

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

Date of Order:	09.10.2025
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NAME OF THE BUILDER		KNS INFRACON PRIVATE LIMITED	
PROJECT NAME		"CAPITAL GATEWAY"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/864/2022	Ravi Dimri V/S KNS Infracon Private Limited	Ms. Anu Mehta Advocate for complainant Sh. Rishabh Jain Advocates for respondent
2.	CR/1059/2022	Sarita Dimri V/S KNS Infracon Private Limited	Ms. Anu Mehta Advocate for complainant Sh. Rishabh Jain 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, "Capital Gateway" (Group residential) being developed by the

same respondent/promoter i.e., KNS Infracon 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 delayed possession charges 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		KNS Infracon Private Limited at "Capital Gateway" situated in Sector-111, Gurugram	
Occupation Certificate: Not received			
Complaint No., Case Title	CR/864/2022 Ravi Dimri V/S KNS Infracon Private Limited	CR/1059/2022 Sarita Dimri V/S KNS Infracon Private Limited	
Reply status	28.07.2023	28.07.2023	
Unit no.	303, 3 rd floor [As per page no. 31 of the complaint]	504, 5 th floor [As per page no. 31 of the reply]	
Area admeasuring	2675 sq. ft. (super area) [As per page no. 31 of the complaint]	1990 sq. ft. (super area) [As per page no. 31 of the reply]	
Date of execution of flat buyer's agreement	04.08.2012 [As confirmed by the counsel for the complainant during proceedings of the day dated 30.01.2025 and copy is also placed on record]	11.09.2012 [As per page no. 27 of the complaint]	
Due date of handing over of possession	07.12.2015 [Note: Due date to be calculated 36 months from the date of sanction of the building plans i.e., 07.06.2012 plus grace period of 180 days]	07.12.2015 [Note: Due date to be calculated 36 months from the date of sanction of the building plans i.e., 07.06.2012 plus grace period of 180 days]	
Cancellation letter	03.10.2016 [As per page no. 17 of the reply]	22.12.2014 [As per page no. 16 of the reply]	

Total consideration / Total Amount paid by the complainant	BSC: Rs.77,57,500/- (As per page no. 31 of the complaint) AP: Rs.35,37,973/- (As per receipt information placed on record during proceedings of the dated 30.01.2025)	BSC: Rs.57,71,000/- (As per page no. 20 of the complaint) AP: Rs.25,67,361/- (As per receipt information placed on record during proceedings of the dated 30.01.2025)
The complainant in the above complaint(s) has sought the following reliefs:		
<ol style="list-style-type: none"> 1. Direct the respondent to provide possession letter to the complainant and handover actual and physical possession of the unit to the complainant. 2. Direct the respondent to provide prescribed rate of interest for the delay in handing over of possession from the date of respective deposits till its actual realization. 3. Direct the respondent to withdraw the unjustified and unlawful demands towards maintenance charges. 4. To conduct such inquiry under section 35 of the Act of the Act into the affairs of the respondent. 		
Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:		
Abbreviation Full form BSC Basic 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 and for not handing over the possession by the due date, seeking delayed possession charges.
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/864/2022, case titled as Ravi Dimri V/S KNS Infracon Pvt. Ltd.** are

being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

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 and location of the project	"Capital Gateway Phase 1", Sector 111, Gurugram
2.	Nature of the project	Group residential
3.	Project area	10.462 acres
4.	DTCP license no.	34 of 2011 dated 16.04.2011 valid up to 15.04.2024
5.	Name of licensee	KNS Infracon Private Limited and 4 others
6.	RERA Registered/ not registered	Registered vide no. 12 of 2018 dated 10.01.2018 valid up to 30.06.2021
	Extension of registration	RC/REP/HARERA/GGM/12 of 2018/7(3)/2022/3 dated 09.08.2022 valid up to 30.06.2025
7.	Unit no.	Flat No.-303, 3 rd floor (As per page no. 31 of the complaint)
8.	Unit area admeasuring	2675 sq. ft. (super area) (As per page no. 31 of the complaint)
9.	Date of execution of flat buyer's agreement	04.08.2012 (As confirmed by the counsel for the complainant during proceedings of the day dated 30.01.2025 and copy is also placed on record)
10.	Date of approval of building plans	07.06.2012 (Taken from another complaint of the same project)
11.	Possession clause	2 Possession <i>2.1 Subject to clause 9 herein or any other circumstances not anticipated and</i>

