

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

Date of filing of complaint: 05.08.2024
Date of Order: 16.12.2025

- 1. Abhishek Mishra**
- 2. Poonam Mishra**

Both R/o: F-19, Double Story, Lodhi Road,
Central, Delhi – 110003

Complainants

Versus

M/s Chintels India Private Limited

Regd. Office at: Chintels India Private
Limited, Chintels Corporation Park, Near
Chintels Chowk, Sector – 114, Gurugram –
122017

Respondent

CORAM:

Shri Arun Kumar

Shri Phool Singh Saini

Chairman

Member

APPEARANCE:

Shri Sahil Dagar (Advocate)

Shri Charu Sangwan (Advocate)

Complainants

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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. N.	Particulars	Details
1.	Name of the project	Chintels Serenity
2.	Project location	Sector-109, Gurgaon, Haryana
3.	Nature of Project	Group Housing Project
4.	DTCP License	250 of 2007 dated 02.11.2007 50 of 2012 dated 17.05.2012
4.	RERA registration	39 of 2019 dated 24.01.2019
5.	Application dated	14.10.2021 (Page 27 of complaint)
5.	Allotment letter	14.10.2021 (Page 20 of complaint)
6.	Unit No.	T8-1203, 12 th Floor (Page 28 of complaint)
7.	Area admeasuring	1590 sq. ft. (Page 28 of complaint)
7.	Buyer Agreement	05.01.2022 (Page 23 of complaint)
8.	Possession clause	7.1 Possession of Apartment/Plot <i>The promoter agrees and understands that timely delivery of possession of the apartment</i>

		<i>to the allottee and common areas to the association of allottees or the competent authority is the essence of the Agreement. The promoters assure to hand over possession of the apartment along with parking and complete common areas with all specifications, amenities and facilities as per agreed terms and conditions or on before project completion.</i>
9.	Due date of possession	December 2023 (As per buyer's agreement)
10.	Sale consideration	Rs.1,12,96,950/- (Page 44 of complaint)
11.	Amount paid by the complainant	Rs. 11,86,180/- (Page 57 of complaint)
12.	Demand/reminder letters	27.10.2023, 15.07.2022, 27.10.2023, 16.12.2023, 05.01.2024, 16.12.2023,
13.	Pre-cancellation letter	05.01.2024 (Page 85 of reply)
14.	Cancellation letter	15.02.2024 (Page 89 of reply)
15.	Legal Notice sent by the complainant	15.03.2024 (Page 63 of complaint)
16.	Occupation Certificate	28.08.2024 (Page 28 of reply)

B. Facts of the complaint:

3. That the complainant has made following submissions:

- i. In the year 2021, the complainants were desirous of finding an apartment for their self-use, came to know about the said project i.e,

“Chintels Serenity” at Pocket B, Phase 2, Sector 109, Gurugram, through its marketing executives, rosy pictures given in the brochure, and advertisements done through various mediums and means. It was specifically represented that said project was approved by the concerned Bank and better rate of home loan could thus be provided to the complainants. Resultant, the complainants on the basis of the information contained in the advertisement, representation regarding home loan, etc, post depositing the booking amount to the tune of Rs. 11,29,695/- applied for the booking in the said project on 14.10.2021 vide application form dated 14.10.2021. Application form dated 14.10.2021 is retained by the builder.

- ii. Some of the clauses stipulated vide application form, that complainant was made to sign by the respondent were one-sided. On request to change such one-sided clauses, it was told that the application form along with terms and conditions must be signed as it is and in case it is not acceptable than the allotment shall not be initiated. It was further assured that the request for changes in the clauses shall be considered at the time of signing of the agreement to sale (ATS)/ builder buyer agreement ('BBA') but presently the application had to be signed 'as is'. It is stated that said application form dated 14.10.2021 has been retained by the builder/company.
- iii. The concerned Bank on 14.10.2021, approved a housing loan for an amount of Rs. 89,45,000/- having rate of interest @ 7.10% p.a. The Respondent on the same date i.e, 14.10.2021, issued an allotment letter dated 14.10.2021. Whereby, a unit bearing “T8-1203 having Super built-up area of approx. 1,590.00 sq. ft. (147.72 Sq.mt.), on 12th floor in Tower No. T8” in the said project has been duly allotted to the complainants. The Total cost for the said apartment was fixed for Rs. 1,12,96,950/-.

