BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**1943 of 2024**
Date of complaint	:	**09.05.2024**
Date of order	:	**15.10.2025**

Jyoti Dadlani and Hemant Kumar Dadlani
Both R/o: - 1163, ATS Village, Sector 93A, Noida Expressway, Gautam Budh Nagar, Uttar Pradesh

Complainants

Versus

Suposhaa Realcon Private Limited
Regd. office at: -
Unit No. SB/C/2L/Office/017A, M3M Urbana, Sector-67, Gurugram, HR- 122102.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Shri Venket Rao (Advocate) — Complainants
Ms. Shriya Takkar (Advocate) — Respondent

ORDER

1. This complaint has been filed by the complainants/allottee(s) under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.No.	Particulars	Details
1.	Name of the project	"Smart world Orchard", Sector- 61, Gurugram Manesar Urban Complex, Gurugram, Haryana
2.	Project area	20.60 Acres
3.	Nature of the project	Affordable Plotted colony (DDJAY)-Independent Floor Residence
4.	DTCP license no. and validity status	68 of 2021 dated 16.09.2021 valid upto 15.09.2016
5.	Name of licensee	Auspicious infrastructure and 10 others.
6.	RERA Registered/ not registered	Registered via registration no. 74 of 2021 dated 03.11.2021 valid upto 31.12.2024
7.	Unit no.	D-10C, 3rd with corresponding plot no. A-47 (Page 92 of reply)
8.	Unit area admeasuring	1630 sq. ft. (super area) 855.84 sq. ft. (carpet area) (Page 92 of reply)
9.	Welcome Letter and Allotment Letter	28.02.2022 (Page 91 and 93 of reply)
10.	Date of execution of BBA	**Not Executed**
12.	Due date of possession	31.12.2024 (Inadvertently mentioned to be 28.02.2025 in POD dated 27.08.2025) (As per application form at page 63 of reply and allotment letter at page 94 of reply)
13.	Total sale consideration	Rs.1,78,85,175/- (Page 92 of reply)
14.	Amount paid by the complainants	Rs. 26,82,776/- (As per cancellation letter at page no. 111 of reply and account statement at page 117 of reply)
15.	Letter sent by respondent to complainant to execute BBA	03.03.2022 and e-mail dated 06.07.2022

		(Page no. 103 and 106 of reply, respectively)
16.	Demand letter Payable on or before 12.03.2022 (Rs. 72,86,847/-)	05.03.2022 (Page no. 104 of reply)
17.	Reminder letters	19.07.2022 (Page no. 107 of reply)
18.	Final opportunity/pre-cancellation	30.07.2022 ***"We, therefore, hereby finally call upon you to make the payment of Rs. 71,54,069/- along with interest thereon till the date of this letter as mentioned above within 7 days from the receipt of this letter.*** *Please note that, if you fail to make the aforesaid payments, we shall presume that you are not interested in the booking/allotment of the aforementioned Unit and we shall be constrained to cancel/terminate the booking/allotment and initiate steps for forfeiture of the Booking Amount and other charges as per the terms agreed, and you shall forthwith execute and register the required Cancellation Deed/other documents in respect of the same against* ***refund of the balance amount, if any, after the aforesaid forfeiture****. In such event, we shall be entitled to deal with or sell the Unit to any third party without any recourse to you and you shall not have any claim, right or interest of any nature whatsoever in respect of the Unit."* (Page no. 109 of reply)
19.	Cancellation letter	10.08.2022 (Page no. 111 of reply)
20.	E-mail sent by respondent to complainants seeking documents to initiate refund process	31.03.2023, 03.04.2023, 05.04.2023 (Page no. 114-116 of reply)
	Amount refunded by the respondent to the complainants	15.05.2024- Rs.26,82,776/- (Page no. 117 of reply)
21.	Occupation certificate	Not obtained
22.	Offer of Possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions: -

a) That the respondent launched a real estate project having Independent Floors under the Affordable Residential Plotted Colony (DDJAY) namely 'Smart World Orchard' situated at Sector 61, Gurugram Manesar, Urban Complex, Haryana on the land admeasuring to 10.80 acres in and had actively promoted the project to attract the public at large.