		<p>beyond control of the first party/confirming party and any restraints/restrictions from any courts/authorities and subject to the purchaser having complied with all the terms and conditions of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the first party/confirming party, whether under this agreement or otherwise, from time to time, the first party/confirming party proposes to handover the possession of the flat to the purchaser within approximate period of 36 months from the date of sanction of the building plans of the said colony. The purchase agrees and understands that the first party/confirming party shall be entitled to a grace period of 180 (one hundred and eighty) days, after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the colony from the concerned authority.</p> <p>.....</p> <p>(As per page no. 35 of the complaint)</p>
12.	Due date of possession	<p>07.12.2015</p> <p>(Note: Due date to be calculated 36 months from the date of sanction of the building plans i.e., 07.06.2012 plus grace period of 180 days)</p>
13.	Baisc sale consideration	<p>Rs.77,57,500/-</p> <p>(As per page no. 31 of the complaint)</p>
14.	Amount paid by the complainant	<p>Rs.35,37,973/-</p> <p>(As per receipt information placed on record during proceedings of the dated 30.01.2025)</p>

15.	Occupation Certificate/ completion certificate	Not received
16.	Offer of possession	Not offered
17.	Demand letter	31.12.2015 (As per reminder letter on page no. 16 of the reply)
18.	Reminder letter	20.04.2016 (As per page no. 16 of the reply)
19.	Cancellation of unit	03.10.2016 (As per page no. 17 of the reply)

B. Facts of the complaint:

8. The complainants have made the following submissions:

- I. That the project 'Capital Gateway' came to the knowledge of the complainant, who is a resident of New Delhi, through the authorized marketing representatives of the respondent. The marketing representatives approached the complainant, for and on behalf of the respondent, making tall claims in regard to the project and the respondent lured the complainant to book a unit in the above said project of the respondent.
- II. That the complainant believing on claims made by the marketing representative of the respondent, booked two units in the said project admeasuring super area and 2675 sq. ft. for a Basic Sale Price of Rs.2900/- per sq. ft. A builder buyer's agreement was executed between the complainant and the respondent in September 2012, for a separate unit in the project. As per clause 2.3 of the agreement, the unit of the complainant were scheduled to be delivered by the respondent within forty-five months which ended in June, 2016. The respondent never apprised the complainant about the sanctioned building plan. Therefore, the possession date was calculated from

the date of booking as per which the date of delivery of possession was on June, 2016.

- III. That the complainant from 02.01.2013 to 03.04.2021 had sent various e-mails and letters to the respondent asking about the status of the project and delivery of possession and even for status of due payments, as the complainant did not want to delay or miss out on any payment due on his behalf. However, the respondent with malicious intention never replied to the mails of the complainant nor addressed his grievances.
- IV. That the complainant despite not receiving any reply from the respondent, kept making payment of the due instalments so that the respondent does not complain about it. The cooperation on behalf of the complainant can be clearly deduced as the complainant even paid unlawful and avoidable "interest charges" to the tune of some lacs, just to avoid any hassle with the respondent and let him do his work freely. The mala fide intention of the respondent can be seen from the fact that even after making such payment, the respondent never issued a "No-dues certificate" in favour of the complainant.
- V. That the complainant, after not receiving any communication from the respondent himself visited the project-site in 24.03.2021 and was shocked to see that the work was still going on and the project, which was to be completed in June, 2016, wasn't finished even in 2021. The complainant always adhered the payment schedule duly agreed upon by him at the time of signing of agreement.
- VI. That the Haryana Government came out with a 'Composition Scheme' in August 2014. This scheme prescribed a 1% VAT on the total contract value effective from 01.04.2014 and barred developers from collecting this tax from buyers. Moreover, if the

respondent would deliver the possession in 2016, as per the agreement, then certain costs and inflation would not have been applicable or due.

