurugram, along with interest as per applicable rates from the date of each payment till the actual realization.
 - ii. Any other relief or order that this Authority deems fit to do so.
6. 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 respondent:

7. The respondent contested the complaint on following grounds: -
- a. That the complainant applied for booking of a commercial unit (retail) in Block-1 "M3M ATRIUM57", in a planned and phased manner vide application form and paid part booking amount towards the same. It is submitted that the complainant on his own free will and understanding and after having read and understood all the terms of the application form, signed the same. Therefore, the respondent allotted the commercial unit bearing no. R1 223 on 2nd floor (Block-1) vide allotment letter dated 23.02.2022. That the total sale consideration of the commercial unit for super area admeasuring 407.96 sq. ft. and carpet area was 188.80 sq. ft. was Rs.1,14,96,902/- plus other applicable charges. That the complainant opted for a time-linked payment plan on his own free will.



- b. It is relevant to mention here that the copy of the buyer's agreement was collected by the complainant for due execution at his end along with the allotment letter and welcome letter.
- c. The respondent raised the first demand vide demand letter dated 23.02.2022 and in accordance with the payment plan opted for by the complainant, the respondent raised the second demand vide letter dated 23.02.2022 and requested the complainant to deposit the amount of Rs.28,24,483/-. Thereafter the respondent again, on the request of the complainant, vide letter dated 12.03.2022 dispatched the triplicates copies for due execution at the complainant's end.
- d. In view of the booking and commitment to make timely payments, the respondent vide acknowledgment letter dated 08.04.2022 offered the complainant a monthly pre-handover amount to provide the complainant the comfort of the respondent commitment to deliver the unit on time.
- e. The respondent on various occasions scheduled the appointment for the registration of the buyer's agreement, the said fact is evident from the emails dated 17.05.2022, 03.06.2022 but to no avail.
- f. After constant follow ups with the complainant, the buyer agreement was executed between the parties on 06.06.2022 and the same was duly registered. The buyer's agreement sets out the rights and liabilities of the parties. The said buyer's agreement was duly registered vide vasika no. 4457 before the Sub-Registrar of assurances, Gurugram, Haryana, the same was intimated to the complainant vide letter dated 27.06.2022.
- g. That the complainant had given his consent to lease out the unit in question and had entered into lease facilitation agreement with respondent and one M3M Lease Management Services Pvt. Ltd. The complainant had opted for leasing arrangement being provided by respondent and one M3M Lease Management Services Pvt. Ltd. to lease out the unit to a suitable lessee

either individually or combined along with other units. Accordingly, the complainant, respondent no.2 and M3M Lease Management Services Pvt. Ltd. entered into a lease facilitation agreement. As per the said agreement, the complainant had agreed that M3M Lease Management Services Pvt. Ltd. has the power to identify the tenant/lessee/licensee/third party and to discuss, negotiate, settle down and finalise the terms and conditions of such lease/license/similar arrangement, rentals/fee, security deposit, escalations, maintenance charges, maintenance security, administrative charges etc. That it was agreed between the parties that the unit in question is not for self-occupation but for leasing to third parties either individually or in combination with other units. The respondent vide email dated 04.04.2024 informed the complainant about the leasing offer received for the unit allotted to him from the brand Anytime fitness and requested the complainant to give his consent for the same. The complainant raised no objection qua the above leasing offer and the terms of lease and accordingly, gave his consent for the same.

- h. The complainant being well aware that timely payment was the essence of the transaction, yet, the complainant failed to deposit the pending dues therefore, the respondent issued reminder dated 24.04.2024 requesting the complainant to deposit the outstanding dues. The said reminder letter was also sent to the complainant vide email dated 24.04.2024.
- i. The respondent again vide email dated 08.05.2024 requested the complainant to come forward and clear his dues within the prescribed time limit and reminded him that the benefits associated with the booking are subject to timely payment of demands raised. The complainant was requested to clear his dues to ensure continuity of benefits.
- j. The complainant failed to honour his obligations of making payments therefore the respondent issued pre-cancellation notice dated 15.05.2024.



The copy of pre-cancellation notice was also shared with the complainant vide email dated 17.05.2024. As the complainant was not coming forward to clear his dues therefore, the respondent vide email dated 05.07.2024 again requested the complainant to clear his pending dues and also informed him that the occupation certificate for the project has been received. Since, the complainant despite issuance of reminders and pre-cancellation notice did not come forward to clear dues, therefore the respondent was constrained to cancel the allotment the allotment of the complainant vide cancellation letter dated 29.07.2024 and forfeit the amount deposited as per clause 9.3(ii) of the buyer's agreement. Post issuance of cancellation letter, the complainant has no right, title or interest over the unit in question nor has any privity of contract with the respondent. The copy of the cancellation letter was also shared with the complainant vide email dated 06.08.2024.

