

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

Date of Order:	09.10.2025
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NAME OF THE BUILDER		EMINENCE TOWNSHIPS INDIA PRIVATE LIMITED	
PROJECT NAME		"EMINECE KIMBERLEY SUITES"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/5863/2024	Mamta Tyagi V/S Eminence Townships India Private Limited	Sh. Sumesh Malhotra Advocate for complainant Sh. Aditya Sharma and Ms. Ritakshi Advocates for respondent
2.	CR/5864/2024	Suman Lata V/S Eminence Townships India Private Limited	Sh. Sumesh Malhotra Advocate for complainant Sh. Aditya Sharma and Ms. Ritakshi Advocates for respondent

CORAM:Shri Arun Kumar
Shri Phool Singh Saini**Chairman
Member****ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority 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 allottee as per the agreement for sale executed inter se.
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, "Eminence Kimberley Suites" (Commercial Colony) being developed by the same respondent/promoter i.e., Eminence Townships India Private Limited. The terms and conditions of the allotment, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the paid-up amount along with interest.

3. The details of the complaints, reply to status, unit no., date of allotment, date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, amount paid by the respondent as delay penalty and relief sought are given in a table below:

Project Name and Location		Eminence Townships India Private Limited at “Eminence Kimberley Suites” situated in Sector-112, Gurugram	
Occupation Certificate: 11.07.2019			
Complaint No., Case Title	CR/5863/2024 Mamta Tyagi V/S Eminence Townships India Private Limited	CR/5864/2024 Suman Lata V/S Eminence Townships India Private Limited	
Reply status	03.07.2025	14.09.2023	
Unit no.	Com-GF-05, Ground floor [As per page no. 79 of the complaint]	GF-26, Ground floor [As per page no. 54 of the reply]	
Area admeasuring	661.25 sq. ft. (super area) [As per page no. 79 of the complaint]	1099 sq. ft. (super area) [As per page no. 54 of the reply]	
Date of allotment	25.08.2014 [As per page no. 73 of the complaint]	25.08.2014 [As per page no. 73 of the complaint]	
Date of execution of agreement	04.09.2014 [As per page no. 77 of the complaint]	04.09.2014 [As per page no. 75 of the complaint]	
Due date of handing over of possession	31.07.2020 [Note: Due date to be calculated 36 months from the date of start of ground floor slab i.e., 31.01.2017 plus grace period of 6 months]	31.07.2020 [Note: Due date to be calculated 36 months from the date of start of ground floor slab i.e., 31.01.2017 plus grace period of 6 months]	

Legal notice for refund along with interest and compensation	06.08.2019 [As per page no. 114 of the complaint]	Not on record
Cancellation letter	06.12.2024 [As per page no. 6 of the application to being on record the cancellation letter filed by the complaint]	06.12.2024 [As per page no. 6 of the application to being on record the cancellation letter filed by the complaint]
Total Consideration / Total Amount paid by the complainant	TSC: Rs.86,50,472/- (As per structure of payments on page no. 103 of the complaint) AP: Rs.84,62,270/- (As per cancellation dated 06.12.2024 on page no. 6 of the application filed by the complaint)	TSC: Rs.86,50,472/- (As per structure of payments on page no. 101 of the complaint) AP: Rs.84,62,270/- (As per cancellation dated 06.12.2024 on page no. 6 of the application filed by the complaint)
Amount paid by the respondent as delay penalty	Rs.44,70,528/- (As per page no. 2 of the reply)	Rs.44,70,528/- (As per page no. 2 of the reply)
The complainant in the above complaint(s) has sought the following reliefs: 1. Direct the respondent to refund/pay an amount of Rs.84,62,720/- at prescribed rate of interest for delay in refund from the date of demand of refund i.e., 06.08.2019. 2. Declare the offer of possession letter dated 17.07.2019 issued by the respondent and demands made by the respondent in terms thereof, as null and void-ab-initio. 3. Direct the respondent to submit a report qua the status of the project specifically in light of the violations mentioned in the present complaint. 4. Direct inquiry/investigation on the violations and actions of the respondent and take action against such violation in terms of the Act of 2016 and Rules. 5. Direct the respondent to pay the litigation fees incurred by the complainant on account of this case of Rs.2,00,000/-.		
Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows: Abbreviation Full form TSC Total Sale consideration AP Amount paid by the allottee(s)		

4. The aforesaid complaints were filed by the complainant against the promoter on account of violation of the buyer's agreement and allotment letter against the allotment of units in the project of the

respondent/builder as refund request was made prior to obtaining of occupation certificate, seeking refund of the paid-up amount.

