

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

Complaint no.: 1008 of 2024
Order pronounced on: 13.11.2025
Order reserved on: 11.12.2025

1. Mr. Vishal Chadha
2. Mrs. Radhika Chadha
Both R/o: - 5 Under Hill Lane, Apartment 3D, Civil
Lines, Delhi- 110054.

Complainants**Versus**

M/s Sobha Ltd.
Regd. Office at: - 5th Floor, Rider House, Plot No. 136P,
Sector- 44, Gurugram- 122003 (Haryana)

Respondent**CORAM:**

Shri Phool Singh Saini

Member**APPEARANCE:**

Shri Bhajan Lal Jangra (Advocate)
Ms. Priyanka Agarwal (Advocate)

Complainant
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 provisions of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.
- A. **Unit and project related details.**
2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:





S. N.	Particulars	Details
1.	Name of the project	Sobha City Phase - 1 Part - 2, Sector 108-Gurugram
2.	Nature of the project	Group Housing Colony
3.	RERA registered or not registered	115 of 2017 dated 28.08.2017 valid upto 01.05.2022
4.	DTCP license	107 of 2008 dated 27.05.2008 Valid up to 26.05.2028
5.	Unit no.	B2-154, 14 th floor (Page no. 59 of complaint)
6.	Unit admeasuring	2003.45 sq. ft. (super area) 1280.17 sq. ft. (carpet area) 171.45 sq. ft. (balcony area) (Page no. 59 of complaint)
7.	Agreement to sell	13.07.2018 (Page no. 54 of complaint)
8.	Possession clause	4.1 Possession <i>.....The Promoter assures to hand over possession of the Unit/Apartment for Residential usage along with parking as per agreed terms and conditions on or before 31/10/2021, subject to further grace period until 01/05/2022 unless there is delay due to 'Force Majeure Events', Court orders, Government policy/guidelines, decisions, affecting the regular development of the Phase-1, Part-2 of the Project. If, the completion of the Phase-1, Part-2 of the Project is delayed due to the above Conditions, then the Allottees) agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Unit/ Apartment for Residential usage along with parking.</i> (Emphasis Supplied)
9.	Due date of possession	01.05.2022 (Note:- due date of possession mentioned in the possession clause including grace period being unconditional and unqualified)
10.	Basic sale consideration	Rs.1,72,95,784/- (As per payment schedule at page no. 86 of complaint)

11.	Total sale consideration	Rs.2,06,09,928/- (Page no. 111 of complaint)
12.	Amount paid by the complainant	Rs.24,94,087/- (As per cancellation mail dated 31.07.2022 page 123 of reply also as submitted by complainant's page 06 of complaint)
13.	Payment Plan	Subvention Payment Plan (Page no. 54 of reply)
14.	Cancellation letter	31.07.2022 (Page no. 67 of reply)
15.	Occupation certificate	02.11.2022 (Submitted by the counsel for respondent during proceeding dated 13.11.2025)

B. Facts of the complaint:

3. The complainant has made the following submissions:-

- I. That the complainants being husband and wife, who had been allotted an apartment no. B2-154, Tower No. B2, on 14th Floor, along with reserved car parking space in residential Group Housing Project under the name of "Sobha City" (Project) located in the village Bahupur, Sector - 108, Gurugram on 25.03.2018 and same was illegally cancelled on 31.07.2022 in violation of terms of agreement for sale and understanding agreed over exchanged over the mails with the builder resultantly, sum of Rs.24,94,087/- paid by the complainants had been forfeited by the respondent hence the present complaint is being filed by the complainants for seeking restoration of allotment or in alternate allotment of unit in the same project.
- II. That the respondent further represented that registered joint development agreement has been signed between the Sobha Limited and Chintels Group, who had undertaken to develop the project "Sobha City". The respondent assured the complainants that the project would be completed as per the layout plans sanctioned by 2021 and the possession

shall be given on or before 31.10.2021. The complainants believing upon the representation agreed to purchase the above said flat.