- k. That the due date of possession as per the terms of the buyer's agreement was 31.12.2024 and the occupation certificate for the unit in question was granted by the competent authorities on 05.07.2024 after due verification and inspection. In the present case the project was completed much before the agreed time limit i.e., 15.05.2025.
- l. The complainant was very well aware that as per clause 5.2 of the buyer's agreement, timely payment of demands was the essence of the arrangement. The complainant being well aware about the same failed to make timely payments. That under Section 19(6) RERA states that the allottee is responsible to make necessary payments in the manner and within time as specified in the agreement.
- m. The respondent issued numerous reminders and requests to complainant to make pending dues, but to no avail. As a consequence of the same, the allotment of the unit was cancelled by the respondent on account of his



payment breaches and lapses vide cancellation letter dated 29.07.2024 as per clause 9.3 (ii) of the buyer's agreement. Thus, the complainant is not entitled to any relief whatsoever.

n. That the complainant has defaulted in making payment on time contrary to the agreed terms. It is submitted that various reminders were issued to and follow ups were made with the complainant for complying with their obligations under the buyer's agreement to make further payments. Even after repeated demands complainant was not ready to come forward and comply with his obligations to make payments. Hence, complainant is not entitled to get any reliefs from the Authority.

8. All other averments made in the complaint were denied in toto.
9. 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 written submissions made by the parties.

E. Jurisdiction of the authority:

10. The plea of the respondents regarding lack of jurisdiction of Authority is rejected. 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

11. 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 the entire Gurugram District for all purposes 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

12. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

13. So, given 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.
14. 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.*** And followed in case of ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021*** 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"

15. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case 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 Direct the respondent to refund the amount received against the unit no. R1-223, allotted to the complainant in the project "M3M Atrium 57" at Block-H, Sushant Lok-III, Sector-57, Gurugram, along with interest as per applicable rates from the date of each payment till the actual realization.

F.II Any other relief or order that this Authority deems fit to do so.

16. In the present complaint, the complainant intends to withdraw from the project and is seeking refund of the entire paid-up amount of Rs.45,98,847/- along with interest at the prescribed rate as per the Act, 2016.

17. The complainant had applied for a booking of a unit in project "M3M Atrium57" being developed by the respondent and allotted a unit bearing no. R1 223 at 2nd floor in Block-1 vide allotment letter dated 23.02.2022 for a total sale consideration of Rs.1,16,20,377/-. Thereafter, a buyer's agreement was executed inter se parties on 06.06.2022 and as per clause 5.1 & 7.1 (ii) of buyer's agreement dated 06.06.2022, the respondent assures to offer possession of the commercial unit to the complainant on or before 15.05.2025. Therefore, the due date of possession comes to be 15.05.2025. The complainant has paid an amount of Rs.45,98,847/- to the respondent-promoter against the agreed sale consideration of the allotted unit.

18. The respondent has raised a plea in its reply that the complainant herein is defaulter and has failed to make payment as per the agreed payment plan. Therefore, demand and reminder letters were issued to the complainant on



21.03.2024 & 24.04.2024. Accordingly, the complainant has failed to abide by the terms of the buyer's agreement dated 06.06.2022 by defaulting in making payment in a time bound manner as per payment schedule. Thereafter, on account of non-payment of outstanding dues, the respondent issued pre cancellation letter on 15.05.2024 and finally cancelled the unit on 29.07.2024. Further submitted that the project is completed and the occupation certificate was granted by the competent authority on 02.07.2024.

19. Now the question before the Authority is that whether this cancellation letter dated 29.07.2024 is valid or not?

20. The Authority has gone through the payment plan i.e., Annexure-A of allotment letter dated 23.02.2022 & Schedule-VI (Part-III) of buyer's agreement dated 06.06.2022, which was duly signed by both the parties, which is reproduced for ready reference: -

Part-III

Payment plan of total consideration value: -

Name of instalment	Payment plan	Instalment Amount (in Rs.)	Applicable Taxes (in Rs.)	Total Amount (in Rs.)
On booking	4.35% of TCV	4,46,428	53,572	5,00,000
On or before 25.02.2022 (subject to signing of the agreement for sale)	35.65% of TCV	36,59,608	4,39,152	40,98,760
On application of OC	50% of TCV	51,32,545	6,15,906	57,48,451
On notice of offer of possession	10% of TCV	10,26,509	1,23,182	11,49,691
Total		1,02,65,090	12,31,812	1,14,96,902

Other charges

Name of instalment	Payment Plan	Instalment Amount (in Rs.)	Applicable Taxes (in Rs.)	Total Amount (in Rs.)
On notice/offer of possession	100% of IFMS	56,640	-Nil-	55,640
	100% of power back-up charges	56,640	10,196	66,836
Total		1,13,280	10,196	1,23,476

21. It is evident from the records that the complainant had paid an amount of Rs.45,98,847/- to the respondent upto the 2nd milestone i.e., on or before 25.02.2022 (subject to signing of the agreement for sale). Thereafter, the



respondent had applied for grant of occupation certificate to the competent authority on 03.03.2024 and as per the agreed payment plan, raised a demand on 21.03.2024, for the payment of 3rd milestone i.e., for on application of occupation certificate and a reminder letter to that demand was sent to the complainant on 24.04.2024. It is also on record, that after issuance of demand letter and reminder letters, a pre-cancellation letter on 15.05.2024 was also sent to the complainant, to clear the outstanding dues, prior to the cancellation of the allotment.

