

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

Complaint no.:	5548 of 2024
Date of filing of complaint:	25.11.2024
Date of Order:	04.12.2025

Satyavan Paul

Complainant

R/o: House no.-232, Block C, Bhatia
Colony, Ballabgarh, Faridabad, Haryana-
121004

Versus

Roshni Builders Private Limited

Respondent

Regd. Office at: Sushant Shopping Arcade
LGF, F-22, Sushant Lok Phase-I,
Gurugram-122002

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Sh. Anshul Sharma (Advocate)

Complainant

Ms. Shriya Takkar and Ms. Meenal Khanna
(Advocates)

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	"M3M Broadway, Sector- 71, Gurugram.
2.	Project area	7.84875 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	71 of 2018 dated 25.02.2018 valid till 24.10.2023
5.	Name of licensee	1. Roshni Builders Pvt. Ltd. 2. Highrise Propbuild Pvt. Ltd
6.	RERA Registered/ not registered	Registered vide no. 31 of 2018 dated 14.12.2018 valid up to 31.10.2023
7.	Unit no.	R6- 206, Second Floor, Block-6 (As per page no. 79 of the reply)
8.	Area admeasuring	413.12(Carpet area) and 830.59 sq. ft.(Super Area) (As per page no. 79 of the reply)
9.	Allotment letter	19.01.2020 (As per page no. 17 of the complaint)
10.	Date of execution of agreement for sale	Executed but undated
11.	Addendum to buyer's agreement	01.10.2020 (As per page no. 133 of the reply)
12.	Possession clause	7. POSSESSION OF THE UNIT 7.1 Schedule for possession of the said Unit: - The Developer agrees and understands that timely delivery of possession of the



		<p><i>Unit along with the car parking space(s), if any, to the Allottee and the Common Areas to the Association of Allottee or the competent Authority, as the case may be, as provided under the Act and Rules 2(1)(f) of the Rules, 2017, is the essence of the Agreement.</i></p> <p>(As per page no. 97 of the complaint)</p>
13.	Due date of possession	31.10.2023 [As per mentioned in the RERA registration]
14.	Payment Plan	Construction linked plan
15.	Basic sale consideration	Rs.99,99,475/- (As per payment plan on page no. 127 of the reply)
16.	Total sale consideration	Rs.1,11,99,411/- (As per payment plan on page no. 127 of the reply)
17.	Amount paid by the complainant	Rs.55,99,705/- (As per receipt information on page no. 15-16 and 23 of the complaint)
18.	Pre-handover amount paid by the respondent	Rs.7,30,356/- (As per application by respondent for placing on record additional facts)
19.	Occupation certificate /Completion certificate	13.12.2021 (As per page no. 171 of the reply)
20.	Offer of possession	16.12.2021 (As per page no. 174 of the reply)
21.	Pre cancellation notice	17.01.2022 & 19.01.2022 (As per page no. 183-184 of the reply)
22.	Cancellation letter	01.02.2022 (As per page no. 185 of the reply)

B. Facts of the complaint:



3. That the complainant has made following submissions:

- I. That the complainant is an individual of sound mind, presently residing at H. No. 232, Block C, Bhatia Colony, Ballabhgarh, Faridabad.
- II. That the complainant, on 19.01.2020, booked a commercial unit in the project namely 'M3M Broadway' situated at Sector-71, Gurugram developed by the respondent by paying an amount of Rs.1,00,000/-. However, contrary to the principles of fairness and good faith, the respondent provided an unsigned and undated allotment letter allotting the commercial unit bearing no. R6 206 admeasuring 830.59 sq. ft. (super area) in the project, thereby failing to establish a legitimate contractual relationship at the outset.
- III. That thereafter, on 28.02.2020, the complainant, under the bona fide belief of the respondent's compliance with statutory obligations, paid a sum of Rs.50,99,705/- following a demand made by the respondent, and receipt of this payment were in gross contravention of Section 13 of the Act, as no buyer's agreement was executed at the time of such demand and receipt of this payment, rendering such demand illegal and unenforceable in the eyes of law.
- IV. That despite receiving more than 10% of the sale consideration, the respondent failed to execute the buyer's agreement as mandated under the Act. The complainant repeatedly requested the execution of the buyer's agreement, but the respondent deliberately delayed the same. It was only on 21.08.2021, after an inordinate delay and illegally retaining the hard-earned money for over 1.5 years, the respondent sent the buyer's agreement along with a letter for its execution.
- V. That the accompanying letter dated 21.08.2021 imposed an arbitrary condition requiring the complainant to return the executed copies to the respondent, to which the complainant complied. However, the



respondent failed to return a duly executed copy to the complainant, causing immense hardship and depriving the complainant of his legal rights under the agreement.