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/allottee are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/5863/2024, case titled as Mamta Tyagi V/S Emimence Townships India Pvt. Ltd.*** are being taken into consideration for determining the rights of the allottee(s) qua refund of the amount paid.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	Eminence Kimberley Suites, Sector 112, Gurugram
2.	Nature of the project	Commercial Colony
3.	Project Area	2.875 acres
4.	DTCP License No.	35 of 2012 dated 22.04.2012 valid up to 21.04.2025
5.	Name of Licensee	KPS Colonisers Pvt. Ltd.
6.	RERA Registered/ Not Registered	74 of 2017 dated 21.08.2017 valid up to 30.12.2018
	Extension of RERA registration	HARERA/GGM/REP/RC/74/2017/EXT/100/2019 Dated-12.05.2019 valid up to 31.12.2020
7.	Unit no.	Com-GF-05 and Ground floor

		(As per page no. 79 of the complaint)
8.	Unit admeasuring	661.25 sq. ft. (super area) (As per page no. 79 of the complaint)
9.	Date of allotment	25.08.2014 (As per page no. 73 of the complaint)
10.	Date of memorandum of understanding	25.08.2014 (As per page no. 74 of the complaint)
11.	Date of execution of buyer's agreement	04.09.2014 (As per page no. 77 of the complaint)
12.	Possession clause	<i>Schedule for possession of the said unit</i> 27. <i>The company based on its present plans and estimates and subject to all exceptions shall endeavor to complete the construction of the said project within 36 (thirty six) months (plus 6 months grace period) from the date of start of the ground floor slab of the particular tower in which the booking is made, subject to timely payment by the allottee(s) of sale price and other charges due and payable according to the payment plan applicable to him/her/them and/or as demanded by the company and subject to force majeure circumstances including but not limited to clauses 27 and 28. The possession of the said unit(s) shall, however, be offered only after grant of completion/occupation certificate from the competent Authority.</i> <i>(Emphasis supplied)</i> (As per page no. 88 of the complaint)
13.	Date of start of construction	31.01.2017

		(As mentioned on page no. 2 of the reply)
14.	Due date of delivery of possession	31.07.2020 (Note: Due date to be calculated 36 months from the date of start of ground floor slab i.e., 31.01.2017 plus grace period of 6 months)
15.	Basic sale consideration	Rs.82,32,562/- (As per structure of payments on page no. 103 of the complaint)
16.	Total sale consideration	Rs.86,50,472/- (As per structure of payments on page no. 103 of the complaint)
17.	Total amount paid by the complainant	Rs.84,62,270/- (As per cancellation dated 06.12.2024 on page no. 6 of the application filed by the complaint)
18.	Occupation Certificate	11.07.2019 (As per page no. 106 of the complaint)
19.	Offer of possession	17.07.2019 (As per page no. 108 of the complaint)
20.	Legal notice for refund along with interest and compensation	06.08.2019 (As per page no. 114 of the complaint)
21.	Reminder letters	17.07.2020 & 24.08.2021 (As per page no. 65-66 of the reply)
22.	Cancellation letter	06.12.2024 [As per page no. 6 of the application to being on record the cancellation letter filed by the complaint]
23.	Assured return paid by the respondent from 01.10.2014 to 28.06.2019	Rs.44,70,528/- (As per page no. 2 of the reply)