- III. That initially the respondent offered payment plan under subvention scheme of 10:75:15 (10 % payable on booking by the complainants, 75% was to be paid through Bank finance and rest 15% out of which 5% to be payable on completion of internal plaster work of the unit/flat 10% to be payable at the time of possession). The respondent also offered discount of Rs.2.5 lac on initial payment of EDC and IDC and 10% of BSV (Basic Sales Value) at the time of booking.
- IV. That under the said subvention plan offered price was per Rs.8,700/- sq. ft. and without subvention plan offered price was Rs.7000/- per sq. ft. Besides for premium corner flat booking additional sum of Rs.200/- was chargeable thus the total price of the flat under subvention for the premium corner flat was Rs.8900/- per sq. ft. Further, the respondent offered additional 3% discount on Rs.8700/- per sq. ft. under subvention plan so the final price as agreed by the respondent came to Rs.8633/-. The respondent official also made a representation that the offer of possession shall be given on or before 31.10.2021, which is also recorded in the agreement for sale.
- V. The complainants believing upon the above representation made a booking of corner premium apartment on 25.03.2021 bearing no. B2-154 in tower no. B2, Type-C, on 14th floor with one reserved card space under subvention scheme 10:75:15 at the rate of Rs.8633/- per sq. ft., against total sale consideration of Rs.2,08,59,927/-. The sale consideration and rate of apartment as calculated included the price of the corner premium apartment in terms of the payment schedule as annexure C-1 to C-3, but the word "Corner premium Apartment" was not recorded in the agreement for sale by the respondent. The complainants as demanded





paid sum of Rs.5,60,000/- at the time of booking inclusive of EDC and IDC charges being (10% of booking amount) and availed discount of Rs.2.5 Lac. The respondent gave a post-dated cheque of Rs.2.5 Lac dated 15.09.2018 as agreed, upon receipt of above booking amount.

- VI. That on 13.07.2018 the respondent signed an agreement to sell in respect of the above apartment with payment plan of 10:75:15 under subvention scheme, wherein the respondent acknowledged receipt of payment of 10% advance payment, 75 % to be payable under the subvention scheme through HDFC loan in various stages on completion of mile stones as per the payment plan and rest 15% out of which 5% to be payable on completion of internal plaster work of the unit/flat 10% to be payable at the time of possession). As per the agreed terms no payment was to be made by the complainant before possession except as above. The possession was to be offered on or before 31.10.2021 as per clause no. 4.1 of the agreement to sell.
- VII. That the complainants paid total sum of Rs.24,94,087/- before signing of agreement to sell on various dates, details of payment made by the complainants. After signing the agreement to sell and receipt of above amount, the respondent turned dishonest and started committing breach, primarily the cheque of Rs.2.5 Lac was got bounced on presentation for the reason stop payment on 15.09.2018, when enquired, the complainants were told by the respondent that said cheque of Rs.2.5 Lac will be encashed by way of adjustment against total sale consideration the time of possession thus unilaterally postponed the payment causing unwanted annoyance and breach of terms. The said cheque remained unpaid till date.
- VIII. That on 15.10.2018, the complainants got the loan approved from HDFC bank to finance 75% payment under subvention scheme of Rs.1,56,40,000/- of 10:75:15 on achievement of mile stone by the builder



that EMI was to be payable by the complainants till the date of possession i.e. 31.10.2021. Vide mail dated 22.08.2019, the respondent abruptly informed the complainants to agree upon to the new payment plan of 30:70 without prior consultation, demanding 30% of BSP and EDC and IDC which was refused by the respondent. That on refusal by the complainants, the respondent sent the mail dated 06.02.2020 whereby again proposed to change the payment plan to 10:10:80 and demanded additional payment of 10% of BSP immediately and balance 80% linked to offer of possession but there had been no progress. On refusal by the complainants to agree upon to the changed payment plan of 10:10:80, the respondent vide mail dated 25.05.2020 again casted pressure on the complainants to agree upon the same.

- IX. That vide mail dated 18.06.2020, the respondent ignoring refusal to the above payment plan by the complainants, pressed the complainants to sign addendum with the above revised payment plan of 10:10:80 and further changed the unit type from premium to standard in the addendum agreement besides also revised BSP. The complainants continued to negotiate but of no consequence. On 03.02.2021 the respondent sent mail calling upon to give acceptance to payment plan of 10:10:80 and sign addendum, the payment plan was never agreed upon and change was unilateral.
- X. That on 19.04.2021 the complainants proposed to change the payment plan to 10:5:85 and after discussion on 29.06.2021 the revised plan of 10:05:85 was accepted under duress. Further, on 02.07.2021 the complainants received mail, whereby the respondent agreed upon the below mentioned revised payment conditions and adjust outstanding of balance payment of Rs.2.5 Lac. In response to the E-mail dated 02.07.2021, the complainants sent mail dated 05.07.2021 calling upon the respondent



