

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

Date of filing of complaint: 18.06.2024
Date of Order: 23.12.2025

Mamta Garg

R/o: 837/5, 5A, Patel Nagar, Gurgaon

Complainant

Versus

M/s Clarika Infra Private LimitedRegd. Office at: 711/92, Depali, Nehru
Place, New Delhi - 110019**Respondent****CORAM:**

Shri Arun Kumar

Chairman

Shri Phool Singh Saini

Member**APPEARANCE:**

Shri Prashant Sheoran (Advocate)

Complainant

Shri Bhavya Sareen (Advocate)

Respondent

ORDER

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

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, 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	"Bonheur Avenue"
2.	Nature of project	Affordable Plotted Colony under DDJAY Scheme
3.	Location of the project	Sector-35, Village-Dhunela, Sohna Road, Gurugram, Haryana.
4.	RERA registered	Registered Vide registration no. 81 of 2022 Dated-12.09.2022
5.	DTCP License	Licence no. 16 of 2022
6.	Welcome letter	03.11.2022 (As on page no. 22 of complaint)
7.	Allotment Letter	03.11.2022 (As on page no. 32 of reply)
8.	Agreement For Sale	03.11.2022 (As on page no. 26 of complaint)
9.	Plot no.	Coral -47, Block-Coral (As on page no. 28 of complaint)
10.	Plot Area	121 sq.yards (As on page no. 28 of complaint)
11.	Possession clause	Clause-7 POSSESSION OF THE PLOT 7.1 Schedule for possession of the said Plot: <i>The Promoter agrees and understands that timely delivery of possession i.e., September 2024 + 6 months of the Plot to the Allottee(s) and the common areas to the association of allottees or the competent authority, as the case</i>

		<p><i>may be, as provided under Rule 2(1) (f) of Rules, 2017, is the essence of the Agreement.</i></p> <p><i>[Emphasis supplied]</i></p> <p>(As on page no. 34 of complaint)</p>
12.	Due date of possession	<p>March, 2025</p> <p>(Calculated from September 2024 + 6 months as mentioned in possession clause of agreement page 34 of complaint)</p>
13.	Basic Sale Consideration	<p>Rs.1,14,95,000/-</p> <p>(Page 53 of complaint)</p>
14.	Total Sale consideration	<p>Rs.1,19,37,860/-</p> <p>(As on page no. 29 of complaint)</p>
15.	Amount paid	<p>Rs.47,74,600/-</p> <p>(As per Customer ledger dated 14.03.2024 on page no. 54 of complaint)</p>
16.	Payment plan	<p>40% current</p> <p>55% on application for OC</p> <p>5% on possession</p> <p>(upgraded after execution of agreement vide email dated 12.04.2023 as evident at page 56 of complaint)</p>
17.	Demand letter on application of OC	<p>17.10.2023</p> <p>(Page 45 of reply)</p>
18.	Reminder against demand letter dated	<p>23.11.2023, 14.12.2023</p> <p>(Page 46-47 of reply)</p>
19.	Final notice for termination of the plot sent by respondent	<p>28.12.2023</p> <p>(As on page no. 48 of reply)</p>
20.	Termination of allotment	<p>09.04.2024</p> <p>(As on page no. 50 of reply)</p>

21.	Completion certificate	18.06.2024 (As on page no. 52 of reply)
22.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the complainant has made following submissions:
 - i. The complainant had applied for the allotment of a plot in the project known as "Bonheur Avenue" being developed pursuant to license no 16 of 2022 at sector 35, Village Dhunela, Sohna Road, Gurgaon. The complainant made an initial payment of Rs. 11,82,291/- towards the sale consideration of the said plot, against two receipts of Rs.10,00,000 and Rs.1,82,291/-. In pursuance of said application, the complainant had been allotted a plot no. Coral 47, having an area of 100.8 sq meters in "Bonheur Avenue" at sector 35, Village Dhunela, Sohna Road, Gurgaon vide allotment letter dated 03-11-2022. After execution of the allotment letter an agreement for the sale of the said plot was executed between parties on 03-11-2022 which was duly registered before the joint Sub- registrar Sohna vide vasika no. 10950 dated 24-01-2023.
 - ii. The total price for the said unit was agreed as Rs 1,19,37,860/- excluding GST, and taxes. The complainant had booked the said unit directly through the respondent and had opted for a payment plan annexed with the agreement to sell as Schedule -C.
 - iii. the demands issued by the respondent were illegal as respondent cannot raise any demand without getting buyers agreement registered as per section 13 of RERA. That as total sale consideration of plot was only Rs.1,19,37,860/- and as per rules of RERA respondent cannot demand more than 10% of sale consideration prior to execution and registration of buyer's agreement and admittedly in the present case agreement was got registered on 24-01-2023. Thus, prior to said date