B. Facts of the complaint:

8. The complainants have made the following submissions:

- I. That the sales representative of the respondent having obtained information from their vast network employed by their marketing/sales team, approached the complainant, employing deceptive salesmanship by means of extravagant theatrics, brochures, catalogues, several sales pitches consisting of numerous lofty representations regarding the reputation of "Eminence" and their commitment to their customers and timely execution of their projects. The respondent had come up with a commercial colony under the name and style "Kimberly Suites" consisting of commercial retail shops and studio apartments, situated in Sector – 112, Village Bajghera, Gurgaon, Haryana.
- II. That based upon the representations and tall claims of the respondent as one of India's leading real estate developers and relying on the promises made by the respondent with respect to the project in question, including promises of the timely delivery of retail shop and its commitment to cater to the specific needs of the complainant, the complainant agreed to book a retail shop unit in the project for a total sale price of Rs.86,50,472/- inclusive of external development charges (EDC), internal development charges (IDC), IFMS and other charges. Thus, the complainant made a booking in a commercial project being developed by the respondent herein, namely "Eminence Kimberly Suites" situated in Sector – 112, Village Bajghera, Gurgaon, and made a payment of Rs.8,52,168/- towards the booking amount.
- III. That the respondent had provided for a down payment plan in terms of which 95% payment of basic sale price was to be paid within 60 days of booking, EDC and IDC was to be paid within 12 months of booking and balance 5% of basic sale price along with IFMSD is

payable at the time of possession. The booking application was replete with one-sided terms. The standard booking application form contained many unfair, arbitrary, one-sided clauses and provisions with arbitrary terms and conditions in favour of the respondent.

- IV. That thereafter, upon receipt of 95% of basic sale price i.e., total of Rs.81,10,935/-, the respondent issued an allotment letter dated 25.08.2014 to the complainant, whereby the complainant was allotted commercial shop bearing no. GF-05, admeasuring 661.25 sq. ft. In addition, the respondent also executed a MOU dated 25.08.2014 with the complainant assuring her of a monthly return of Rs.78,209/- till the date of possession of the subject unit.
- V. That the respondent, was at the time offering assured return @12% p.a. to all the allottee/complainant who opted for down payment plan, wherein the complainant will have to pay 90-95% (approx.) of the cost of property to the respondent and in return will receive a monthly assured return on amount already paid. Given the representation for assured return and persuasion by the representatives of the respondent, the complainant paid an amount of Rs.84,62,720/- before the execution of the buyer's agreement and the respondent agreed to pay a monthly assured return of Rs.78,209/- @ 12% p.a. on an amount of Rs.78,20,935/-.
- VI. That thereafter the complainant executed a buyer's agreement dated 04.09.2014 with the respondent. As per clause 27 of the said agreement, the respondent was duty bound to hand over possession of the unit within 36 months from the date of start of construction of the stilt/ground floor slab of the particular tower in which booking is made along with a grace period of 6 months. Pursuant to

demand raised by respondent, the complainant paid an amount of Rs.3,51,785/- to the respondent on 12.08.2015. The complainant has to make the payment to the respondent in terms of the payment plan opted by the complainant. Given the said arrangement, the complainant made timely payment as per down payment plan aggregating to an amount of Rs.84,62,720/- as on August, 2015.

- VII. The start date of construction/development of the project "Kimberly Suites" submitted by the respondent as part of its application for registration of project before the Authority is 09.02.2012. Having regard to the same and clause 27 of the said agreement, the respondent was duty bound to hand over possession of the unit by 09.02.2015 (without considering the grace period of 6 months), however, the respondent miserably failed to deliver the possession of the unit on time.
- VIII. That the respondent after a delay of over 4 years received part completion certificate in respect of the project on 11.07.2019. That the commercial colony i.e., the project Kimberly Suites comprised of three apartment towers and a commercial block. The respondent received part occupation certificate in respect of tower- 2 & 3 and commercial block.
- IX. That in terms of the agreement, the respondent was duty bound to hand over possession of the shop to the complainant by February, 2015, however, the respondent miserably failed to deliver possession of the shop on time and had only offered the possession of the shop on 17.07.2019 vide its letter dated 17.07.2019. The respondent vide said offer of possession letter raised several illegal and unauthorized demands outside the scope of the BBA.

- X. That the complainant upon being offered possession visited the project site on 27.07.2019, to her utter shock and surprise found that the project was far from complete and the civil work was still going on. The respondent even after a considerable delay, without completing the project had offered possession to the complainant. It is submitted the respondent has failed to deliver the possession of the unit within time in terms of clause 27 of the agreement. Further, the part occupation certificate obtained by the respondent does not reflect the correct on ground position, as only the super structure was existing on the site at the time of visit by the complainant i.e., 27.07.2019, which clearly indicated that the part occupation certificate was granted in complete disregard of the actual on ground position and was clearly a result of deep contacts and reach of the respondent in the system.
- XI. That in view of the considerable delay being caused by the respondent in completion of the project and being faced with uncertainty of the project ever attaining completion, the complainant through her counsel served upon the respondent a legal notice dated 06.08.2019, terminating the agreement and sought refund of the principal paid along with the interest on the instalment paid, from the respondent, in terms of the agreement.
- XII. That the complainant filed an application under section 7 of Insolvency Bankruptcy Code, 2016 (IBC) for seeking admission of insolvency proceedings against the respondent in September, 2019. However, due to amendment in the provisions of IBC, the same could not be further pressed.
- XIII. That said, despite termination of agreement by the complainant and the demand for refund of entire amount paid to the respondent, the