- to adjust sum of Rs.2.5 Lac cheque amount and 3 years interest on it amounting to Rs.30,000/- for delayed payment. Thus called upon to adjust the sum of Rs.2,80,000/- against instalment of 5% on internal plastering.
- XI. That on 09.07.2021 the CRM Shipa Malik sent a mail accepting the revised payment plan of 10.5.85 agreed to give Rs.30,000/- as interest on Rs.2.5 lakh. On 23.09.2021 the CRM of defendant Shilpa Malik again sent a mail and agreed upon that sum of Rs2.80 lakh will be adjusted from the 5% demand for internal plaster work in October 2021. That vide mail dated 29.12.2021, the respondent informed to raise bill for the internal plaster work in January 2022.
- XII. That on the request of the complainants to visit site to inspect the internal plastering work before release of 5% payment, accordingly, the schedule visit was arranged on 10.02.2022, however mischievously, the complainants granted limited access, contending safety issue. The complainants noticed that no internal plaster work was going on. The complainants informed his concerned to the respondent and called upon to send a demand notice of 5% along with copy of revised addendum but neither the said demand notice nor revised addendum with payment plan of 10:05:85 was received.
- XIII. That on 14.03.2022 CRM Shilpa Malik sent mail calling upon to sign the old addendum sent vide mail dated 03.02.2021 containing the old payment plan of 10.10.80 and extended the date of possession to future uncertain date in terms of RERA Extension certificate granted but refused to give any specific date of possession and calling upon, to make the payment for internal plaster work without any specific demand notice under threat to cancel allotment if addendum is not signed or the conditions were not agreed upon.



- XIV. That on 11.04.2022 the respondent sent threatening mail to cancel allotment in response thereof vide mail dated 12.04.2022 the complainants highlighted the defaults on the part of the respondent contending Rs.2.80 lakh is not documented No demand notice for payment for internal plaster work is sent. They have changed the premium apartment to standard in the addendum without any information and basis. The complainants were expecting the demand notice for internal plaster work after adjustment of Rs.2,80,000/- and revised payment schedule of 10:5:85 to be documented as agreed upon in the mail dated 09.07.2021 and mail dated 23.09.2021 (refer para no. 24 & 25), and called upon to change unit type from premium to standard against mail dated 12.04.2022, the respondent instead in the slapped the complainants with cancellation notice dated 31.07.2022 making false allegation of having not signed the addendum and forfeited the entire amount of Rs.24,94,087/-.
- XV. That the complainant objected to illegal cancellation and vide mail dated 01.08.2022 contested the uncalled for conduct of sobha for the past 4.5 years and addressed the same to its CEO for necessary action but of no consequence. On 08.10.2022 the complainants received a mail from CRM that they would release the demand notice for final payment, hoping the issue stood resolved the complainants were waiting revised addendum to be signed.
- XVI. That on 02.11.2022 the complainant received another mail from CRM informing that OC has been received and will send the final payment request followed by handing over of possession and registration of documents for transfer. The complainant was expecting the possession as per a mail dated 02.11.2022 and notice for demand but no response received till 24.10.2023, the complainant wrote a mail dated 24.10.2023 calling upon CRM to handover the possession. The complainant was ready



with the payment but the respondent vide mail dated 09.11.2023 from legal department informed that the unit has been cancelled and unit has been sold to third party.

- XVII. That the respondent never shared the revised addendum plan with agreed payment plan of 10:05:85 acting illegally, cancelled the allotment of Apartment and forfeiture of entire amount sum of Rs.24,94,087/- hence aggrieved by the said illegal arbitrary act, conduct and omission, the complainants are being compelled to file the present complaint for reinstate of allotment of Apartment /flat in the same project or fresh allotment on the same price in the said project.
- XVIII. That the respondents played fraud upon the complainants by alluring them to invest their hard earned money in the project and forfeited the same by illegal cancellation notice dated 31.07.2022 despite the fact the respondent had resolved the issue vide mail dated 08.10.2022 and 02.11.2022. That the cancellation of the apartment/flat and forfeiture of amount by the respondent is illegal and in violation of section 11 (4)(5) of the Act, 2016.
- XIX. The respondent have also violated section 18(1) (a) of the Act, 2016 and failed to give possession in time, therefore, the complainants are filing the present complaint for seeking relief of restoration of allotment and possession with delayed interest. That the respondent has caused inordinate delay in completion of the project by 3 years to cover up the delay as cancelled the allotment of the booked unit for their vested interest. It is evident of the irresponsible and desultory attitude and conduct of the respondents, they are injuring the interest of the buyers who have spent hard earned money in purchasing the said Apartment/flat in the project, thus, caused the complainant great monetary loss and harassment to the complainant hence the present complaint.