b) That the respondent herein had accepted the booking of the complainants on 03.08.2021 along with the booking amount of Rs. 2,00,000/- for further registration.

c) That while issuing the registration for the project the Authority imposed certain conditions upon the respondent and as per condition 8 of the Registration Certificate the respondent undertook and was obligated to not accept any booking on the subvention scheme approval without prior approval of the Authority. Subsequent to the condition of not selling any unit upon subvention scheme plan the respondent did not proceed to offer the said subvention scheme plan to the complainants.

d) That believing upon the trust and faith of the respondent that the booking is confirmed under the Subvention Scheme Plan and upon making payment of 15% the remaining 85% shall be paid at the time of Offer of Possession the complainants herein have paid an amount of Rs.25,50,000/- which aggregates to 15% of the total sale consideration of unit along with GST. The same was acknowledged by the respondent vide e-mail communication dated 28.11.2021, whereby, the respondent intimated that unit No. D-10/C has been allotted to the complainants.

e) Subsequently, after receiving an amount of Rs. 25,50,000/- i.e., 15% of the sale consideration the respondent vide Allotment Letter dated 28.02.2022 allotted an Independent Floor No. D-10C admeasuring super area of 1630

Sq. ft. having Total Sale Consideration of Rs. 1,70,33,500/- in the aforesaid project.

f) That in accordance with clause 6 of the Allotment Letter dated 28.02.2022, the respondent herein undertook and assured to execute Agreement for Sale within 30 days of the allotment of the unit in question but to the contrary no Agreement for Sale has been executed by the respondent even after accepting more than 10% of the Total Sale Consideration.

g) That instead of executing the agreement for the unit in question the respondent herein further raised demand of Rs. 2,00,000/- which was duly paid by the complainants vide cheque and was also acknowledged by the respondent vide Receipt No Cr-Dr-0602, dated 03.02.2022.

h) That the complainants further paid an amount of Rs.1,32,776/- vide Cheque bearing no. 000224, dated 07.03.2022, towards the unit in question as and when demanded by the respondent.

i) That on 07.03.2022, the CRM Team of the respondent confirmed the payment plan of 15%: 85% and also confirmed the receipts of 15% of the total sale consideration along with GST which the complainants have already paid as and when demanded by the respondent.

j) That contrary to what was assured at the time of booking the respondent directed the complainants to apply for home loan either to Axis Bank or ICICI Bank under the subvention scheme plan.

k) That the complainants protested and evidently stated the respondent that the complainants did not want to get into any loan commitments and as per the assurances it was the respondent who was obligated to facilitate the loan and the pre-EMI against the unit in question till the offer of possession.

l) That after much pursuance on account of the respondent the complainants herein applied for home loan to the Axis Bank which was rejected by the

Axis Bank within 2 days of application stating that they are not extending any loan to the project being developed by the respondent due to some issues and the complainants may contact the respondent for further assistance. However, the same was reverted to the respondent and the complainants were further suggested by the respondent to approach ICICI Bank.

m) That on 18.04.2022, the ICICI Bank upon the request of the respondent approached the complainants and collected the documents and loan processing fee from the complainants on 21.04.2022. That while collecting the loan documents and the processing fee the complainants were assured by the ICICI Bank that the sanction letter would get issued to the respondent and tri-partite agreement will get execute along with other formalities. But, after lapse of 10 days even the ICICI Bank approached the complainants stating that the Bank is not lending loan on the basis of the Subvention Scheme Plan.

n) That upon not being able to facilitate the home loan facility under the subvention scheme plan the respondent further provided false assurances and directed the complainants to approach HDFC Bank from where the complainants could avail the loan from the subvention scheme plan.

o) That again on 03.08.2022, the complainants upon the instruction of the respondent applied for the home loan under the subvention scheme plan before the HDFC Bank and on 05.08.2022, the documents were collected from the complainants. Further on 09.08.2022, the HDFC Bank reverted the complainants that the bank could provide loan but only upon the 'Construction Linked Plan' and not on 'Subvention Plan'.