respondent has failed to either reply to the said legal notice dated 06.08.2019 or return the amount to the complainant, till date. The respondent is illegally withholding the refund amount due to the complainant.

- XIV. That aggrieved by the conduct of the respondent, the complainant protested against the grant of any such occupation certificate to the respondent as well as raised issue of incomplete construction with competent authorities. Given the continued risk of life and failure, the complainant addressed her grievance along with two other allottees via representation-cum-complaint dated 28.02.2020 and requested for revocation/cancellation of the same in light of non-completion of the project till date and several building violations. The complainant protested against the grant of any such occupation certificate to the respondent as well as raised issue of incomplete construction with competent authorities. Given the continued risk of life and failure, the complainant addressed her grievance along with two other allottees via representation-cum-complaint dated 28.02.2020 and requested for revocation/cancellation of the same in light of non-completion of the project till date and several building violations.
- XV. That the respondent has acted in an arbitrary and whimsical manner while obtaining the occupation certificate for an incomplete project and thereby making no sincere efforts to rectify the violations and complete the project. Pursuant to obtaining OC the respondent has issued letter of offer of possession and demanding balance outstanding payments from the complainant, whereas the action of offer of possession and demand by the respondent is violative of the rights of the complainant as she was being compelled to take



possession and make payments for an incomplete project which is not safe and in habitable condition. Particularly when the respondent has violated various safety measures, guidelines and conditions imperative to obtain an occupation certificate. That the project is far from complete and there are several noticeable violations and by no stretch of imagination the project can be certified to be complete and safe for occupation.

- XVI. That said, no further action was taken on the representation-cum-complaint of the complainant. The officials did not communicate any report or action taken to rectify all the defaults and complete the project in accordance with the standards prescribed under various laws and building codes so that the project/ units are fit and in habitable condition for the complainant. It is pertinent to submit here that the said offer of possession is symbolic offer as the complainant is unable to utilise the unit for the purpose purchased. Further it is submitted here that there has been no improvements and rectifications made by the respondent at the project site after the letter of offer of possession in year 2019 and same can be compared and verified from photographs of the project.
- XVII. That the respondent has obtained the OC in haste for an incomplete project with malafide intention to put stop to assured returns in accordance with the MOU executed and further to make subsequent demands of payment. The respondent is unjustly enriching itself at the cost of life and safety of the complainant and other allottees.
- XVIII. That being said, the complainant's husband has been to the project site several times in the past years and has clicked several photographs and videos, which clearly reflect that the project was far

from complete. Substantial civil works, paint job, front façade work etc. was going on as later as 2023.

- XIX. That in terms of the law laid down in the Real Estate (Regulation and Development) Act, 2016 and by the judgment of Newtech promoters and Developers Private Limited versus State of U. P., the allottee has an absolute right to seek refund of the amounts paid without any deduction in case the promoter defaults or delays the project. Infact in the present case the demand for refund was made by the complainant through legal notice dated 06.08.2019 and since then the respondent is illegally withholding the refund, therefore the respondent is also liable to pay interest at the prescribed rate of interest on the interest amount from the date of demand of refund amount.
- XX. That having no option the complainant is constrained to prefer the present complaint to seek refund of Rs.84,62,720/- along with prescribed rate of interest.

C. Relief sought by the complainant:

9. The complainants have sought following relief(s):
- i. Direct the respondent to refund/pay an amount of Rs.84,62,720/- at prescribed rate of interest for delay in refund from the date of demand of refund i.e., 06.08.2019.
 - ii. Declare the offer of possession letter dated 17.07.2019 issued by the respondent and demands made by the respondent in terms thereof, as null and void-ab-initio.
 - iii. Direct the respondent to submit a report qua the status of the project specifically in light of the violations mentioned in the present complaint.