C. Relief sought by the complainants:

4. The complainants are seeking the following reliefs:
 - i. Direct the respondent to withdraw the cancellation letter dated 31.07.2022 and restore the allotment of the apartment or in alternative if the apartment has been sold in breach of correspondence over mail/agreement to sell, further the respondent be directed to allot same or similar flat in the project at previously allotted rates as mentioned in the agreement to sell 25.07.2018 and appropriated the amount already paid of Rs.24,94,087/- towards sale consideration of a new apartment/flat.
 - ii. The respondent be directed to pay delay possession charges.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds by way of filing reply dated 22.08.2024:
 - i. That the respondent company launched a residential Group housing project in the name & style of "Sobha City, situated at Village Babupur, Sector-108, Gurugram, Haryana being developed in phases, The Complainant booked a Unit in Sobha City, Phase-1, Part 2 of the Project having RERA Registration no. 115 of 2017 dated 28.08.2017. The complainants approached the respondent and booked the unit and on 25.03.2018, received the allotment of unit no. B2-154 in Tower-B2, in the project "Sobha City- Phase-1, Part-2" situated at Sector-108 Gurugram. An agreement to sale was executed between the parties on 13.07.2018. The complainants had paid a total sum of Rs.24,94,087/- against the total sale consideration of Rs.2,08,59,927/-.
 - ii. That the complainants had opted for home loan out of their own free will with HDFC. Furthermore, the discount of Rs.2.5 lacs was offered to the





complainants by their broker and not directly by the company and the cheque of Rs.2.5 lacs, in question, dated 15.09.2018 was also given by the said broker and not the respondent company, however, in absolute good faith, the respondent company had agreed to adjust the amount of Rs.2.5 lacs in the total sale consideration of the unit. That the complainants managed to secure a home loan of Rs.1,56,40,000/- from HDFC Bank vide sanction letter dated 15.10.2018 as the respondent company was never been apprised of this information by the complainants. It later came to the knowledge of the respondent company that the complainants did not follow through with the subvention scheme for the reasons best known to themselves. Therefore, as a goodwill gesture, the respondent company, being a consumer centric company, offered alternate payment plan option of 10:10:80 to the complainants for the sake of their financial convenience, where the next 10% was to be paid at the time of completion of the internal plaster work and the rest 80% can be linked to possession.

- iii. That the complainants deliberately kept on using dilly dallying techniques and did not agree to any of the offers made by the respondent company offered for a considerable long time. The complainants kept on finding one or other reasons in an attempt to not make any further payments to the respondent company, which clearly shows their malafide intentions.
- iv. That the respondent company, in order to retain the complainants as their allottees, even agreed to the unjust demands of the complainants to adjust the amount of Rs.2.5 lacs, along with interest of Rs.30,000/- as discount, despite the fact that the discount was offered to the complainant by their broker and not the respondent company, and thus, was not their responsibility.
- v. That despite the long back and forth which lasted for more than 2 years, the complainants were still not satisfied with the alternate payment plans



offered by the respondent company, thus, a final offer of 10:5:85 was offered to the complainants and subsequently, on 14.03.2022, a payment request towards the completion of internal plaster work was raised as per 10:5:85 scheme, however, the complainant did not even pay the same.