respondent has no right to raise any demand. Yet on 30-11-2022 respondent has raised a demand of Rs. 23,99,067 with due date of 20-12-2022, which is apparently illegal and clear violation in terms of section 13 of RERA ACT. That complaint naturally objected the same and met respondent officials in this regard. That thereupon officials of respondent apprise that these demand letters were generated in routine manner and they will make sure that no new demand letter will be issued without getting agreement registered. Thus, the demand raised in said demand letter is illegal and said amount cannot be termed as due under any circumstances.

- iv. The respondent assured that it will not raise any further demand without getting agreement registered yet on 19-01-2023 the respondent raised a demand letter wherein it was mentioned that an amount of Rs. 47,99,245 (showing previous outstanding installment as Rs 12,17,887). Since there was no valid demand thus there was no question of previous outstanding) yet to avoid any complication complainant paid an amount of Rs. 12,17,900/- on 12.02.2023. The agreement was got registered on 24-01-2023, thus any demand raised prior to registration of agreement cannot be termed as valid. However, respondent mischievously raised another demand dated 17-03-2023 demanding an amount of Rs.53,72,024/- wherein an amount of Rs. 35,81,345/- was again shown as previous dues and asked to pay the same by 10.04.2023. That subsequent to receiving of same complainant again met the officials of respondent apprise about their commitment and requested to withdraw said demand. Thereafter officials of respondent asked to send a request letter to change payment plan, so that a new demand letter can be issued. Accordingly, complainant and the respondent agreed to change the payment plan and a letter dated 04.04.2023 along with a cheque of Rs.11,81,180/-

was submitted by the complainant to the respondent with a request to change the payment plan from earlier agreed plan to a new plan of payments to be made in proportions of 40:60, wherein 60% was to be demanded on offer of possession only. Further request was made to waive off interest on delayed payment (if any). The said request was accepted by the respondent vide email dated 12-04-2023 and the respondent confirmed that payment plan will be as 40:55:5 wherein 55% will be demanded on valid application of occupation certificate/completion certificate and remaining 5% will be demanded on offer of possession. That other than said condition, the other requests as mentioned in letter dated 04-04-2023, were duly admitted by the respondent, as the respondent never objected to/ modified or countered the other requests which were made by the complainant in the letter dated 04.04.2023. That along with letter dated respondent accepted a cheque of Rs.11,81,180/-. Thereafter, respondent on 17.04.2023 accepted new payment plan and accordingly encashed cheque of Rs. 11,81,180/-. That complainant had already paid 40% of the sale consideration and it was assured by the respondent that it will not charge any interest. Since payment plan was mutually modified by parties thus thereafter respondent has no right to charge interest on the basis of earlier agreed payment plan.

- v. That vide email dated 12-04-2023 respondent agreed to new payment plan of 40:55:5 yet, mischievously on 17.10.2023 respondent issued a demand letter demanding an amount of Rs.62,62,263/- wherein previous dues were shown as 41,84,695/- and interest of Rs. 2,86,889/- was levied by respondent.
- vi. When a new payment plan was agreed upon between the parties then, in that case respondent was not left with any right to claim any amount due, towards interest or otherwise, prior to 12.04.2023 under any

circumstances and no future demands could be made either till the application of a valid completion certificate. Furthermore, the respondent had already agreed for waiver of hundred percent of the interest, if any. Thus, in view of the above stated facts, the said demand letter was, clearly, untenable in the eyes of law.

- vii. Even otherwise no such demand letters can be raised by respondent as no such work was done at the spot as mentioned in the demand letter, thus even otherwise the respondent could not have demanded such amount. It is submitted that the respondent vide official emails kept on updating the work progress.
- viii. The respondent has failed to achieve the landmark for the demand as mentioned in earlier payment plan and for this reason, the complainant and the respondent had mutually agreed to change the payment plan. That even as per agreed plan the respondent could have raised 55% of the balance amount only upon a valid application for OC/CC after completion of all the pending work in the plotted colony. That in order to apply for the completion certificate before DTCP, a proper procedure has been prescribed and as per said procedure, the developer has to fulfil requirements as provided by the DTCP in checklist. Without fulfilling those requirements as mentioned in the checklist, no developer can apply before DTCP for granting of a completion certificate and if any developer does apply for OC/CC but without fulfilling prerequisite of application of completion certificate then, legally, it cannot be termed as a valid application for grant of CC.
- ix. In fact, respondent has failed to achieve milestone, wherein it can apply for completion certificate is further proved from the architect certificate of respondent itself, submitted before RERA on 31-12-2023, wherein the respondent itself admits the fact that the project is far from completion and several basic yet important services / facilities are yet

to be completed. That few services are no even started as certificate itself says 0% and most of the services/infrastructures are not even near to completion. That such malpractice on the part of respondent in itself proves the fact that said illegal request of completion certificate was just a hoax and method to extort money from allottees illegally.