- iv. Direct inquiry/investigation on the violations and actions of the respondent and take action against such violation in terms of the Act of 2016 and Rules.
- v. Direct the respondent to pay the litigation fees incurred by the complainant on account of this case of Rs.2,00,000/-.

D. Reply by the respondent:

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

- a. That the complainant has not approached the Authority with clean hands and have deliberately suppressed material facts, warranting the dismissal of the present complaint on the grounds of 'Suppressio Veri'. The complainant has defaulted on the material obligations as defined under the buyer's agreement dated 04.09.2014 and has even failed to make the due payments payable by the complainant upon offer of possession. It is pertinent to state here that the offer of possession of the said unit was made within the time limit as agreed upon in the buyer's agreement and further the complainant after availing the benefits of "Assured Return" to the tune of Rs.4,70,528/- has now been avoiding the due payments as payable by the complainant under the buyer's agreement.
- b. That the unit of the complainant falls under the retail segment of the project and as per clause 27 of the buyer's agreement, the said unit was to be delivered within 42 months (i.e., 36 months plus 06 months grace period on account of force majeure) from the date of start of stilt/ ground floor roof slab of the particular tower in which the unit is located. The casting of ground floor roof slab of the retail segment started on 31.01.2017 and thus, the period of delivery of possession of the said unit was due on 30.07.2020, whereas, on the contrary, the unit was delivered on 17.07.2019 i.e., 12 months

(approx.) prior to the due date of delivery. Thus, the respondent is at no fault whatsoever and has complied with the terms of buyer's agreement.

- c. That in addition to the buyer's agreement, in terms of the Memorandum of Understanding (MOU) dated 25.08.2014, a monthly assured return of Rs.78,209/- was paid to the complainant from 01.10.2014 to 28.06.2019, i.e., a total amount of Rs.44,70,528/- had already been paid by the respondent to the complainant and in the light of the prayer, made by the complainant qua refund, the said amount also becomes returnable by the complainant to the respondent and further, as the respondent is at no fault, whatsoever, thus, in the light of previous judgements passed by the learned Authority, the refund to the complainant may be permitted upon deduction of the earnest money and the other benefits availed upon by the complainant and in accordance with the provisions of buyer's agreement.
- d. That the respondent applied for the renewal of license of the project site but for the reasons best known to DTCP a reply on the same was received by the petitioner only on 03.08.18, with wrong figures of EDC/IDC and finally after long chase and follow-up only the revised demand was received from the office of DTCP on 01.02.2019, following which EDC/IDC has been paid and even the future instalments of the same has been paid in advance by the petitioner. During this period the petitioner could not apply for occupancy certificate, even after work at project site was completed. Force Majeure continued from 19.03.2018 till 01.02.2019.
- e. That on 27.03.2019, work at the project site were completed and application for obtaining the occupancy certificate was submitted.

That after long chase and follow-ups from the learned office of DTCP, Haryana, on 11.07.2019, occupancy certificate was received after a force majeure of 103 days to the respondent. The respondent even after existence of the force majeure conditions, as the respondent was excessively diligent in executing the work thus, the possession of the unit was offered well before the due date for offer of possession and the offer of possession was issued by the respondent in the name of the complainant on 17.07.2019.

- f. That the complaint suffers from bar under the provisions of the limitation Act, 1963, the complainant has placed reliance that the relief of refund is being sought on account of delay in handover of the possession of the allotted Unit. The complainant has concealed the very fact that the "Offer of possession" of the unit was offered on 17.07.2019 and numerous reminders were also sent to the complainant however, it is on account of failure of the complainant herself that she has not taken over the physical possession of the unit for more than 5 years. As the cause of action is claimed to have been arisen on account of failure of delivery of possession, and in the light of offer of possession the complaint is bad in law and is liable to be dismissed and the complainant be directed to make the balance payment and take-over the physical possession of the unit.
- g. That the complainant had earlier initiated proceedings before the Hon'ble National Company Law Tribunal (NCLT) seeking commencement of Corporate Insolvency Resolution Process (CIRP) against the respondent. However, the said petition was dismissed on 19.11.2019, on the ground that the respondent had already offered possession of the unit, and it was the complainant who had defaulted

in making the requisite payments and failed to accept the possession as offered.