- vi. That from the overall conduct of the complainants, it is clearly evident that the complainants never had any intentions of making any further payments and the respondent company rigorously tried for more than 2 years to retain the complainants as valuable allottees, however, the complainants did nothing but exploited the respondent company without paying a single penny for more than 4 years (last payment being made on 02.07.2018 for an amount of Rs.6,88,564/- with total consideration of the unit Rs.2,08,59,927/-. It is submitted, when all the efforts of the respondent company went in vain, the respondent company finally exercised its rights under section 11 (5) of the Real Estate (Regulation & Development), Act, 2016 and cancelled the allotment of the complainants vide cancellation letter dated 31.07.2022 and doing so the respondent company was well within its rights to make necessary deductions of the earnest money in line with the agreement for sale dated 13.07.2018.
- vii. It is submitted that as per Haryana RERA notification dated 05.12.2018 titled "The Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018" the Hon'ble Authority has clarified that the respondent is entitled to forfeiture of earnest money which shall not exceed 10% of the sale consideration. The complainant has failed to bring forth any ground entitling him the reliefs sought. The respondent company was well within its rights under section 11 (5) of the Act, 2016 to cancel the Unit as the same was done in line with the agreement for sale dated 13.07.2018. The respondent has not indulged in any unfair and/or restrictive trade practices and has not caused any

harassment and/or loss to any of its allottees including the complainant either as alleged or otherwise and the Complainant is not entitled for any relief from the Authority.

viii. That even after that, the complainant stayed on asleep for another 2 years and has now come up before this court claiming that they were ready to make the payments but were waiting for an offer of possession from the respondent company. It is submitted that had the complainant had any intentions whatsoever, to make any payments, they would have made the due payments when it was actually demanded by the respondent company, however, the complainants, deliberately and intentionally did not make any payment for the reasons best known to themselves. That from the above facts and circumstances, it is clearly evident that the complainants are nothing but cheap opportunists who are trying to misuse this Authority to satisfy their unjust motives and thus, on this ground alone, the present complaint is liable to be dismissed along with heavy cost on the complainants for wasting the precious time of the Authority.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.
8. The complainant and respondent have filed the written submissions on 27.11.2025 and 09.12.2025 respectively which are taken on record. No additional facts apart from the complaint or reply have been stated the written submissions

E. Jurisdiction of the Authority.

9. 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



10. 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

11. 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) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. 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 complainants at a later stage.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to withdraw the cancellation letter dated 31.07.2022 and restore the allotment of the apartment or in alternative if the apartment has been sold in breach of correspondence over mail/agreement to sell, further the respondent be directed to allot same or similar flat in the project at previously allotted rates as mentioned in the agreement to sell 25.07.2018 and appropriated the amount already paid of Rs.24,94,087/- towards sale consideration of a new apartment/flat.

F.II The respondent be directed to pay delay possession charges.

13. Briefly stating the facts are that a unit no. B2-154, 14th floor admeasuring 2003.45 sq. ft. (super area) was allotted to the complainants in the project



"Sobha City (Phase 1 Part 2)", Sector 108, Gurugram, Haryana. Thereafter, the BBA was executed inter se parties on 13.07.2018 and as per clause 4.1 of the said BBA, the respondent promised to handover the possession of the subject unit by 01.05.2022 including grace period of 6 months. The complainants through the present complaint consistently demonstrated bona fide intent and readiness to fulfil his contractual obligations. At the time of execution of agreement to sell, the respondent/promoter has offered the subvention scheme payment plan i.e., 10:75:15 (10% payable on booking by the complainants, 75% was to be paid through Bank finance and rest 15% out of which 5% to be payable on completion of internal plaster work of the unit/flat 10% to be payable at the time of possession). Thereafter, various conversation between the parties through E-mail all on record but neither any payment plan was agreed between the parties nor any outstanding payment were made by the allottee. The respondent has cancelled the unit of the complainants on 31.07.2022 on account of non-payment of the outstanding dues. Therefore, the complainants have approached the Authority through present complaint seeking aforesaid reliefs.

14. On the other hand, the respondent submitted that the present complaint is wholly devoid of merit and is nothing more than a vexatious attempt by the complainant to unjustly claim possession of the flat despite his own repeated, prolonged, and admitted defaults under the Agreement for Sale dated 13.07.2018. The respondent has, at every stage, acted in accordance with the terms of the agreement for sale, and has even gone above and beyond its contractual obligations on several occasions purely on humanitarian grounds. The cancellation of the allotment dated 31.07.2022 was a direct and inevitable consequence of the complainants continued defaulted in non-paying the outstanding dues notwithstanding numerous reminders, notices, and even reinstatement opportunities. The respondent further submitted that the



complainants herein have paid an amount of Rs24,94,087/- against the sale consideration of Rs.2,06,09,928/- (i.e., 12.10%) and the respondent has completed the construction of the project and the occupation certificate has been obtained on 02.11.2022 and thereafter due to non-payment of outstanding dues the unit in question has already been cancelled on 31.07.2022. Accordingly, the respondent prayed for dismissal of the present complaint.