VII. That due to the fault on the part of respondent, the complainant should not be made to pay unjustified demands. Thus, the respondent should not increase the price of the said units in the project and deliver the possession of the said units in the cost agreed upon at the time of signing the agreement. That the complainant sent various mails to the respondent from 05.09.2018 to 29.10.2018 raising his concern that despite of making payment towards delay possession interest they are demanding more charges illegally with malicious intention to cheat and dupe the innocent. Despite consistent chain of e-mails, the respondent was failed to address the grievances of the complainant nor provided any interest and compensation for the delay period. The respondent always has laissez faire attitude towards the complainant.

VIII. That the complainant received a letter dated 05.09.2019 from the respondent demanding the maintenance charges of Rs.1,18,944/- unlawfully or without any justification. The maintenance charges includes interest of Rs.20,845/- and GST Charges. It is submitted that the maintenance charges shall be levied from the date of handing over of the possession and the charges shall be reasonable and justifiable, however, the respondent failed to provide the justification for the same.

IX. That the respondent is duty bound to maintain transparency in every transaction, however, in the present case, the respondent with intent to cheat and dupe the complainant, did not provide any record and justification of the maintenance charges.

X. That being in a dominant position the respondent always ignored the concern and grievances of the complainant and never bothered to redress the same. It is pertinent to note that despite of making payments towards the delay interest, the respondent has raised certain unlawful and unjustifiable demands. It is also pertinent to mention here that the only time the respondent communicated with the complainant was when the respondent sent letters asking for payment/installment for the said units.

XI. That the present case is a clear exploitation of innocence and beliefs of the complainant and an act of the respondent to retain the complainant hard-earned money illegally.

XII. That the complainant is an officer serving the Indian Army at the position and rank of Brigadier and booked two units in the captioned project with many dreams, however, the project got delayed which caused grave mental and financial harassment to the complainant. It is further submitted that the demands of the respondent are endless which caused mental agony to the complainant.

XIII. That the tactics of the respondent to dupe and retain the complainant in the project is crystal clear by their act of raising unlawful and unjustifiable demands despite of redressing the grievances of the complainant and paying delay interest.

XIV. That the respondent has utterly failed to fulfil his obligations to complete the construction in time and has caused huge losses and mental agony to the complainant and thus violated the terms of Section 18 of the Act of 2016.

C. Relief sought by the complainant:

9. The complainants have sought following relief(s):

- i. Direct the respondent to provide possession letter to the complainant and handover actual and physical possession of the unit to the complainant.
- ii. Direct the respondent to provide prescribed rate of interest for the delay in handing over of possession from the date of respective deposits till its actual realization.
- iii. Direct the respondent to withdraw the unjustified and unlawful demands towards maintenance charges.
- iv. To conduct such inquiry under section 35 of the Act of the Act into the affairs of the respondent.

D. Reply by the respondent:

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

- a. That at the outset, it is most respectfully submitted that the instant complaint of the complainant is not maintainable on facts or in law and is as such liable to be dismissed/rejected. The complainant has obfuscated the provisions of the Act, 2016 and the rules, 2017 to their advantage, which is brazen misuse of law. The complainant has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. They have raised false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.
- b. The respondent had applied for environment clearance on 20.10.2011. The developer finally got the environment clearance on 17.06.2013. The respondent had applied for the revision in building plans of the said project before the appropriate authority. However, for no fault of the respondent, the plans were approved by the Department only after a delay of 2 years. Owing to this, the construction of project could not be started in a timely manner. The

complainant, having keen interest in the said project, approached the respondents for booking a unit in the said project.

- c. That, after being satisfied with the project in totality he expressed his willingness to book a unit in the project. It is thus apparent on the face of it, the complainant in the present case is not consumer rather 'investor' who falls outside the purview of the Act, 2016 more specifically in view of the preamble of the Act, 2016 which states to protect the interest of the consumers. It is to be considered that complainant is not consumer and thus he fall outside the purview of the Act, 2016 and the instant complaint is liable to be dismissed.
- d. At present, it is a matter of record that the structure of the said project in question is complete, and few instalments are due and payable on account of the complainant. Moreover, it is pertinent to state that the respondent has applied from obtaining occupation certificate for Phase-I of the said project as all the construction and development activities are complete.
- e. After receipt of SWAMIH investment fund, the respondent was able to resume the construction activities at a very large scale in expeditious manner. The development at the project site is in full swing, in order to complete the project and handover the possession to the allottees at the earliest.
- f. That the respondent has always made efforts for completion of the said project. Initially, the Interim RERA granted RERA registration on 10th January 2018 till 31.12.2020 for Phase I (Tower A to G) and 31.12.2021 for Phase II (Tower H to J). From time-to-time construction activities were impeded due to poor air quality in the Delhi NCR region.