p) The complainants vide e-mail dated 14.08.2022, showed its resentment and informed the respondent that they are extremely disturbed and shocked to hear that the offered payment plan i.e., Subvention Plan of 15%

: 85% was no longer available and the same could not be facilitated by the respondent.

q) That vide said e-mail dated 14.08.2022, the complainants showed resentment stating that they had already paid an amount of Rs. 26,82,776/- which included the payment of 15% of the Unit along with GST of Rs. 1,32,776/- which the respondent had extorted on the pretext of offering unit under the subvention scheme plan but the same has been rejected by three banks namely Axis Bank, ICICI Bank and HDFC Bank on several occasions. Further, the complainants clearly intimated the respondent that they do not intend to have any EMI liability on their own account as no bank was ready to agree upon the original terms promised and lend loan facility under the subvention scheme.

r) That the complainants disputed the rental amount of Rs. 50,000/- which the respondent assured to pay for 24 months amounting to Rs. 12,00,000/- which the respondent has failed to pay as on date and upon asking the status of such payment the respondent had informed that the said amount shall be deducted from the final payment at the time of offer of possession. However, vide said email the complainants requested the respondent to settle the issue to the earliest and revert back to the complainants.

s) That the respondent vide e-mail dated 25.01.2023, asked the complainants to reconsider the decision made pertaining of seeking refund of the complete amount and also informed that in case the complainants still wishes to seek refund then the respondent will cancel the allotment and refund the amount after following deductions:

a. Earnest Money of 10% of the total sale consideration.
b. Amount of brokerage paid by the Respondent to the broker.
c. Amount equivalent to the items, coupons and vouchers given by the Respondent from the refundable amount.

t) That as per the provision of Regulation 3 of the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 the respondent is entitled to deduct only 10% of the total sale consideration i.e., the earnest money (which includes the brokerage, interest, taxes etc.) only in case of default of the complainants in paying the instalments in accordance with the payments schedule. But, to the contrary in the present case the respondent has failed to honour the commitments made at the time of booking and has failed to provide the allotment of the complainants on the basis of Subvention Scheme Plan and in fact, had insisted to opt for the Construction Linked Plan.

u) That the complainants vide e-mail dated 27.01.2023, informed that they have invested their life savings into the project of the respondent on the basis of certain commitments from the respondent i.e., the Subvention Scheme Plan and payment of 15% : 85% which the respondent has failed to honour and owing to the same the complainants were forced to seek refund.

v) That vide said e-mail dated 27.01.2023, the complainants again expressed their interest and intention to continue with the allotment in Project in question only on the condition in case the respondent is willing to honour the promises made which includes Subvention Payment Plan of 15% : 85% where, the complainants have already paid full amount of 15% and even paid the extra GST as demanded by the respondent and would pay the 85% on possession as was agreed at the time of booking and secondly, reimbursement of rent @ Rs. 50,000/- per month for 24 months from the date of booking which the respondent has failed to pay.

w) That the respondent vide e-mail dated 03.04.2023, called upon the complainants to return the original documents and directed the complainants to sign the Indemnity Bond served along the email, which

arbitrarily included that the respondent could forfeit Booking amount which comes out to Rs. 18,00,000/- even in the instant case where the complainants were not at default and it happens to be respondent who has failed to honour its commitments of providing the unit in question upon subvention scheme plan.

x) Owing to such arbitrary and illegal deductions being made by the respondent on its own default of not being able to provide the Unit on Subvention Scheme Plan the complainants vide e-mail dated 13.04.2023, intimated the respondent that they were and still are willing to continue with the allotment of the complainants if the complainants are allowed to pay the remaining 85% on the Offer of Possession.

y) Despite after making several follow ups and visits at the office of the respondent no fruitful response has been provided by the respondent and infact the respondent herein has been trying to take undue benefit of the innocence of the complainants and had retained the hard-earned money amounting to Rs. 26,82,776/- on the pretext of providing the allotment on Subvention Scheme Plan but instead had failed to honour the commitments made at the time of booking.

z) That the respondent herein at first had acted in violation of the conditions of the Registration Certificate No. 74 of 2021, dated 03.11.2021, had sold the present unit in question upon the subvention scheme plan without seeking the approval of the Authority. The relevant abstract of the Registration Certificate No. 74 of 2021, is reproduced hereunder for ready reference:

> *'8. There shall not be any subvention scheme for the registered project without prior approval of the Authority.'*

aa) Furthermore, the respondent herein has raised demands and accepted an amount of Rs. 26,82,776/- i.e., 15% of the Total Sale Consideration of Rs.