15. In view of the factual matrix of the present case, the question posed before the Authority is whether the cancellation is valid in the eyes of law?
16. Upon examining the documents available on record and submission made by both the parties, the Authority observes that as per clause 4.1 of the buyer's agreement dated 13.07.2018, the respondent is under obligation to handover the possession of the subject unit by 01.05.2022 inclusive of the grace period. The complainants have paid an amount of Rs24,94,087/- against the sale consideration of Rs.2,06,09,928/- (i.e., 12.10%). The occupation certificate was obtained by the respondent on 02.11.2022. The Authority further observes that the respondent has cancelled the unit in question on 31.07.2022, due to non-payment of the outstanding dues.
17. During proceeding dated 13.11.2025, the counsel for the complainant brought to the notice of the Authority at the time of execution of agreement to sell respondent company has offered the subvention scheme payment plan (10% payable on booking by the complainants, 75% was to be paid through Bank finance and rest 15% out of which 5% to be payable on completion of internal plaster work of the unit/flat 10% to be payable at the time of possession). On refusal by the complainants to agree upon to the changed payment plan of 10:10:80, the respondent vide email dated 25.05.2020, against casted pressure on the complainants to agree upon the same and due to non-payment, the unit of the complainants was cancelled vide email dated 31.07.2022. On contrary,



the respondent submitted that at the time of booking, the complainants have opted the subvention linked payment plan, but in the year 2018, various restriction imposed by the Government, therefore the respondent was unable to provide the said payment plan. Further, the respondent contended that the respondent has offered several payment plan i.e., 10:10:80 and 10:85:05; further, the complainants had failed to pay the outstanding dues and due to non-payment of outstanding dues, the respondent has cancelled the unit vide cancellation letter dated 31.07.2022.

18. It is observed that the agreement to sell was executed between the parties on 13.07.2018 and the offered the subvention linked payment plan. Vide e-mail dated 22.08.2019, the respondent informed the complainants that the subvention scheme is not available and the respondent can offer this condition by changing the payment plan and the relevant portion of email dated 22.08.2019 is reproduced for ready reference:-

From Shilpa

To Vishal Chadha

Dear Mr. Chadha,

I again request you to confirm the date and time for the meeting in the coming week. As you are aware that subvention scheme is not available anymore with any of the banks. We can offer terms and condition by changing the payment schedule. You can remit 30% of your BSP along with EDC/IDC to enable your associate as well the money and the balance payment at offer of possession.

Thanks & Regards,

Shilpa Malik

CRM

19. On refusal by the complainants, the respondent sent an email dated 06.02.2020 whereby change to the payment plan was proposed to 10:10:80 and additional payment of 10% of BSP was demanded and balance 80% was linked to offer of possession but there had been no progress.

From Shilpa

To Vishal Chadha

Dear Sir,

We can fix up the meeting for 10th February. Please let me know the convenient time for the same.



As you have mentioned regarding the proposed on email. We can work out the numbers based on below working if you give your consent on the same.

Amount paid R. 24,94,087/-

Amount already due is Rs.77,48,512/- (as we have already completed fifth floor slab.

We request you to remit 10% of BSP within next 60 days and the balance of 80% of BSP and other charges can be linked to offer of possession.

As you must be aware that the unit was booked under subvention scheme valid till October 2021.

Hope you will find in above order.

Thanks & regards

Shilpa Malik

CRM

20. That on 03.02.2021 the respondent sent mail calling upon the complainants to give acceptance to payment plan of 10:10:80 and sign addendum, the payment plan was never agreed upon and the change was unilateral. On 19.04.2021 the complainants proposed to change the payment plan to 10:05:85 and after discussion on 29.06.2021 the revised plan of 10:05:85 was accepted. Further, on 02.07.2021 the complainants received mail, whereby the respondent agreed upon the revised payment conditions and adjust outstanding of balance payment of Rs.2.5 Lac. Further on 09.07.2021, the CRM Shipa Malik sent a mail accepting the revised payment plan of 10:05:85 agreed to give Rs.30,000/- as interest on Rs.2.5 lakh. On 23.09.2021, the CRM Shilpa Malik again sent a mail and agreed upon that sum of Rs.2.80 lakh will be adjusted from the 5% demand for internal plaster work in October 2021.
21. That on 14.03.2022, CRM Shilpa Malik sent another mail calling upon the complainants to sign the old addendum sent vide mail dated 03.02.2021 containing the old payment plan of 10:10:80 and extended the date of possession to future uncertain date in terms of RERA Extension certificate granted but refused to give any specific date of possession and called upon the complainants, to make the payment for internal plaster work without any specific demand notice under threat to cancel allotment if addendum is not signed or the conditions were not agreed upon.