- VI. That thereafter, the complainant sent formal letter dated 10.09.2021 and representations to the respondent officials, requesting the executed buyer's agreement for loan processing purposes. Despite being legally obligated to provide the same, the respondent blatantly ignored such requests, demonstrating wilful negligence and deficiency in service.
- VII. That thereafter, as a consequence of the respondent's persistent non-compliance with statutory obligations and failure to address the repeated requests of the complainant, the respondent unjustifiably initiated coercive actions against the complainant for non-payment of the demand raised by the respondent. The respondent, in a clear demonstration of high-headedness, issued a pre-cancellation letter dated 11.11.2021, threatening to cancel the unit allotted to the complainant. Despite being fully aware of the complainant's legitimate concerns and continuous attempts to resolve the issues, the respondent escalated the matter by issuing a cancellation letter dated 27.11.2021, thereby unilaterally cancelling the unit without lawful justification or due process.
- VIII. That the complainant, being aggrieved by this arbitrary and illegal act, immediately approached the respondent, making earnest request for withdrawal of the cancellation. These requests were made both orally and through formal representations, highlighting the complainant's good faith and willingness to amicably resolve the matter. After relentless follow-ups and consistent efforts by the complainant, the respondent withdrew the cancellation. However, this withdrawal was



not accompanied by any substantive redressal of the underlying grievances or adherence to statutory requirements, further compounding the harassment and mental agony suffered by the complainant. and thereafter issued an offer of possession dated 16.12.2021. However, the said offer of possession was unsupported by a valid occupation certificate or necessary documentation, in blatant violation of Section 19(10) of the Act.

- IX. That thereafter, upon inspection of the unit, the complainant discovered on-site reduction in the size of the unit by almost 100 sq. ft. and dimensions were also not according to the representation made at the time of booking of the unit, amounts to a material breach of the agreed terms. The complainant raised this issue through formal complaint, which were acknowledged by the respondent with false assurances of providing an alternate unit. However, no resolution has been provided to date, reflecting a deliberate intent to deceive the complainant.
- X. That the complainant has paid a total amount of Rs.55,99,705/- against the total sale consideration of Rs.1,14,05,972/-, as evidenced by the statement of accounts issued by the respondent which demonstrates the complainant's adherence to his financial obligations while highlighting the respondent's failure to fulfil their statutory and contractual duties.
- XI. That the complainant submits that the respondent's actions are violative of the statutory provisions of the Act. Therefore, the respondents are liable to refund the entire amount paid by the complainant along with interest at prescribed rate in accordance with the provisions of the Act of 2016 and the complainant has genuine

grievance which require the intervention of the Hon'ble Authority.
Hence, the present complaint.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- Direct the respondent to refund the amount i.e., Rs.55,99,705/- paid by the complainants at the prescribed rate of interest.

D. Reply by the respondent:

5. The respondent contested the complaint on the following grounds:
- That at the very outset, the complaint filed by the complainants is baseless, vexatious and is not tenable in the eyes of the law. Therefore, the complaint deserves to be dismissed at the threshold.
 - The complainants are not entitled to any relief whatsoever:**
 - That the complainant along with a co-allottee herein being well aware of the respondent's good standing and reputation in the market and further having conducted their own independent due diligence, expressed their interest in booking a commercial unit in the project, containing office spaces, entertainment, food and beverage outlets, moder office spaces, upscale efficient lofts over the project land under the name and style of "M3M Broadway", Sector 71, Gurugram vide an application form for the provisional allotment and paid part booking amount towards the same.
 - That the aforesaid application form was submitted by Ms. Saroj Paul, the first applicant and wife of the complainant, Mr. Satyavan Paul, who is listed as the second applicant/the complainant.
 - That in due consideration of the part booking amount paid by the complainant and his co-allottee and their commitment to

B

make timely payments, commercial unit bearing no. R-6 206 having carpet area of 413.12 sq. ft along with super area of 830.59 sq. ft. on the 2nd floor in Block-6 in the said project was allotted to Saroj Paul as first allottee and to the complainant as the second allottee. The allottees on their own free will and volition had opted for a specific payment plan and on their own paid an amount of Rs.1,00,000/- and Rs.4,00,000/- on 19.01.2020, which was duly acknowledged by the respondent company. It is pertinent to mention that the allottees were constantly contacted and asked to execute the builder buyer's agreement and other formalities but the allottees didn't pay any heed to the request.