- x. In order to cheat the allottees of the project and in order to extort money from them, the respondent on 21st of June 2023 sent a letter to the Director Town & Country planning Haryana, requesting him to issue completion certificate for the project in question. It is submitted that as per the directions of the DTCP, the respondent failed to file a valid application for obtaining completion certificate and thereafter raised an illegal demand letter dated 17-10-2023 to the complainant demanding an amount of Rs. 62,62,263/-. The respondent has no right to demand said amount from the complainant without fulfilling its part to complete the infrastructure and services at the project and without applying for completion certificate as per requirements of DTCP. Merely because the respondent has issued a letter to the DTCP asking for a completion certificate, the same does not in itself or ipso facto, fulfils the condition of valid application for granting of CC. The said act was only done by the respondent in order to usurp the hard-earned money of allottees including complainant. After receiving above-stated demand letter, complainant kept on contacting officials of the respondent and objecting about the said demand. However, respondent refused to answer any query of the complainant and remains adamant on its illegal demand. Vide email dated 8th of April 2024, complainant through her husband Sh. Atul Garg again raised objection qua illegal demand letter qua unit in question along with other units of complainant and requested to withdraw its demand on application for CC, however, respondent instead of acting bonfide,

respondent illegally cancelled the allotment of the complainant, and sent a cancellation letter dated 16-04-2024 and cheques of 14-03-2024. Thus, the complainant deemed it appropriate to file present complaint before the authority as the respondent failed to sort out the matter in issue and malafidely cancelled the allotment of complainant.

- xi. that above stated demand letters and cancellation letter are absolutely illegal and against the agreed terms and condition between the parties. The respondent wrongly demanded against stage of application of obtaining OC/CC as the respondent never applied for CC/OC on prescribed format before the DTCP and merely a letter issued qua grant of completion certificate does not provides any right to respondent to raise any demand.
- xii. That complainant is and has always been ready and willing to perform his part of the agreement by making payment of property in question but subjected to condition that respondent first performs its part and applies for certificate qua completion; validly before DTCP after making all the necessary compliances as required mandatorily by DTCP .
- xiii. That respondents have absolutely no authority or right to unilaterally cancel the allotment of complainant without there being any fault of complainant.
- xiv. That by means of the present complaint, complainant requests the Hon'ble authority to direct the respondent to perform its part of the contract and handover the actual physical possession of the said plot to complainant, after completion of work at the site and after obtaining completion certificate and further direct the respondent to stop demanding any such amount without fulfilling its part of contract.
- xv. As the respondent had cancelled the allotment of complainant, the complainant has been left with no other option but to approach the

honourable Authority for adjudication of the matter in issue and to set aside cancellation and for handing over possession of unit after completion of project. Hence, the complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to handover possession of plot after obtaining completion certificate.
 - ii. Direct the respondent to set-aside illegal demand letter demanding Rs.62,62,263/-.
 - iii. Restrain the respondent for claiming/issuing further demands till the respondent applies for valid completion certificate after 100% of work at the project.
 - iv. Direct the respondent to set aside illegal cancellation letter dated 16.04.2024.
 - v. Restrain the respondent from creating any sort of right title or interest in the unit in question in the meantime i.e., during pending of complaint.

D. Reply by the respondent:

5. The respondent contested the complaint on the following grounds:
 - i. The complainant on her own free will and consent had approached the respondent for allotment of 'plot' in said project and submitted an application form for booking of the unit in the said project.
 - ii. At the time of submission of the application, the complainant was allotted 'Plot Coral 47, in the project admeasuring 100.8 sq. yd., (hereinafter referred to as 'unit') at total sale price of Rs. 1,19,37,860/- vide allotment letter dated 03.11.2022.
 - iii. The complainant in the complaint under reply has averred that she booked the unit directly through the respondent. However, the

booking of the unit was made through the real estate agent in name and style of T and T Realty Private Limited which is evident from the allotment letter issued by the respondent.