1,70,33,500/- without executing any Agreement for Sale or Builder Buyer Agreement for the Unit in question. However, as per the provision of Section 13 of the Act of 2016, the Respondent Developer herein is obligated to not receive any deposit or advance more than 10% of the total sale consideration of the unit.

bb) That the respondent herein is trying to shift the onus upon the complainants by not being able to provide allotment under the Subvention Scheme Plan and has alleged to create default on account of the complainants in paying the instalment even without executing the Agreement for Sale, and now has constrained the complainants to cancel the allotment so that the respondent is able to sold the Unit to some other buyer with malafide intention to gain unlawful enrichment which has caused immense loss to the complainants.

C. Relief sought by the complainants:

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

I. Direct the respondent to execute agreement for sale and BBA with the complainants.

II. Direct the respondent to raise demands as per the subvention scheme plan i.e., 15%: 85% out of which 15% has already been paid by the complainants.

III. Direct the respondent to handover possession of the allotted unit to the complainants.

IV. Direct the respondent to update the exact status of the project.

V. Direct the respondent to pay rental amount of Rs.50,000/- for 24 months as agreed at the time of booking.

5. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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

6. The respondent by way of written reply dated 03.12.2024 made following submissions: -

a) That the complainants after conducting his own due diligence and independent enquiries and only after being fully satisfied about the projects of the respondent company, applied for allotment of an independent floor residence bearing no. D-10C in the project "Smartworld Orchard" being developed by the respondent in Sector 61, Gurugram vide Application Form through their broker and paid the booking amount towards the same. The complainants on their own free will and understanding and after having read and understood all the terms of the application form, signed the application form and deposited the amount towards the same.

b) That thereafter the respondent vide email dated 28.11.2021 confirmed that unit bearing no. D-10C would be allotted to the complainants and requested the complainants to confirm the same so that formal allotment could be issued by the respondent. After constant follow ups with the complainants, they gave a go- ahead for the same and accordingly, the respondent issued formal allotment letter dated 28.02.2022 wherein the complainants were allotted unit bearing no. D-10C, 3rd floor in the said project for a total consideration of Rs. 1,78,85,175/- plus other charges. The complainants on their own free will and understanding of the legal import and effect opted for the construction linked payment plan.

c) That vide cover letter dated 03.03.2022 the respondent duly dispatched the triplicate copies of the buyer's agreement for due execution at the complainants end, but to no avail.

d) That thereafter the respondent as per the payment plan opted by the complainants, issued demand vide letter dated 05.03.2022 for an amount

of Rs. 72,86,847/- after adjustments. In lieu of the same, the complainants paid a part amount of Rs. 1,32,776/- against the said demand which has been duly acknowledged by the respondent. Thus, the terms of the allotment were duly accepted by the complainants as in furtherance of the same the complainants made payment on their own free will.

e) Since the complainants failed to execute the buyer's agreement, the respondent vide email dated 06.07.2022 reminded the complainants to come forward and execute the buyer's agreement.

f) Since the complainants failed to make the complete payment of the dues raised vide the demand letter, the respondent issued a reminder vide reminder letter dated 19.07.2022 reminding the complainants to come forward and make the payment of the outstanding dues to the tune of Rs.71,54,069/- within a period of 10 days from the issuance of the letter. The reminder letter was also sent to the complainants vide email on 19.07.2022.

g) Despite issuance of the reminder letter, the complainants did not come forward to clear their outstanding dues, therefore the respondent issued pre-cancellation letter dated 30.07.2022 to the complainants finally calling upon the complainants to make payment of Rs. 71,54,069/- along with interest failing which the allotment/booking shall be cancelled/terminated. The pre-cancellation notice was also sent to the complainants vide email dated 30.07.2022.

h) That the complainants even after the issuance of the abovementioned pre-cancellation letter failed to take advantage of this opportunity and continued to breach the terms of the Application Form/Allotment. As a consequence of the same the respondent was constrained to terminate the allotment of the complainants vide cancellation letter dated 10.08.2022 and forfeit the amount as per terms of the Application Form/Allotment.