- d. That the respondent company as per the payment plan opted by the allottees, raised demand vide letter dated 01.02.2020 requesting the allottee to clear the dues to the tune of Rs.50,99,705/- which was due payable on or before 19.02.2020.
- e. That the respondent company after several requests vide cover letter dated 04.02.2020 dispatched the triplicates copies of the BBA for due execution at their end. Subsequently, after the BBA was signed, the complainant duly shared the signed copies with the respondent company. However, the registration of the BBA was not completed due to the complainant's request to delete the name of the main applicant and to execute a new BBA solely in the complainant's name. As a result, the BBA was not registered. The aforesaid mentioned BBA sets-out the rights and liabilities of both the parties.
- f. That the allottees defaulted in paying the dues payable as per demand letter dated 01.02.2020, therefore, the respondent



issued reminder-1 to the complainant and his co-allottee on 26.02.2020 to come forward and clear their pending outstanding dues to the tune of Rs.45,53,309/- within 15 days from the date of the reminder letter.

- g. That the allottees belatedly made the payment of Rs.50,99,705/- on 28.02.2020. Thus, it can be inferred that the allottees were defaulters since the very inception. Furthermore, the allottees approached the respondent company and vide letter dated 01.10.2020 requested the respondent to delete the name of Ms. Saroj Paul, who was the first allottee from the present allotment. Accordingly, the respondent being a customer-oriented company acceded to the said request and started with the process.
- h. That in furtherance to the same, an addendum to the buyer's agreement was executed between M/s Saroj Pual, the first allottee and respondent on 01.10.2020. Accordingly, the respondent issued letter dated 27.03.2021 confirming the deletion of name of Ms. Saroj Paul in its records and all documents pertaining to the present allotment were endorsed in the name of the complainant alone.
- i. That deletion of name of the Ms. Saroj Paul and execution of the addendum agreement, the complainant requested that a fresh agreement be executed between the complainant and the respondent.
- j. That meanwhile, in view of the booking and commitment to make timely payments, the respondent company sent an acknowledgement letter stating that the complainant was eligible for a pre-handover on the contribution till the date of



the execution of the aforesaid acknowledgement letter, applicable to the said unit towards the part consideration for the said unit and paying the certain amount as per the payment schedule opted by the complaint. The complainant didn't send the signed/executed acknowledgement letter to the respondent company, however, the respondent company offered the complainant a monthly pre-handover amount to provide the complainant the comfort of the company's commitment to deliver the unit on time. An amount of Rs.5,41,742/- (after TDS deduction) has been paid to the complainant as pre-handover amount from 03.07.2020 to 01.10.2021 through cheques and RTGS. Thus, the complainant by his conduct had duly accepted the terms of the acknowledgment letter. The complainant on his own free will post discussions with the respondent company had agreed to waive of pre-handover during lockdown period till June 2020.

- k. That the respondent company completed the construction of the tower in which the unit of the complainant way before the agreed timelines and applied for grant of occupation certificate vide application dated 31.08.2021. The respondent company conveyed the same to the complainant vide email dated 25.10.2021 as well.
- l. That on 22.10.2021, the respondent herein raised demand that was due and payable by the complainant upon the application of OC. The demand raised was for an amount of Rs.44,79,755/- which was payable on or before 10.11.2021. The said demand was also sent to the complainant by the respondent company vide email dated 11.11.2021. Since, no payment was



forthcoming the side of the complainant, the respondent issued pre-cancellation notice dated 11.11.2021 calling upon the complainant to deposit the previous outstanding dues, along with interest amounting to Rs.44,95,733/- within 15 days. The aforesaid pre-cancellation notice was also sent to the complainant vide email dated 13.11.2021. The respondent company vide email dated 18.11.2021 again requested the complainant to clear their pending dues.