- iv. Thereafter an agreement to sale dated 03.11.2022 (the Agreement), registered on 24.01.2023 with the office of Sub-Registrar Sohna Vide vasika no. 10950 was executed between the complainant and the respondent. At the time of execution of the agreement, it was categorically agreed between the parties that timely payment is the essence. As per the agreement, the possession of the unit was to be handed over to the complainant by September 2024 along with 06 months grace period towards force majeure events as per clause 7 of the agreement.
- v. As per the payment plan opted by the Complainant an amount of Rs. 35,81,345/- became due, till March 2023. In view of the same Respondent vide correspondences dated 08.02.2023, 16.02.2023, 24.03.2023, reminded the complainant of her liability towards the respondent in order to secure timely possession of the unit. However, complainant under her high headedness ignored the same and miserably failed to make the payment. The respondent left with no other option but to issue a final termination notice dated 31.03.2023.
- vi. That upon receipt of the final termination notice dated 31.03.2023, complainant made a part payment of Rs. 11,81,180/- and sent request vide letter dated 04.04.2023, for change of payment plan owing to the financial difficulties faced by her. Respondent company showcasing its customer-oriented point of view accepted the same changed the payment plan of the complainant to 40:55:5. It was specifically agreed that after payment of 40% of the total sale consideration another 55% was to be paid at the time of the application of OC/CC and rest 5% was to be paid at the time of possession.

- vii. As per the agreement to sell dated 03.11.2022 the complainant was required to pay the due instalments as per the payment schedule, in respect of the unit, however the payment schedule was never adhered to by the complainant.
- viii. Clause 9.3 of the agreement specifically states that if the allottee fails to make the payment of the two consecutive instalments he/she shall be liable to pay interest and in case allottee remains at default after period of 90 days from the date of receipt of the notice, promoter shall be at liberty to cancel the unit.
- ix. The respondent filed an application for grant of OC/CC to the DTCP, Haryana on 23.06.2023. Since, milestone of Application of OC/CC was achieved by the respondent in a time bound manner, respondent issued demand letters and reminder notices to the complainant for making payment of due instalment of 55% of the total sale consideration as per the subsequent payment plan opted by the complainant. However, complainant under her high headedness miserably failed to make the payment of the due amount, which was to be paid at the time of the application for OC/CC.
- x. That in order to cover up his wrong doings and lacunas on his part, complainant has levelled baseless and hoax allegations qua the application of OC/CC, filed by the respondent. Pursuant to the submission of letter by the respondent for grant of OC/CC, inspection was carried out by the Department on 11.01.2024 whereby it was confirmed that all the services had been laid down by the respondent.
- xi. The respondent further points out that the defects pointed out by the complainant in complaint under reply does not concern the plotted colonies or the projects which are plotted projects. Despite respondent act of safeguarding interest of the complainant once, complainant

completely ignored the same ignored the timelines of payment of due amount.

- xii. In order to protect the interest of the complainant, respondent company again issued a demand letter dated 17.10.2023, thereby calling upon the complainant to make the entire due payment. However, complainant miserably failed to meet the demand cum his liability towards the respondent. Since the complainant failed to make the payment of the due amount, respondent again issued various reminders dated 07.11.2023, 23.11.2023 and 14.12.2023 in order to avoid unnecessary dispute. However, complainant again ignored the reminders issued by the respondent.
- xiii. As the complainant chose to ignore all the opportunities granted by the respondent company to avoid the conflict, the respondent was constrained to issued final notice dated 28.12.2023 for termination of the allotment due to non-payment of the due amount as per the liabilities enshrined under the payment plan opted by the complainant.
- xiv. As the complainant did not clear the outstanding dues despite receipt of the final notice, the respondent issued cancellation notice dated 09.04.2024, on account of failure of the complainant to clear the outstanding dues.
- xv. Pertinently the allegation levelled by the complainant qua the application of OC/CC, are made just to mislead this Hon'ble Authority and cover up her faults. Owing to the fact that CC of the project has been procured by the respondent, allegation so levelled are liable to be dismissed at the very threshold.
- xvi. It is clear from the aforementioned facts and circumstances that cancellation of allotment done by the respondent is very much legal and called for. The instant complaint is not maintainable keeping in view the facts, circumstances and law relating thereto. The

complainant has failed to produce any evidence or specific averments worth its salt to prove its claims. Moreover, there is no quantification of claims as sought for by the complainant under prayer clause, therefore, the instant complaint is liable to be dismissed at the threshold.