- h. That despite delayed payments from the complainant, the respondent, the unit has been offered for more than 4 years back and the complainant has dues payable in respect to the due instalments and interest and the complainant purely in a fit of rage in order to evade from her liability in respect to the payment of her dues, interest applicable on the due installments and monthly maintenance amount has filed the present bogus and unfounded complaint against the respondent. It thus, the same is liable to be dismissed with heavy cost.
11. 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:

12. The objection raised by the respondent regarding rejection of complaint on ground of subject matter jurisdiction stands 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

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the 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.

13. 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.

F. Finding on objections raised by the respondent:**F.I Objection regarding the complaint barred by Limitation Act, 1963**

14. The respondent has raised a contention that the complaint is barred by limitation as the due date of possession as per the agreement was July, 2020 and the complainant has failed to exercise her rights within the prescribed timeframe. The Authority observes that although the cause of action to file the present complaint accrues in July, 2020 i.e., the date of handing over of possession as stipulated under the terms and conditions of the agreement but it is a settled situation now that after due date of possession of the unit, the cause of action is continuing till such obligation of offering the possession of the unit is fulfilled by the promoter-builder.

In the present case, the subject unit was offered to the complainant on 17.07.2019. Thus, it was after date of such offer of possession when time for limitation starts tickling. Further, in view of Covid-19, Hon'ble Apex Court vide order dated 10.01.2022 in suo-moto W.P. (C) No. 3 of 2020 has declared period from 15.03.2020 to 28.02.2022 as zero period. Further, as per the scheme of calculating the remaining limitation as provided in the order of Hon'ble Supreme Court, the present complaint which was filed on 28.11.2024 is well within the limitation. Thus, the contention of promoter that the complaint is time barred by proviso of Limitation Act stands rejected.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to refund/pay an amount of Rs.84,62,720/- at prescribed rate of interest for delay in refund from the date of demand of refund i.e., 06.08.2019.

15. The complainant was allotted a unit in the project of respondent "Eminence Kimberley Suites" in Sector-112, Gurugram for a total sale consideration of Rs.86,50,472/-. The buyer's agreement was executed on 04.09.2014 between the parties and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.84,62,270/-.

16. As per clause 27 of the buyer's agreement dated 04.09.2014, due date of possession is to be calculated 36 months from the date of start of the ground floor slab of the particular tower in which the booking is made with a grace period of six months after the expiry of 36 months. The possession clause is reproduced below for the ready reference:

Clause 15

The company based on its present plans and estimates and subject to all exceptions shall endeavor to complete the construction of the said project within 36 (thirty six) months (plus 6 months grace period) from the date of start of the ground floor slab of the particular tower in which the booking is made, subject to timely payment by the allottee(s) of sale price and other charges due and payable according to the payment plan applicable to him/her/them

and/or as demanded by the company and subject to force majeure circumstances including but not limited to clauses 27 and 28. The possession of the said unit(s) shall, however, be offered only after grant of completion/occupation certificate from the competent Authority.

(Emphasis supplied)

17. Therefore, the due date for possession is to be calculated 36 months from the date of start of ground floor slab i.e., 31.01.2017 with a grace period of 6 months. Thus, the due date for possession of the unit comes to 31.07.2020.
18. The respondent in its reply mentioned that the occupation certificate of the project was obtained on 11.07.2019 and the offer of possession was made on 17.07.2019. Thereafter, reminders for taking over of possession on payment of outstanding dues were issued on 17.07.2020 & 24.08.2021. But the complainant neither come forward to take the possession of the unit nor informed the respondent that she does not want to continue with the project. The complainant has filed the present complaint on 28.11.2024 i.e., after offer of possession seeking refund of the paid-up amount.
19. The counsel for the complainant vide proceedings of the day dated 09.10.2025 stated that a legal notice was sent to the respondent for withdrawal from the project on 06.08.2019, hence, the complainant may be allowed refund of the entire paid-up amount along with the interest. The counsel for the respondent vide proceedings dated 09.10.2025 mentioned that the offer of possession was made on 17.07.2019 after obtaining occupation certificate on 11.07.2019 which is prior to the due date of possession, thus the complainant is not entitled to full refund.
20. The Authority has observed that in the legal notice the complainant has clearly expressed the intention to withdraw from the project and refund of the paid-up amount but the same was made after offer of possession of the unit has been made by the respondent.