The cancellation letter was also sent to the complainants vide email dated 10.08.2022. The respondent was constrained to cancel the unit on account of non-payment of demands raised by the respondent and failure to execute the buyer's agreement. The allotment of the complainants was cancelled in accordance with clause 39 of Application Form and clause 8 of allotment letter. It is submitted that the respondent has incurred various losses/damages on account of the breach of the terms of the Application Form/Allotment by the complainants, which the complainants are liable to pay as per the terms of agreement. The complainants had paid an amount of Rs. 26,82,776/- against total sale consideration of Rs.1,78,85,175/- plus charges and due to the default of the complainants in making timely payments, the respondent has suffered losses as follows:

i. Earnest Money- Rs.1703350/- It is submitted that the complainants herein had agreed to the forfeiture of the earnest money, in the event of failure to comply with the terms of the Agreement and perform their obligations.

ii. Loss of statutory dues and taxes deposited- It is stated that the respondent has already deposited the requisite amounts towards GST and statutory dues. It is submitted that these taxes are to be deposited by the respondent the moment the demands are raised, and thus an amount of Rs.85,168/- towards GST loss has been paid by the respondent and a loss to the said amount is borne as the same is not refundable to the respondent.

iii. Interest- Sum of Rs.299001/- was the interest payable by the complainants for the delayed payments.

i) Thus, the total loss calculated comes to Rs. 20,87,519/- which includes earnest money deduction @10% to the tune of Rs.1703350/-, loss of statutory dues and taxes deposited Rs. Rs.85,168/-, further a sum of

Rs.299001/- towards interest payable by the complainants for delayed payment.

j) Post cancellation of the unit, the complainant vide emails insisted for full refund of the amount deposited. It is submitted that the complainants were duly informed that as per the terms of Application Form/allotment the cancellation would entail forfeiture of earnest money, brokerage paid, delayed interest and amount equivalent to vouchers, coupons received by the allottee.

k) That thereafter the respondent again vide email dated 25.01.2023 informed the complainants that the unit stands cancelled as they had failed to had failed to abide by the terms of the Application Form/Allotment. The respondent vide email dated 31.03.2023 requested the complainants to submit the requisite documents for refund process. The respondent again vide emails dated 03.04.2023 and 05.04.2023 reminded the complainants to come forward and submit the requisite documents to initiate the process of refund.

l) The complainants vide their own emails dated 31.10.2022, 07.12.2022 and 20.01.2023 had only insisted for the refund of the entire amount deposited. Thus, now they are estopped by their own conduct from seeking the alleged relief of possession. The respondent as a goodwill gesture on 13.04.2023 agreed to refund the entire amount deposited post deduction of only, vouchers/ promotional gifts paid to the complainant even though as per the agreed terms of terms of application form/allotment, the respondent was entitled to deduct earnest money, brokerage, delayed interest and amount equivalent to vouchers, coupons received by the allottee. Despite repeated requests, the complainants failed to submit the documentation to process the refund. The present complaint has been

filed after almost 1.5 years from the date of the cancellation and is nothing but an afterthought of the complainants to unjustly enrich themselves.

m) The respondent company as a goodwill gesture and to bring closure to the matter refunded the entire amount of Rs.26,82,776/- to complainants vide bank transfer on 16.05.2024, even though as per the agreed terms of terms of application form/allotment, the respondent was entitled to deduct earnest money, brokerage, delayed interest and amount equivalent to vouchers, coupons received by the allottee.

n) The complainants are defaulters and have defaulted in making timely payments and failed to execute the buyer's agreement and therefore the respondent was constrained to cancel the allotment of the unit vide cancellation letter dated 10.08.2022. That the unit being cancelled there is no privity of contract between the parties and the complainants have no right, title or interest in the unit in question and neither are the allottees of the same and therefore the complaint is infructuous.