- iv. Thereafter the builder/respondent provided buyer agreement/ATS, which was to be signed by the complainants and returned to the builder. The complainants had to sign already prepared documents and the some of the clauses contained were totally unreasonable. The buyer's agreement and terms and conditions were a fixed set of papers, which was asked to be signed by the complainants and no modification was entertained by the builder/respondent. Even though the complainants were informed at the time of signing the application form that the request for modifying the clauses would be considered by the respondent at the time of signing of the BBA/ATS, the complainants were told that the policy of the builder/respondent had now changed and in case the BBA/ATS was not acceptable then the allotment will stand cancelled and earnest money will be forfeited.
- v. Clauses stipulated vide application form/buyer's agreement were pre-set. Wherein, the possession, builder's default, etc., have been subject to numerous terms and conditions and force majeure circumstances. In fact, the said ATS/BBA was also not as per the Haryana Real Estate (Regulation and Development) Rules, 2017. With malafide intentions the respondent has tweaked force majeure clause (court orders, Government policy /guidelines, decisions, have been intentionally excluded), clause 9.3, etc., The drafting of such clauses is not only vague but so heavily loaded in favour of the promoters/builder that even a single bona-fide mistake/default by the allottee in fulfilling obligations, payments, formalities, and documentations etc. as prescribed by the respondent may make the respondent levy interest on bona-fide delay payments, cancel the allotment, make the possession clause irrelevant for the purpose of allottees such as, the complainants and the commitment date for handing over possession loses its meaning. The incorporation of such clause or omission to integrate reasonable clause

in the buyer's agreement/ATS by the respondent is just to evade its liability and to get unjust enrichment at the complainant's cost. It is stated that the respondent has misused its dominant position and drafted such mischievous ATS/ buyer's agreement and the complainant were left no option but to sign on the dotted lines. Vide ATS dated 05.01.2022 possession of the said apartment was promised on or before December 2023.

- vi. On 10.02.2022, a portion of some flats in the builder/respondent's residential project i.e., Chintel Paradiso situated at Sector 109, Gurugram were collapsed. Further, vide structure audit report of IT Delhi many towers in above said project were declared unsafe. Resultant, in view of Govt. of Haryana's order/ Memo no. 729/RA dated 07.03.2022, all banks had stopped releasing instalments and put a freeze on new home loan on all projects. Moreover, DTCP also had banned registries of all projects pertaining to the builder/respondent. The abovesaid fact is also evident vide reply dated 19.10.2022 to the RTI application under Right to Information Act, 2005. Whereby it was clearly stated that Banks were not providing home loan for the Project Chintels Serenity, Sector 109, Gurugram in view of the Haryana Govt. order/ memo bearing no. 729/RA dated 07.03.2022. Hence, the complainants, meet the officials of the respondent and decided to withdraw their allotment in the respondent's said project. However, the respondent's officials assured that the concerned issue will be resolved soon and requested the complainants not to withdraw the allotment. Thereafter, the complainants vide email dated 06.04.2022, did follow-up with the respondent regarding status of the said project, Bank clearance, etc., such that, further payments may be made to the respondent. The respondent vide its email dated 06.04.2022, informed the complainants that the builder/respondent are waiting for the

further notification/guidelines from the concerned Govt. authorities, structural audit of said project and further informed that abovesaid will only happen as per the time and instruction of the concerned Govt. authorities. Further, to make sure that the complainant will not cancel the allotment and ask for refund of deposited amount, gave the bald/vague assurance that the possession of project Chintels Serenity/said project is expected to happen as per the timeline mentioned in the buyer's agreement.