21. As per the documents placed on record by the respondent, the Authority has observed that the due date of possession was 31.07.2020 but the occupation certificate of the project was obtained on 11.07.2019 and offer of possession has been made on 17.07.2019 which is way prior to the due date of possession. Though the complainant has expressed her interest to withdraw from the project vide legal notice for refund dated 06.08.2019 but as the same was made after offer of possession.
22. As per section 18 of the Act of 2016, the complainant-allottee has right to continue or withdraw from the project but the same has to be expressed in clear terms before offer of possession as held by the Authority in **complaint no. 613 of 2018** titled as **"Mridula Parti and Partha Sarathi De Vs. M/s Microtek Infrastructures Pvt. Ltd."**. In the instant complaint, the complainant never expressed her wish to withdraw from the project before offer of possession has been made on 17.07.2019 which tacitly shows that the complainant intended to continue with the project and the refund has been sought only by way of legal notice on 06.08.2019 i.e., after the offer of possession of the unit has been made by the respondent. Therefore, the respondent is entitled for deduction of earnest money.
23. Now when the complainant approached the Authority to seek refund, it is observed that under clause 18 of the buyer's agreement dated 04.09.2014, the respondent-builder is entitled to forfeit the 10% of the total sale consideration. The relevant portion of the clause is reproduced herein below:

"In case, the allotment is got cancelled by the Allottee(s) himself/herself/itself, he/she/it shall forfeit to the company the entire amount of earnest money together with interest on delayed payments and any other amount of non-refundable nature including but not confined to brokerage paid by the company and the agreement for sale shall stand cancelled and the allottee(s) shall be left with no lien whatsoever on the said unit."

24. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of *Maula Bux VS. Union of India, (1970) 1 SCR 928* and *Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136*, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the 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 Singh and Anr. VS. M3M India Limited* decided on 26.07.2022, held that 10% of basic sale price is a reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

"5. AMOUNT OF EARNEST MONEY

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

25. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate

Regulatory Authority, Gurugram, the respondent/builder can't retain more than 10% of sale consideration as earnest money on surrender by the complainant-allottee or cancellation by the builder but that was not done. So, the respondent is directed to refund the amount received from the complainant i.e., Rs.84,62,270/- after deducting 10% of the basic sale consideration along with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of legal notice for refund i.e., 06.08.2019 till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*. The amount of Rs.44,70,528/- already paid on account of assured return shall be adjusted.

G.II Declare the offer of possession letter dated 17.07.2019 issued by the respondent and demands made by the respondent in terms thereof, as null and void-ab-initio.

26. As per the documents placed on record, the Authority has observed that the offer of possession was made on 17.07.2019 after obtaining of occupation certificate on 11.07.2019 and the demands raised therein was as per the agreed terms of the buyer's agreement dated 04.09.2019. Moreover, the Authority has allowed the refund of the paid-up amount along with interest as detailed out in para 25 of this order. Thus, the above-mentioned relief sought by the complainant becomes redundant.

G.III Direct the respondent to submit a report qua the status of the project specifically in light of the violations mentioned in the present complaint.

G.IV Direct inquiry/investigation on the violations and actions of the respondent and take action against such violation in terms of the Act of 2016 and Rules.

27. The above-mentioned relief sought by the complainant are being taken together being inter-connected.

28. The complainant has not clearly identified the violations of the Act, 2016, and its rules by the respondent. Neither it is mentioned in the facts of the complaint nor pressed before the Authority during the proceedings of the day. Without specific details about the alleged violations, there is no basis for the relief sought. Thus, no direction to this effect.

G.V Direct the respondent to pay the litigation fees incurred by the complainant on account of this case of Rs.50,000/-.

29. The complainant is seeking above mentioned relief w.r.t. compensation.

Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357 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.

H. Directions of the Authority:

30. 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 of 2016:

- i. The respondent/promoter is directed to refund the amount i.e., **Rs.84,62,270/-** received by him from the complainant after deduction of 10% of basic sale consideration of Rs.82,32,562/- as earnest money along with interest at the rate of 10.85% p.a. on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of legal notice for refund i.e., 06.08.2019 till the actual realization of the

- amount after adjusting an amount of Rs.44,70,528/- already paid on account of delay penalty.
- ii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
31. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
32. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
33. Files be consigned to the registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 09.10.2025