6. 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:

7. The objection of the respondent regarding rejection of complaint on ground of 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

8. 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

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

allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

10. 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. Findings on relief sought by the complainant:

- F.I Direct the respondent to handover possession of plot after obtaining completion certificate.**
- F.II Direct the respondent to set-aside illegal demand letter demanding Rs.62,62,263/-.**
- F.III Restrain the respondent for claiming/issuing further demands till the respondent applies for valid completion certificate after 100% of work at the project.**
- F.IV Direct the respondent the respondent to set aside illegal cancellation letter dated 16.04.2024.**
- F.V Restrain the respondent from creating any sort of right title or interest in the unit in question in the meantime i.e., during pending of complaint.**

11. The above-mentioned relief(s) sought by the complainant are taken together being inter-connected.
12. The complainant was allotted a unit vide allotment letter dated 03.11.2022 in the project of respondent namely "Bonheur Avenue" in Sector-35, Gurugram for a total sale consideration of Rs.1,19,37,860/-. A builder buyer's agreement was executed between the parties on 03.11.2022 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.47,74,600/-.
13. The complainant contended that the respondent has violated section 13 of the Act of 2016 as the respondent kept raising illegal demands prior

to execution of the buyer's agreement and prior to obtaining occupation certificate or competition certificate. The complainant also contended that the unit in question has been arbitrarily cancelled by the respondent.

14. The respondent mentioned that the unit was cancelled by the respondent on 09.04.2024 on account of non-payment after issuance of multiple reminders. The competition certificate of the unit of the complainant was obtained on 18.06.2024 and the complainant has paid only Rs.47,74,600/- against the sale consideration of Rs.1,19,37,860/-. Now, the question arises whether the cancellation is valid or not?
15. The complainant has opted for special down payment plan. As per the opted payment plan, the complainant has to pay 40% of the total sale consideration on current, 55% on application of OC and 5% on offer of possession. Though the respondent has raised a demand letter dated 17.10.2023 on application of OC for payment of outstanding dues. However, it becomes pertinent to mention here that the respondent had applied for grant of occupation certificate on 26.06.2023 and thereafter raised demand letter dated 17.10.2023. Subsequently, the respondent has sent reminder letters dated 23.11.2023 and 14.12.2023 and thereafter issued a final reminder for payment of outstanding amount due against demand letter dated 17.10.2023. Upon non-compliance on part of the complainant, the respondent finally terminated the unit of the complainant vide termination letter dated 09.04.2024. The complainant has paid only Rs.47,74,600/- which is 39.99% of the total sale consideration i.e., Rs.1,19,37,860/-.
16. As per Section 19 (6) & 19 (7) of the Act, 2016, the complainant-allottee was under an obligation to make timely payment as per the agreed payment plan towards consideration of the allotted unit. In the present

complaint, despite being granted several opportunities to comply with his obligations, the complainant failed to discharge his obligation for making timely payment of the outstanding dues and the respondent has obtained the completion certificate on 18.06.2024 i.e., prior to the due date of possession i.e., March 2025. In view of the afore-mentioned facts, the cancellation of the unit dated 09.04.2024 stands valid.

17. Now, another question arises before the authority that whether the authority can direct the respondent to refund the balance amount as per the provisions laid down under the Act of 2016, when the complainant has sought the relief of the delayed possession charges while filing of the instant complaint or during proceeding. It is pertinent to note here that there is nothing on record to show that the amount has been refunded back to the complainant. The Authority observed that rule 28(2) of the rules provides that the Authority shall follow summary procedure for the purpose of deciding any complaint. However, while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the Authority can always work out its own modality depending upon peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the parties to protract litigation. The Authority will not go into these technicalities as the Authority follows the summary procedure and principle of natural justice as provided under section 38 of the Act of 2016, therefore the rules of evidence are not followed in letter and spirit. Further, it would be appropriate to consider the objects and reasons of the Act which have been enumerated in the preamble of the Act and the same is reproduced as under:

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of

consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto"

18. Furthermore, 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"

19. 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.47,74,600/- after deducting 10% of the basic sale consideration i.e., Rs. 1,14,95,000/- along with interest at the rate of 10.80% (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 cancellation i.e., 09.04.2024 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. Directions of the Authority:

20. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i) The respondent/promoter is directed to refund the amount i.e., Rs.47,74,600/- to the complainant after deduction of 10% of basic sale consideration of Rs.1,14,95,000/- as earnest money along with interest at the rate of 10.80% 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., 09.04.2024 till the actual date of 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.

21. Complaint stands disposed of.

22. File be consigned to the registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.12.2025

HARERA
GURUGRAM