22. That as per revised payment schedule of 10:5:85 to be documented as agreed upon in the mail dated 09.07.2021 and mail dated 23.09.2021 and called upon to change unit type from premium to standard against mail dated 12.04.2022, the respondent instead sent a cancellation notice dated 31.07.2022 to the complainants and forfeited the entire amount of Rs.24,94,087/-.
23. The Authority observes that the respondent, despite the complainant's prolonged default, continued to engage constructively. On 22.08.2019, an email was sent by the respondent to the complainants informing the complainants that subvention scheme is not available anymore with any of the banks they can offer terms and condition by changing the payment schedule. Thereafter, numerous email communication inter-se the parties i.e., 18.06.2018, 22.06.2018, 20.06.2018, 04.12.2018, 17.12.2018, 22.05.2019, 01.08.2019 with regard to mutual payment plan are on record but no outcome was achieved in between the parties. Further, as per email dated 06.02.2020, the respondent company offered the possession linked payment plan (10:10:80) but the complainants have paid the outstanding dues as per the said payment plan. It is notable that the respondents have sent several reminders as per the payment plan agreed between the parties, to make payment of the amount due, but the same had no positive results and ultimately laid to cancellation of unit vide email dated 31.07.2022.
24. Further, the Authority cannot ignore the fact that the respondent has completed the construction of the project and obtained the occupation certificate on 02.11.2022 from the competent authority. The complainants have paid 12.10% of the sale consideration and the last payment was paid by the complainants on 02.07.2018. Section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 13.07.2018 is held to be valid. But while cancelling the



unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. However, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928*** and ***Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, 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 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."

25. Also, Hon'ble Apex Court in *Civil Appeal no.3334 of 2023* titled as *Godrej Projects Development Limited Versus Anil Karlekar* decided on 03.02.2025 has held that 10% of BSP is reasonable amount which is liable to be forfeited as earnest money.
26. 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, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.24,94,087/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration i.e., Rs.1,72,95,784/-. The respondent is directed to return the remaining amount along with interest on such balance amount 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 termination/cancellation 31.07.2022 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.

27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The cancellation letter dated 31.07.2022 is held to be valid in eyes of law. Therefore the respondent/promoter is directed to refund the paid-up amount of Rs.24,94,087/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration i.e.,



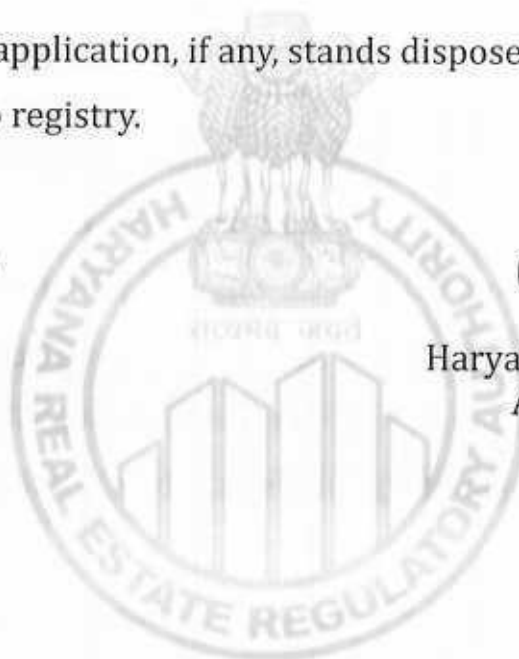
Rs.1,72,95,784/- to the complainants along with interest on such balance amount at the rate of 10.85% as prescribed under rule 15 of the Rules, from the date of termination/cancellation 31.07.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

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

28. The complaint and application, if any, stands disposed of.

29. File be consigned to registry.

Dated: 11.12.2025


(Phool Singh Saini)

Member
Haryana Real Estate Regulatory
Authority, Gurugram

HARERA
GURUGRAM