o) That in furtherance of the cancellation of the subject unit, the respondent company has allotted the unit to third party.

p) The respondent as a goodwill gesture and to bring closure to the matter refunded an amount of Rs. 26,82,776/- to complainants vide bank transfer on 16.05.2024, even though as per the agreed terms of terms of application form/allotment, the respondent was entitled to deduct earnest money, brokerage, delayed interest and amount equivalent to vouchers, coupons received by the allottee. Thus, the present complaint is liable to be dismissed at the very threshold.

q) That as per the Allotment letter dated 28.02.2022, the due date of handing over possession of the independent floor residence is 31.12.2024, however the same is subject to force majeure conditions and any extension granted by the HRERA on or before 31.12.2024. Thus, the present

complaint is pre-mature and no case under Section 18 of RERA Act, 2016 is made out. It is submitted that the complainants have failed to make out a case under Section 31 r/w Sections 35, 36 & 37, 38 of RERA Act 2016. Thus, the matter deserves to be dismissed at the very threshold.

r) It is submitted that the complainants have not challenged the notice dated 10.08.2022. Therefore, no reliefs under the allotment can be claimed by the complainant. The complainants by way of the present complaint is seeking the alleged relief of execution of buyer's agreement and to raise the demands based on the alleged subvention payment plan and handing over of possession. It is submitted that relief sought by the is contrary to the mandate in section 14 of the specific relief act. The grant of this relief in the present matter cannot be sustained.

s) That the dispute and differences, if any, between the parties involves various questions of facts and law. The issues raised by the complainants cannot be addressed before this authority and the subject matter cannot be adjudicated without going into the facts of the case which requires elaborate evidence to be led, and which cannot be adjudicated upon under the summary jurisdiction of this hon'ble regulatory authority. The complaint is thus liable to be dismissed on this ground alone.

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

E. Jurisdiction of the Authority:

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial Jurisdiction:

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

E. II Subject-matter Jurisdiction:

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11(4)(a)***
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
> ***Section 34-Functions of the Authority:***
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to execute agreement for sale and BBA with the complainants.

F.II Direct the respondent to raise demands as per the subvention scheme plan i.e., 15%: 85% out of which 15% has already been paid by the complainants.

F.III Direct the respondent to handover possession of the allotted unit to the complainants.

F.IV Direct the respondent to update the exact status of the project.

F.V Direct the respondent to pay rental amount of Rs.50,000/- for 24 months as agreed at the time of booking.

12. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

13. The factual matrix of the case reveals that the complainants were allotted unit no. D-10C, 3rd floor with corresponding plot no. A-47, admeasuring 1630 sq. ft. super area and 855.84 sq. ft. carpet area in the project "Smart World Orchard", Sector-61, Gurugram Manesar Urban Complex, Gurugram by the respondent for a total consideration of Rs.1,78,85,175/- against which they have paid a sum of Rs.26,82,776/- to the respondent till date. The complainants have submitted that believing upon the trust and faith of the respondent that the booking is confirmed under the Subvention Scheme Plan and upon making payment of 15% the remaining 85% shall be paid at the time of offer of possession the complainants herein have paid an amount of Rs.25,50,000/- which aggregates to 15% of the total sale consideration of unit along with GST. However, the respondent to create default on account of the complainants in paying the instalment even without executing the agreement for sale has constrained the complainants to cancel the allotment so that the respondent is able to sold the unit to some other buyer with malafide intention. The respondent has submitted that vide cover letter dated 03.03.2022, the respondent duly dispatched the triplicate copies of the buyer's agreement for due execution at the complainants' end, but to no avail. Further, despite issuance of the several reminders, the complainants did not come forward to clear their outstanding dues, therefore the respondent issued pre-cancellation letter dated 30.07.2022 to the complainants finally calling upon the complainants to make payment of Rs.71,54,069/-. The complainants even after the issuance of the abovementioned pre-cancellation letter failed to take advantage of this opportunity and continued to breach the terms of the

application form/allotment. As a consequence of the same, the respondent was constrained to terminate the allotment of the complainants vide cancellation letter dated 10.08.2022 and forfeit the amount as per terms of the application form/allotment. Furthermore, the respondent as a goodwill gesture and to bring closure to the matter refunded an amount of Rs.26,82,776/- to complainants vide bank transfer on 16.05.2024, even though as per the agreed terms of terms of application form/allotment, the respondent was entitled to deduct earnest money, brokerage, delayed interest and amount equivalent to vouchers, coupons received by the allottees. Now, the question before the Authority is whether the cancellation is valid or not.