22. Further, as per clause 5.2 of buyer's agreement dated 06.06.2022, the allottee agreed to make the timely payment of outstanding dues. The relevant clause 5.2 of the buyer's agreement is reproduced as under for a ready reference: -

5. TIME IS OF ESSENCE:

*"5.2 Notwithstanding anything contained in this agreement, **timely performance by the Allottee(s) of all its obligation under this agreement, including without limitation, the obligations to make timely payment of all the dues** (including the total consideration value and other charges) as well as any other dues, deposits and amounts including payment of any interest in accordance with this agreement and the Act and the Rules shall also be the essence of this agreement."*

[Emphasis Supplied]

23. The Authority observes that clause 9.3 (ii) of buyer's agreement dated 06.06.2022 talks about that in the event of default or breach of any terms and conditions of the buyer's agreement by the allottee(s), the respondent-promoter has right to cancel the allotment is entitled to forfeit the amount of earnest money. The relevant Clause 9.3 (ii) of buyer's agreement is reproduced as under for a ready reference: -

9.3 (ii) In case default by the allottee(s) under the condition listed in clause 9.3(i) above continues for a period beyond 90 days after notice received from the promoter in this regard, the promoter may terminate the present agreement and cancel the allotment of the said commercial space/ unit. In case of such cancellation, the promoter herein is entitled to forfeit (i) the earnest money paid for the allotment along with interest and penalties/ damages (received or due) on any delayed payment/ non-payment by the allottee(s)...

[Emphasis supplied]



24. It is observed that as per Section 19 (6) & 19 (7) of the Act, 2016, the complainant-allottee is under an obligation to make timely payment as per agreed payment plan towards consideration of the allotted unit. Despite being granted several opportunities to comply with his obligations, the complainant failed to discharge his obligation for making timely payment of the outstanding dues. Thus, the respondent has cancelled the allotment of the subject unit due to non-payment on 29.07.2024, after issuance of demand letter and reminder letter dated 21.03.2024 & 24.04.2024 and pre-cancellation letter dated 15.05.2024. Therefore, the cancellation letter dated 29.07.2024 is hereby held to be valid in the eyes of law. Moreover, the respondent has completed the construction of the project and has obtained the occupation certificate on 02.07.2024 (before the due date of possession i.e., 15.05.2025).
25. However, after cancellation of the allotment, the respondent is not entitled to keep the entire money paid by the complainant with it and the respondent is under obligation to return the paid-up amount after deducting the amount of earnest money. In this case, refund can only be granted after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority, Gurugram (Forfeiture of Earnest Money by the builder) Regulations, 11(5) of 2018. The Authority observes that clause 9.3 (ii) of buyer's agreement dated 06.06.2022 talks about that in the event of default or breach of any terms and conditions of the buyer's agreement by the allottee(s) and upon cancellation, the respondent is entitled to forfeit the amount of earnest money. The relevant Clause 9.3 (ii) of buyer's agreement is reproduced as under for ready reference: -

9.3 (ii) In case default by the allottee(s) under the condition listed in clause 9.3(i) above continues for a period beyond 90 days after notice received from the promoter in this regard, the promoter may terminate the present agreement and cancel the allotment of the said commercial space/ unit. In case of such cancellation, the promoter herein is entitled to forfeit (i)



the earnest money paid for the allotment along with interest and penalties/ damages (received or due) on any delayed payment/ non-payment by the allottee(s)...

[Emphasis supplied]

26. It is contended by the respondent that they are liable to forfeit amount towards earned money, statutory charges, brokerage etc. However, 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/438/2019 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."

27. 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-promoter can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent-promoter is directed to refund the amount of Rs.45,98,847/- received against the allotted unit after deducting 10% of the sale consideration and return the remaining amount to the complainant along with interest on such balance amount at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation of allotment i.e., 29.07.2024 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

28. Further, on 07.05.2024, the respondent has filed an application for placing on record certain facts, vide which the respondent provided that the respondent-promoter after cancellation of unit on 29.07.2024, on 01.03.2025, the respondent had given a cheque of Rs.34,35,768/- after deduction of 10% of sale consideration to the complainant and the same was encashed by the complainant into his account on 03.04.2025. In view of the above, the respondent-promoter shall also adjust the amount of Rs.34,35,768/- from the refundable amount.

G. Directions of the Authority:

29. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations



cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.

- i. The respondent-promoter is directed to refund the paid-up amount of Rs.45,98,847/- after deduction of 10% of sale consideration, being earnest money to the complainant along with interest on such balance amount at the rate of 10.85% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation of allotment i.e., 29.07.2024 till the actual date of refund of the amount.
- ii. The respondent-promoter shall also adjust the amount of Rs.34,35,768/-, being already refunded to the complainant, from the refundable amount.
- iii. A period of 90 days is given to the respondents to comply with the directions given in this order failing which legal consequences would follow.

30. Complaint as well as applications, if any, stands disposed of accordingly.

31. File be consigned to the registry.


(Phool Singh Saini)
Member**HARERA**
GURUGRAM
(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram
Dated: 09.10.2025