- vii. The builder/respondent illegally and for its unjust enrichment at the complainant's cost raised the demand dated 15.07.2022 for Rs. 47,44,719/- with due date 29.07.2022. Resultant, the complainants again did follow-up with the respondent and meet its officials including Mr. Animesh Indra. It was again assured that the issue will be settled soon and post structural audit of the said project, the ban imposed by the concerned Govt. authorities will be revoked. It was further assured that no delay penalty shall be imposed on the complainants and payment to the above demand may be paid on disbursal of the approved loan amount by the Bank. The complainant also sent an email dated 24.07.2022 to the respondent regarding abovesaid. it is pertinent to mention that the respondent kept silent on the said email dated 24.07.2022. It is a settled proposition of law that if notice/communication is not replied, the contents thereof shall be deemed to be admitted. Thus, in the present matter, it can be safely held that the respondent has admitted the contents of the said email dated 24.07.2022 by not preferring any reply thereof.
- viii. The respondent on 27.10.2023 again raised a demand letter for the total amount of Rs. 1,01,60,068/- including alleged delay interest for an amount of Rs. 6,70,630/-. Thereafter, the complainant again did regular follow-up with the respondent. However, the complainant was

shocked when the respondent refused to accept the complainant's bonafide and genuine request for waiver of said alleged delay interest. The respondent on 05.12.2023, informed, inter-alia, that Mr. Animesh Indra is no longer working with the respondent w.e.f. 23.05.2023. Further, the respondent issued a reminder dated 16.12.2023 for payment with delay interest of Rs. 7,73,584/- till 16.12.2023.

- ix. The respondent by ignoring all bonafide and genuine requests of the complainants, with malafide intentions, issued a show-cause notice dated 05.01.2024 and thereafter wrongly cancelled the allotment vide its cancellation letter dated 15.02.2024 and forfeited the entire deposited amount paid by the complainants. As per proforma of agreement for sale, provided by the Haryana Real Estate (Regulation and Development) Rules 2017, only post 90 days of notice from the promoter, the allotment may be cancelled. However, the builder/promoter herein with malafide intentions has cancelled the allotment only post one month of said show cause notice. The respondents herein were never permitted nor authorized to retain the monies of the complainants.
- x. The complainants were constrained to serve a legal notice dated 15.03.2024 to the respondent, requesting the respondent to come forward and, to withdraw the cancellation letter dated 15.02.2023. Thereafter, waive off the alleged interest on alleged delayed payments. Further, provide all permissions including occupation certificate and thereafter handover the possession of the aforesaid apartment and the common facilities complete in all respects to the complainant, or in alternative refund entire money, that is, Rs. 11,86,180/- without any deduction with interest at the rate of 18% from the date of deposit till its realization and legal cost to the tune of Rs. 15,000/- within 15 days of the receipt of this notice. However, the respondent vide its reply

dated 01.02.2024 with vague and misleading reply refused to adhere with the legal notice dated 15.03.2023. Thus, the complainants served a rejoinder dated 29.04.2024 to the abovesaid reply.

- xi. The possession of the said Apartment was supposed to be delivered by December 2023 as promised by the respondent, but even after a lapse of over a year, the respondent showed its incapability to initiate the project as promised. In fact, as per the HRERA website, the said project is already lapsed. Thus, it is clear that the respondent has failed to discharge its duties as a promoter under the Act 2016.
- xii. By wrongly charging the complainant, wrongly cancelling allotment, and not fulfilling its own contractual obligations, the respondent has faulted in performance of its obligations and have blatantly attempted to escape its liability.
- xiii. The complainant hereby seeks to redress the various forms of legal omissions and illegal commissions perpetuated by the respondent/seller/builder/promoter/company/agent/channel partner, which amount to unfair trade practices, breach of contract and are actionable under the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017. In the present circumstances, the complainant has been left with no other option but approach and seek justice at Haryana Real Estate Regulatory Authority at Gurugram, Haryana.
- xiv. Hence, the complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to declare that alleged cancellation letter dated 15.02.2023 as null and void.
 - ii. Direct the respondent to withdraw the cancellation letter dated 15.02.2023.

- iii. Direct the respondent to also, waive off the alleged interest on the alleged delayed payment.
- iv. Direct the respondent that post obtaining occupation certificate/ completion certificate, handover the possession of the apartment bearing no. T8-1203 and common facilities complete in all respects.
- v. Direct the respondent to pay interest, for every month of delay in offering of possession of the apartment to the complainant on the deposited amount, at the prescribed rate as per the Act, 2016 till the respondent hands over the possession of the apartment.
- vi. Direct the respondent in alternative to the above-mentioned relief to refund the entire money/booking amount of the complainant i.e., Rs. 11,86,180/- without any deduction with the interest at the rate of 18%, from the date of deposit till realization.
- vii. Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant.