- m. That the complainant failed to pay heed to and comply with the aforementioned pre-cancellation notice, thereby the respondent left with no other alternative issued a cancellation notice dated 27.11.2021 cancelling the allotment of the complainant and the same was communicated to the complainant vide mail dated 30.11.2021.
- n. That thereafter the complainant approached the respondent company and requested for reinstatement of the unit and the respondent company being a customer-oriented company and as a one-time goodwill gesture acceded to the request of the complainant on the condition that the complainant would clear his outstanding dues.
- o. That the occupation certificate for the unit in question was granted by the competent Authority on 13.12.2021 after due verification and inspection. The respondent company vide email dated 14.12.2021 duly informed the complainant about the receipt of the occupation certificate.
- p. That the respondent company herein vide letter of offer of possession dated 16.12.2021 offered possession of the unit in question to the complainant and requested the complainant to



remit the outstanding amount towards the remaining basic sale price, taxes, cess, stamp duty charges etc on or before 15.01.2022. The said notice for offer of possession was served upon the complainant by the respondent company vide email dated 17.12.2021, however the complainant failed to clear his dues and take possession of the unit in question.

- q. That the respondent company again vide email dated 27.12.2021 requested the complainant to come forward and clear his pending dues raised vide the notice for offer of Possession, but to no avail. Since, the complainant failed to clear his dues therefore, the Respondent issued pre-cancellation letter dated 17.01.2022 calling upon the complainant to remit the outstanding dues to the tune of Rs.58,47,904 within 15 days. The said pre-cancellation was also served upon the complainant by the respondent company vide email dated 19.01.2022.
- r. That the complainant herein yet again failed to comply with the pre-cancellation notice dated 17.01.2022 and did not come forward to deposit the outstanding dues payable to the respondent and thus was in default of his contractual obligations. Therefore, the respondent herein was constrained to issue cancellation notice dated 01.02.2022, cancelling the allotment and forfeiting the amounts paid by the complainant. The said cancellation letter was sent to the complainant vide email dated 05.02.2022.
- s. That the total loss calculated comes to Rs.38,10,569/- (approx.) which includes earnest money deduction @10% to the tune of Rs. 11,19,941/-, pre-handover of Rs.5,94,338/-, loss of



statutory dues and taxes to the tune of Rs.13,62,640/-, brokerage of Rs.6,07,069/- and further a sum of Rs.1,26,581/- towards interest payable by the complainant for the delayed payments. It is submitted that the complainant is raising these frivolous issues as an afterthought in order to unjustly enrich himself.

iii. The project was completed much before the agreed time limit:

- a. That the due date of possession as per the terms of buyer's agreement was 31.10.2023 or as may be further revised/approved by the authorities. Despite adverse circumstances like NGT orders, COVID 19 pandemic, the respondent has completed the construction of the project and applied for the grant of Occupation Certificate on 31.08.2021. The Occupation Certificate was granted by the Competent Authorities on 13.12.2021 after due verification and inspection. The respondent company offered possession to the complainants vide letter for offer of possession dated 16.12.2021 and requested the complainant to take possession of the unit which is ready and complete. There is no delay in offering possession of the unit to the complainant. Thus, no case is made out under Section 18 of the Act of 2016.
- b. That the complainant is not liable for refund along with interest as the possession has been offered prior to the possession timeline as stipulated under the buyer's agreement and the complainants are not entitled for benefit of their own wrongs as they failed to come forward to clear outstanding dues for the said demands raised in accordance with the payment plan being well aware that time is essence of the agreement.





iv. **The complainant is not a genuine consumer:**

- a) That the complainant is not a genuine consumer and an end user since he has booked the said unit in question purely for commercial purpose as a speculative investor and to make profits and gains. Further, the complainant has invested in many projects of different companies which prove that the complainant is not consumer but only investor. Thus, it is clear that the complainant had invested in the unit in question for commercial gains, i.e., to earn income by way of rent and/or re-sale of the property at an appreciated value and to earn premium thereon. Since the investment has been made for the aforesaid purpose, it is for commercial purpose and as such the complainant is not consumer/ end user. The complaint is liable to be dismissed on this ground alone. Under these circumstances, it is all the more necessary for the complainant, on whom the burden lies, to show how the complainant is consumer.
- b) The complainant has not disclosed their financial position and the statement of income and assets for the last 5 (five) years prior to the date of booking of the above unit. It is necessary for the complainant to file copies of its income tax returns for the 5 (five) years prior to the date of booking.
- c) Details of the total assets both moveable and immovable together with the value of each asset in the name of the complainant should also be disclosed, which would indicate whether the aforesaid booking was done, like other properties, for investment purposes.