- g. The legal fraternity is respected for its novelty and highly educated professionals. The Hon'ble Supreme Court has allowed extension of limitation taking into consideration the impact of the novel corona virus over the world. Similarly, the real estate sector was impacted badly due to Covid-19 as the construction activities were halted for a long time. Moreover, the cost of construction kept on increasing with time.
- h. The present complaint is devoid of any merit and has been preferred with the sole motive to harass the respondent. In fact, the present complaint is liable to be dismissed on the ground that the said claim of the complainant is unjustified, misconceived and without any basis and is against the respondent.
- i. In spite of the fact that the real estate market has gone down badly, the respondents have managed to carry on the works with certain delays caused due to various above mentioned reasons and the fact that various buyers, including the complainant of the project has defaulted in making timely payments towards his outstanding dues, resulting into inordinate delay in the construction activities, still the construction of the said project has never been stopped or abandoned and the project will be delivered soon.
- j. It is a respectful submission of the respondent that a bare perusal of the complaint will sufficiently elucidate that the complainant has miserably failed to make a case against the respondents. It is submitted that the complainant has merely alleged in the complaint about the delay on the part of the respondent in offering possession but has failed to substantiate the same. The fact is that the respondent has been acting in consonance with the registration of

project with the Authority and no contravention in terms of the same can be projected on the respondent.

- k. The Haryana Real Estate Regulatory Authority, Gurugram, does not have jurisdiction in the instant case as the subject-matter of the complaint has to be decided as per the Act, 2016 and the Rules, 2017. The complainant has erred in invoking the jurisdiction of the Authority, Gurugram, as the compensation can only be granted in cases where the Authority so directs.
- l. Thus, it is germane to state that there is no further deficiency as claimed by the complainant against the respondent and no occasion has occurred deeming indulgence of this authority. Hence, the present complaint is liable to be dismissed.

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 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 delay due to force majeure circumstances.

14. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as orders passed by the National Green Tribunal during October-November 2019 and other orders. But the plea taken by respondent is devoid of merit and hence, rejected. The authority is of considered view that as per clause 2.1 of flat buyer's agreement, the due date of handing over of possession is to be calculated as 36 months from date of sanction of building plan including a grace period of 180 days. The date of sanction of building plan as stated by complainant is 07.06.2012. As the due date of handing over

of possession come out to be 07.12.2015 which is way before from the conditions that respondent is taking plea of. The respondent was liable to complete the construction of the project and handover the possession of the said unit by 07.12.2015 and the respondent is claiming benefit of ban on construction by National green Tribunal laid in October-November 2019 whereas the due date of handing over of possession was much prior to the event. Therefore, the authority is of the view that ban on construction by NGT cannot be used as an excuse for non- performance of a contract for which the deadlines were much before such restriction, the said time period is not excluded while calculating the delay in handing over possession.

F.II Objection regarding delay in completion of construction of project due to outbreak of Covid-19

15. The Hon'ble Delhi High Court in case titled as **M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020** dated 29.05.2020 has observed as under:

69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

16. In the present case also, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 07.12.2015. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time

period cannot be excluded while calculating the delay in handing over possession.

F.III Objection regarding the complainant being investor

17. The respondent has taken a stand that the complainant is investor and not consumer, therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aim & object of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the flat buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is allottee(s) as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given

under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to provide possession letter to the complainant and handover actual and physical possession of the unit to the complainant.

G.II Direct the respondent to provide prescribed rate of interest for the delay in handing over of possession from the date of respective deposits till its actual realization.

19. The complainant was allotted a unit in the project of respondent "Capital Gateway", in Sector 111, Gurugram for a basic sale consideration of Rs.77,57,500/-. A flat buyer's agreement was executed between the parties on 04.08.2012 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.35,37,973/-.