D. Reply by the respondent:

5. The respondent contested the complaint on the following grounds:
 - i. The complainants approached the respondent for allotment of an unit in the said project after duly satisfying themselves in regards to the facilities and amenities being offered in the said project and also based upon its own independent due diligence and inquiry. That pursuant to the complainants' application, the complainants submitted application form dated 14.10.2021 to the respondent (hereinafter called "the application form") specifically requesting for allotment of unit no. T8-1203 having super built-up area of 1,590 sq.ft. along with one car parking (hereinafter called "the said unit").
 - ii. Subsequent to the application form, the respondent provisionally allotted the said unit in the said project to the complainants by way of allotment letter dated 14.10.2021.

- iii. By way of allotment letter, the respondent categorically informed the complainants that allotment of the said unit was subject to execution of agreement for sale including that of making timely payment as per payment plan opted by the complainants. It was further informed to the complainants that total cost of the said Unit is Rs. 1,12,96,950/-. It was further informed to the complainants that they were required to pay the total cost as per the payment plan opted by them which was provided in the allotment letter dated 14.10.2021. That as per the payment plan opted by the complainant's they were required to make payment in following manner: -

S. No.	Occasion Name	Charge Name	Due Amount	Net Amount
1.	On Booking	BSP	11,29,695/-	11,29,695/-
2.	Within 30 days of RERA Reg.	BSP	45,18,780/-	45,18,780/-
3.	On Application of occupation certificate	BSP	45,18,780/-	45,18,780/-
4.	On offer of Possession	BSP	11,29,695/-	11,29,695/-
	Total Cost (Rs.)		1,12,96,950/-	1,12,96,95/-

- iv. It was further informed to the complainants that they would be required to execute agreement for sale within 30 days from payment of 10% of sale amount which shall be the booking amount for the said unit. That the complainants paid Rs. 11,29,695/- as booking amount to the respondent.
- v. The respondent kept requesting the complainants for signing the agreement for sale. However, due to delay by the complainants in signing the agreement for sale the same only came to be executed on 05.01.2022.
- vi. According to the payment plan opted by the complainants, the respondent issued a demand letter dated 15.07.2022 at the stage of "Within 30 days from RERA Reg." requesting the complainants to pay

Rs. 47,44,719/- inclusive of taxes by 29.07.2022 towards payment of the amount due at stage of "Within 30 days from RERA Reg.". However, the complainants failed to make the payment as per the demand letter dated 15.07.2022 i.e., by 29.07.2022.

- vii. The respondent again issued a demand letter dated 27.10.2023 at stage of "On Application of Occupation Certificate" calling upon the Complainants to pay Rs. 47,44,719/- towards payment due at the stage of "On Application of Occupation Certificate" along with pending dues for amount due at stage of "Within 30 days from RERA Reg." of Rs. 47,44,719/- thereby raising demand of total pending dues of Rs. 1,01,60,068/- payable by 10.11.2023. However, the complainants again failed to pay the outstanding dues to the respondent by due date i.e., by 10.11.2023.
- viii. Subsequently, on account of non-payment of dues, the respondent issued reminder letters to the complainants. The respondent issued reminder letters dated 16.12.2023, reminder letter dated 05.01.2024 calling upon the complainants to pay the outstanding dues and the interest being accrued on outstanding dues on account of non-payment.
- ix. Owing to non-payment of outstanding dues despite repeated reminders and request, the respondent left with no other recourse issued show cause notice dated 05.01.2024 calling upon the complainants to show cause why the allotment of the said unit should not be cancelled on account of non-payment of due amount by the respondent. That the factum of issuance of show cause notice was also informed to the complainants on their email.
- x. Despite issuance of show cause notice, the complainants failed to make payment to the respondent and further failed to show any valid reason or cause why the allotment of the said unit should not be cancelled on

account of non-payment of dues. subsequently, the respondent issued cancellation letter dated 15.02.2024 cancelling the allotment of the said unit to the complainants.