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 respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. 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

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

E.II Subject matter jurisdiction

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

8. 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 objections raised by the respondent:

F.1 Objection regarding the complainant being investor.

9. The respondent has taken a stand that the complainant is investor and not consumer. Therefore, he is not entitled to the protection of the Act and is not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the documents placed on record, it is revealed that the complainant is buyer and paid a price of Rs.55,99,705/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference.



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

10. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainant is allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

G. Findings on relief sought by the complainant:

G.I Direct the respondent to refund the amount i.e., Rs.55,99,705/- paid by the complainant at the prescribed rate of interest.

11. The complainant was allotted a unit in the project of respondent "M3M Broadway" in Sector-71, Gurugram vide allotment letter dated 19.01.2020 for a total sum of Rs.1,11,99,411/-. The agreement for sale was executed and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs.55,99,705/-.
12. The respondent has cancelled the unit vide cancellation letter dated 01.02.2022 before the due date of handing over of possession i.e., 31.10.2023 on account of outstanding dues after issuing pre-cancellation notice dated 17.01.2022. The complainant has paid an amount of Rs.55,99,705/- i.e., 50% of the sale consideration of Rs.1,11,99,411/-. The payment plan opted by the complainant is instalment linked and as per the payment plan, the 50% of the total

sale consideration is to be paid on or before 19.02.2020 (subject to signing of builder buyer's agreement) and remaining 40% amount has to be paid on application of occupation certificate and remaining 10% on notice of offer of possession. The respondent has received the occupation certificate on 13.12.2021 and offered the possession of the unit on 16.12.2021 but the complainant has paid just 35% of the total sale consideration till date. The respondent has cancelled the unit on 01.02.2022 before the due date on account of non-payment as the complainant is supposed to pay the total sale consideration on notice of offer of possession but only 50% has been paid till date. Thus, in view of the aforementioned facts, the cancellation of the unit stands valid and the respondent is entitled for deduction of earnest money.

13. On 28.07.2025, the counsel for the respondent has filed an application to bring on records additional facts vide which it has been brought to the notice of the Authority that an amount of Rs.37,49,408/- has been refunded to the complainant on 14.07.2025 vide RTGS after deduction of earnest money and the amount paid on account of pre-handover i.e., Rs.7,30,356/-.
14. It is evident from the documents placed on record that the complainant has opted for instalment linked payment plan and he has paid a sum of Rs.55,99,705/- against sale consideration of Rs.1,11,99,411/- of the unit allotted to him. As per the payment plan opted by the complainant, he was required to make payment of the total sale consideration on notice of offer of possession. The respondent has obtained the occupation certificate on 13.12.2021 from the competent Authority and thereafter offered the possession of the unit on 16.12.2021 along with demand of payment of outstanding dues but the complainant has failed to pay the same. The





respondent has issued various reminder letters and thereafter pre-cancellation letter and cancellation letter dated 17.01.2022 and 01.02.2022 respectively.

15. Now when the complainant approached the Authority to seek refund, it is observed that under clause 1.16 of the agreement to sale, the respondent-builder is entitled to forfeit the 10% of the total sale consideration. The relevant portion of the clause is reproduced herein below:

"Provided that if the allottee defaults/delays in payment towards any amount which is payable, the allottee shall be liable to pay interest for the delayed period to RBPL, at the interest rate as prescribed in the Rule 15 of Rules computed on and from the due date. "Earnest Money" will be 10% (Ten Percent) of the total sale consideration."

16. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as ***Jayant Singhal and Anr. VS. M3M India Limited*** decided on 26.07.2022, held that 10% of basic sale price is a reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the

Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and 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."

17. 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 cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainants i.e., Rs.55,99,705/- after deducting 10% of the sale consideration and also the amount already paid to the complainant and return the remaining amount along with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation i.e., 01.02.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

Directions of the Authority:

18. 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.55,99,705/-** received by him from the complainant after deduction of 10% of sale consideration of Rs.99,99,475/- as earnest money and amount already refunded/pre-handover amount paid to the complainant-allottee along with interest at the rate of 10.85% p.a. on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation i.e., 01.02.2022 till the actual date of refund of the amount.
- 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.

19. Complaint stands disposed of.

20. File be consigned to the registry.


(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 04.12.2025