20. The respondent vide letter dated 31.12.2015 raised a demand for due instalment as per the payment plan opted by the complainant. Thereafter the respondent issued a reminder letter on 20.04.2016 for payment of outstanding dues and finally terminated the allotment of the unit on 03.10.2016 on failure of payment of outstanding instalments.

21. The counsel for the respondent has mentioned in the reply that the unit of the complainant was cancelled way back in 2016 due to non-payment of instalments despite issuance of numerous reminders and hence no case of DPC is made out as the unit has already been cancelled. Further, the present complaint is barred by limitation as the unit of the complainant was cancelled way back in the year 2016. Now, the question arises before the Authority is that the cancellation letter dated 03.10.2016 is valid or not?

22. On consideration of the documents place on record and submissions made by the parties, the Authority has observed that the complainant-allottee is under an obligation to make payment of outstanding as agreed between the parties vide agreement dated 04.08.2012. As per section 19(6) of the Act of 2016, every allottee who has entered into an agreement to take an apartment, plot or building under section 13(2) is responsible to make necessary payments in the manner and within the time as specified in the said agreement. In the present case, the complainant-allottee has not obliged with the terms of the agreement. The respondent has raised a demand vide demand letter dated 31.12.2015 and further issued a reminder vide reminder letter dated 20.04.2016 for payment of outstanding dues as per the agreed payment plan but the complainant has failed to make the payments within the stipulated time. Therefore, the cancellation dated 03.10.2016 of the unit stands valid.

23. Moreover, the respondent has raised a contention that the complainant has filed the present complaint on 14.03.2022 after a lapse of almost 6 years from the date of cancellation and the Authority has decided a plethora of complaints stating that a 3 years period is a considerable period to approach the competent forum to seek the relief arising out of continuing cause of action. In the present case, the 3 years from the date of cancellation comes to an end on 03.10.2019 and the complaint is filed much after on 14.03.2022. Thus, the relief sought in the present complaint is not maintainable being barred by limitation. But the same doesn't shed off the liability of the respondent to refund the paid-up amount by the complainant after necessary deductions as per the provisions of the Act of 2016.

24. The counsel for the respondent vide proceedings of the day dated 06.03.2025 stated that as the relief sought by the complainant in the complaint is not maintainable due to cancellation of the unit on 03.10.2016. He further stated that though the unit was cancelled on 03.10.2016 and requested to file the status whether the refund has been made or not to the complainant after deduction of earnest money as per clause 1.15 of buyer's agreement dated 04.08.2012 but no status has been filed by the respondent till the date of this order thus, the Authority has presumed that the respondent has not refunded any amount to the complainant after cancellation of the unit. Clause 1.15 of the buyer's agreement is reproduced below for the ready reference:

(1.15) EARNEST MONEY

The First Party/confirming party and the purchaser hereby agree that 15% of the total basic sale consideration i.e., Base Price + Specification Charges on the total super area of the flat shall constitute the "Earnest Money".

25. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928*** and ***Sirdar K.B Ram Chandra Raj 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 Indian Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as ***Jayant Singhal and Anr. VS. M3M India Private Limited decided on 26.07.2022***, held that 10% of basic sale price

is a reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

"5. Amount Of Earnest Money

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

26. Keeping in view the aforesaid factual and legal provisions, the respondent can retain the earnest money paid by the complainant against the allotted unit and shall not exceed 10% of the consideration amount. So, the same was liable to be forfeited as per clause 1.15 of the buyer's agreement and Haryana Real Estate Regulatory Authority Regulation 11(5). So, the respondent/builder is directed to refund the amount received from the complainant i.e., Rs.35,37,973/- after deducting 10% of the sale consideration and return the remaining amount 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%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation i.e., 03.10.2016 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G.III Direct the respondent to withdraw the unjustified and unlawful demands towards maintenance charges.

27. As the Authority is allowing the refund of the paid-up amount along with interest as mentioned in para 26, all above sought relief by the complainant becomes redundant.

G.IV To conduct such inquiry under section 35 of the Act of the Act into the affairs of the respondent.

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.

H. Directions of the Authority:

29. 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.35,37,973/-** received by him from the complainant after deduction of 10% of basic sale consideration of Rs.77,57,500/- 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 cancellation i.e., 03.10.2016 till the actual realization.
- 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.

30. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
31. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
32. Files be consigned to the registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 09.10.2025