- xi. Thereafter, the complainants with no valid reasons and based completely on frivolous and false grounds issued legal notice dated 15.03.2024 asking the respondent to withdraw the cancellation letter and waive-off the delayed interest payment of the said unit or in alternative refund the amount paid by the complainants. Thereafter, the respondent duly replied to the said legal notice dated 15.03.2024 issued by the complainants and informed the complainants that the allotment of the said unit was cancelled as per the terms and conditions of agreement for sale dated 05.01.2022 on account of non-payment of dues by the complainants and the amount paid by the complainants which is the booking amount stood forfeited. Thereafter, the respondent received the rejoinder to the legal notice dated 15.03.2024 sent by the complainants making false and frivolous claims.
 - xii. It is evident that the allotment of the said unit to the complainants was cancelled due to non-fulfilment of obligations and default on part of the complainants and in accordance with the terms and conditions of the agreement for sale.
 - xiii. The respondent has received the occupation certificate for said project as well from DTCP. Thus, the instant complaint filed by the complainants is liable to be dismissed in light of facts and circumstances stated above and for reasons.
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 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 declare that alleged cancellation letter dated 15.02.2023 as null and void.**
- F.II Direct the respondent to withdraw the cancellation letter dated 15.02.2023.**
- F.III Direct the respondent in alternative to the above-mentioned relief to refund the entire money/booking amount of the complainant i.e., Rs. 11,86,180/- without any deduction with the interest at the rate of 18%, from the date of deposit till realization.**

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 14.10.2021 in the project of respondent namely "Chintels Serenity" in Sector-109, Gurugram for a total sale consideration of Rs.1,12,96,950/-. A builder buyer's agreement was executed between the parties on 05.01.2022 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.11,86,950/-.
13. The complainant contended that the respondent had kept raising illegal demands which were not in terms of payment plan opted by the complainant of the buyer's agreement. 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 15.02.2024 on account of non-payment after issuance of multiple reminders. The occupation certificate of the unit of the complainant was obtained on 28.08.2024 and the complainant has paid only Rs.11,86,180/- against the sale consideration of Rs.1,12,96,950/-.

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 Rs. 11,29,695/- on booking, Rs. 45,18,780/- within 30 days of RERA registration, Rs. 45,18,780/- on application of occupation certificate and Rs.11,29,695/- on offer of possession. Though the respondent has raised a demand letter

dated 27.10.2023 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 16.10.2023 and thereafter raised demand letter dated 27.10.2023. Subsequently, the respondent has sent reminder letters dated 16.12.2023 and 05.01.2024 and thereafter issued a cause notice/final reminder dated 05.01.2024 for payment of outstanding amount due against demand letter dated 27.10.2023. Upon non-compliance on part of the complainant, the respondent finally terminated the unit of the complainant vide termination letter dated 15.02.2024. The complainant has paid only Rs.11,86,180/- which is 10.50% of the total sale consideration i.e., Rs.1, 12,96,950/-.

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 occupation certificate on 28.08.2024. In view of the afore-mentioned facts, the cancellation of the unit dated 15.02.2024 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 principal 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.11,86,180/- after deducting 10% of the basic sale consideration i.e., Rs. 1,12,69,950/- 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., 15.02.2024 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.IV Direct the respondent to also, waive off the alleged interest on the alleged delayed payment.

F.V Direct the respondent that post obtaining occupation certificate/ completion certificate, handover the possession of the apartment bearing no. T8-1203 and common facilities complete in all respects.

F.VI Direct the respondent to pay interest, for every month of delay in offering of possession of the apartment to the complainant on the deposited amount, at the prescribed rate as per the Act, 2016 till the respondent hands over the possession of the apartment.

20. In view of the cancellation dated 15.02.2024 having been held to be valid, the relief(s) sought by the complainant become(s) infructuous and are accordingly dismissed.

F.VII Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant.

21. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.

G. Directions of the Authority:

22. 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.11,86,180/- to the complainant after deduction of 10% of basic sale consideration of Rs.1,12,96,950/- 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 .

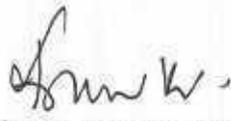
- ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

23. Complaint stands disposed of.

24. File be consigned to the registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.12.2025

HARERA
GURUGRAM