14. On consideration of documents available on record and submissions made by both the parties, the Authority observes that the unit in question was allotted to the complainants vide allotment letter dated 28.02.2022 and on the basis of provisions of allotment, the complainants have paid an amount of Rs.26,82,776/- against the total sale consideration of Rs.1,78,85,175/-, till cancellation of the unit and no payment was made by the complainants after March 2022. The complainants have submitted that they have booked the unit under subvention plan payment and upon making payment of 15%, the remaining 85% shall be paid at the time of offer of possession. However, there is nothing on record to substantiate their said claim. The Authority has gone through the payment plan (Annexure A) of the allotment letter dated 28.02.2022, same is extracted below for ready reference: -

Name of Instalment	%	BSP	CGST	SGST	Total Amount
Booking Amount	10.00	17,03,350	42,584	42,584	17,88,518
On start of construction-Excavation of the Project Site (On signing of Agreement For Sale)	25.00	42,58,375	1,06,459	1,06,459	44,71,294
On Completion of Bulk Excavation of the Project Site	20.00	34,06,700	85,168	85,168	35,77,035

On Completion of Stilt Roof Slab of Plot	10.00	17,03,350	42,584	42,584	17,88,518
On Completion of 2nd Floor Roof Slab of Plot	10.00	17,03,350	42,584	42,584	17,88,518
On Completion of Top Roof Slab of Plot	5.00	8,51,675	21,292	21,292	8,94,259
On Start of Flooring of Unit	5.00	8,51,675	21,292	21,292	8,94,259
On Application of Occupation Certificate of the Plot	5.00	8,51,675	21,292	21,292	8,94,259
On offer of possession	10.00	17,03,350	42,584	42,584	17,88,518
Total		1,70,33,500	4,25,838	4,25,838	1,78,85,175

15. Therefore, the Authority is of considered view that the respondent was right in raising demands as per payment plan agreed between the parties. It is further evident from the record that in terms of the payment plan agreed between the parties, the respondent has sent numerous reminders to the complainants to pay outstanding dues and to execute buyer's agreement. However, the complainants failed to make payment of the outstanding dues and to execute buyer's agreement. Therefore, the respondent was constrained to issue pre-cancellation letter dated 30.07.2022, giving last and final opportunity to the complainants to comply with their obligation to make payment of the amount due. However, despite repeated follow ups and communications and even after the issuance of the pre-cancellation letter, the complainants failed to act further and comply with their contractual obligations and therefore the allotment of the complainants was finally cancelled vide cancellation letter dated 10.08.2022. Further, Section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the allotment letter dated 28.02.2022 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. The Hon'ble apex court of the land 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,*** has held that *forfeiture of the amount*

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

16. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondent is liable to refund the deposited amount of Rs.26,82,776/- after deducting 10% of the sale consideration i.e., Rs.1,78,85,175/- being earnest money along with an interest @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 on the refundable amount, from

the date of cancellation i.e., 10.08.2022 till actual refund of the amount within the timelines provided in Rule 16 of the Rules, 2017.

17. After calculating the above, it is determined that in the present case, the respondent is liable to refund an amount of Rs.12,03,415.50/- to the complainants till the date of this order. However, the respondent vide RTGS dated 15.05.2024, has already refunded the entire paid-up amount of Rs.26,82,776/- to the complainants without any deductions. Thus, no amount is liable to be refunded to the complainants. In view of the above, the present complaint stands dismissed being devoid of merits. File be consigned to the registry.

Dated: 15.10.2025

(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM