

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

Complaint no. : 2194 of 2025
Date of complaint : 01.05.2025
Date of order : 22.01.2026

Sanjeev Kumar Bhola
R/o: 3B/5, Old Rajender Nagar, Gangaram
Hospital Marg, New Delhi- 110060

Complainants

Versus

M/s Ireo Grace Realtech Private Limited
Regd. Office at: - 304, Kanchan House,
Karampura, Commercial Complex, New Delhi-
110015
Corporate Office at: 5th Floor, Orchid Centre,
Golf Course Road, Sector-53, Gurugram-
122002.

Respondent

CORAM:
Phool Singh Saini

Member

APPEARANCE:
Rahul Bhardwaj (Advocate)
M.K Dang (Advocate)

Complainant
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 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:

Sr. No.	Particulars	Details
1.	Name and location of the project	"The Corridors" at sector 67A, Gurgaon, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project Area	37.5125 acres
4.	Licensed Area	37.5125 acres
5.	DTCP license no.	05 of 2013 dated 21.02.2013
	Validity of License	Upto 20.02.2021
	Name of licensee	M/s Precision Realtors Pvt. Ltd. and 5 others
6.	RERA Registered/ not registered	Registered Registered in 3 phases Vide 378 of 2017 dated 07.12.2017 (Phase 1) Vide 377 of 2017 dated 07.12.2017 (Phase 2) Vide 379 of 2017 dated 07.12.2017 (Phase 3)
	Validity Status	30.06.2020 (for phase 1 and 2) 31.12.2023 (for phase 3)
7.	Unit no.	1003, 10 th Floor, Tower B7 (As per page no. 39 of complaint)
8.	Unit area admeasuring	1539.84 sq. ft. (As per page no.39 of complaint)
9.	Date of approval of building plan	23.07.2013 (As per project details)
10.	Date of allotment letter	07.08.2013 (As per page no. 27 of the complaint)
11.	Date of environment clearance	12.12.2013 (As per project details)
12.	Date of execution of builder buyer agreement	07.11.2014 (As per page no.36 of complaint)
13.	Date of fire scheme approval	27.11.2014 (As per project details)
14.	Possession clause	13. Possession and Holding Charges "Subject to force majeure, as defined herein and further subject to the Allottee having complied with



		<p><i>all its obligations under the terms and conditions of this Agreement and not having default under any provisions of this Agreement but not limited to the timely payment of all dues and charges including the total sale consideration, registration chares, stamp duty and other charges and also subject to the allottee having complied with all the formalities or documentation as prescribed by the company, the company proposes to offer the possession of the said apartment to the allottee within a period of 42 months from the date of approval of building plans and/or fulfillment of the preconditions imposed thereunder(Commitment Period). The Allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days (Grace Period), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the Company.</i></p> <p style="text-align: right;">(Emphasis supplied)</p> <p>(As per page no.53 of complaint)</p>
15.	Due date of possession	23.01.2017 (Calculated to be 42 months from the date of approval of building plans) Note: Grace Period is not allowed.
16.	Total sale consideration	Rs.1,65,69,085/- (As per the payment plan on page no. 72 of complaint)
17.	Amount paid by the complainants	Rs.72,10,277/- (As per receipts on page no. 88-95 of the complaint)
18.	Reminders for payment	<p>For Sixth Instalment: 22.06.2016, 22.07.2016 and 12.08.2016</p> <p>For Seventh Instalment: 23.08.2016, 16.09.2016 and 07.10.2016</p> <p>For Eighth Instalment: 25.10.2016, 21.11.2016 and 14.12.2016</p>
19.	E-mail sent by complainant to respondent requesting for cancellation of unit	21.11.2016 (As per page no. 45 of reply)
20.	Cancellation Letter	11.01.2017 (As per page no. 96 of the complaint)
21.	Occupation Certificate	27.01.2022 (As per page no. 61 of reply)
22.	Offer of possession	Not offered



B. Facts of the complaint

3. The complainant has made the following submissions by filing the present complaint on 01.05.2025: -

- a) That induced by the attractive advertisements, assurances, representations, and promises made by the respondent and, thus, believing the same to be correct and true, the complainant sought an allotment of a unit in the project of the respondent. Vide a letter dated 07.08.2013, the complainant was offered an allotment of unit no. CD-B7-10-1003, 10th Floor, tower B7, admeasuring 1534.84 sq. ft. for a basic sale price of Rs.9,200 per sq. ft. Furthermore, what is pertinent to note that the complainant out of numerous payment plan chose construction linked payment plan to purchase the said unit from the respondent.
- b) That pursuant to executing the allotment letter with the complainant, the respondent executed a buyer's agreement with the complainant. The said agreement contained various one sided and arbitrary clauses, but yet the complainant could not negotiate on any of the clauses, since any disagreement or cancellation would have led to forfeiture of the earnest money. As a result, the complainant herein was only required to sign on the dotted line.
- c) That the complainant on execution of the buyer's agreement with the respondent was allotted an unencumbered, without any lien or charge unit. Accordingly, the respondent allotted the unit bearing no. CD-B7-10-1003, 10th Floor, Tower B7, admeasuring 1534.84 sq. ft. for a basic sale consideration of Rs. 1,41,66,528/-.
- d) That the respondent has miserably failed to comply with the terms and conditions of the buyer's agreement, despite receiving more than the amount the complainant was obligated to pay to the respondent for



purchasing the unit. The respondent took more amount than the promised amount as per the terms and conditions of the buyer's agreement. The complainant has paid more than the agreed amount for the unit as per the payment plan i.e., Rs. 72,10,277/-.

- e) That the complainant was constrained to pay the extra amount to the respondent under the apprehension that the complainant may lose their unit which has been purchased by their hard-earned money. The said agreement contained various one sided and arbitrary clauses due to which the complainant could not negotiate on any of the clauses, since any disagreement or cancellation would have led to forfeiture of the earnest money.
- f) That in urgent need of a space to reside and from the pace of construction work, the complainant had realised that the respondent has no intention of completing the project within the agreed time limit. Therefore, the complainant stopped making payment after May 2015 and communicated to the respondent about their intention to withdraw from the project. The respondent agreed to complainant's request and assured initiate their refund at the earliest. The complainant waited for quite some time but there was no refund provided by the respondent. The complainant upon not receiving the refund as promised, visited the office of the respondent where complainant was assured that the company shall soon be initiating their refund. However, despite repeated assurances, the respondent failed to refund complainant's amount. A cancellation letter dated 11.01.2017 was sent to the complainant.
- g) As per Section 18 of the RERA Act, if a promoter fails to discharge its obligations as per the rules and regulations or in accordance with the agreement executed between the allottee and the promoter, then the promoter would be liable to pay compensation to such allottees. The



word 'shall' indicate that this provision is mandatory and it is the absolute right of the allottee/ homebuyer which accrues on account of promoter's failure to discharge its obligations. Therefore, the case of the complainant is covered by Section 18 of the RERA Act and the complainant is entitled to seek refund along-with applicable interest. Further, as per Section 19(4) of the RERA Act, 2016, the Promoter is entitled to a refund of the amount paid along with interest.

- h) That there is no undue delay on part of the complainant in filing the present complaint before this Authority. The balance of convenience is entirely in the favour of the complainant and against the offending respondent.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to refund the amount paid by the complainant to the respondent along with interest accrued over the years as per the RERA Act.
 - II. Direct the respondent to pay a sum of Rs.1,00,000/- to the complainant towards litigation costs.
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 vide its reply dated 08.10.2025: -
- a) That the present complaint is barred by limitation as the cause of action pertaining to the grant of refund first arose when the respondent issued a letter of cancellation way back on 11.01.2017.



- b) That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.
- c) That the complainant, after checking the veracity of the project namely, 'The Corridors', Sector 67-A, Gurgaon had applied for allotment of a unit vide booking application form. The complainant had agreed to be bound by the terms and conditions of the booking application form.
- d) That based on the said application, respondent vide its allotment offer letter dated 07.08.2013 allotted to the complainant unit no. CD-B7-10-1003 having tentative super area of 1539.84 sq. ft. for a sale consideration of Rs.1,65,69,085.74/- which was exclusive of service tax, stamp duty, registration charges etc. The buyer's agreement was executed between the parties on 07.11.2014.
- e) That vide letter dated 13.12.2013, the respondent had called upon the complainant to sign the buyer's agreement. However, due to detection of formatting deficiency in the agreement, the same was called back by the respondent vide letter dated 24.12.2013 and thereafter a revised buyer's agreement was sent to be signed vide letter dated 22.03.2014.
- f) That the respondent raised payment demands from the complainant in accordance with the mutually agreed terms and conditions of the allotment as well as of the payment plan. The respondent vide payment request dated 14.04.2013 had raised the payment demand towards the second instalment demand for the net payable amount of Rs.17,20,856/- However, the complainant did not make payment of the said instalment, and the respondent was constrained to send Reminder I dated 14.05.2013. Despite this, the complainant did not made the entire payment. The remaining amount payable by the complainants was demanded by the respondent being arrears in the next instalment.



- g) That the respondent vide its payment request dated 18.03.2014 raised the third instalment demand for the net payable amount of Rs. 21,46,454.49 including the previous arrears. However, the demanded amount was paid only after reminders dated 13.04.2014 and 04.05.2014 were sent by the respondent to the complainants.
- h) That the respondent vide its payment request dated 06.07.2015 raised the fourth instalment demand for the net payable amount of Rs. 21,42,965.24. The complainant paid only Rs.9,21,537/- whereupon the respondent was constrained to send reminder dated 21.08.2015.
- i) That the respondent vide its payment request dated 21.04.2016 raised the fifth instalment demand for the net payable amount of Rs.18,83,794.06. However, the complainant failed to remit the demanded amount even after reminders dated 17.05.2016 and 08.06.2016 were sent by the respondent.
- j) That the respondent vide its payment request dated 22.06.2016 raised the sixth instalment demand for the net payable amount of Rs. 37,71,484.18 including previous arrears. However, the complainant failed to remit the demanded amount despite reminders dated 22.07.2016 and 12.08.2016 sent by the respondent.
- k) That respondent vide its payment request dated 23.08.2016 raised the seventh instalment demand for the net payable amount of Rs. 53,95,636.18 including previous arrears of Rs.37,71,484. However, the complainant failed to remit the demanded amount even after reminders sent by the respondent dated 16.09.2016 and 07.10.2016.
- l) That respondent vide its payment request dated 25.10.2016 raised the eighth instalment demand for the net payable amount of Rs.68,76,038.54 including previous arrears. However, the complainant failed to remit the



- total demanded amount even after reminders dated 21.11.2016 and 14.12.2016 sent by the respondent.
- m) That thereafter, the complainant requested the respondent to cancel his unit. The complainant also met the CRM team of the respondent to cancel the unit in question as he was not having the requisite funds to purchase the same. The complainant further requested the respondent to refund the amount paid by him as per the terms and conditions agreed between the parties in the apartment buyer's agreement after deducting forfeiture, brokerage charges and delayed interest etc. after the unit is sold to a third party. Accordingly, the unit in question was cancelled by the respondent vide cancellation letter dated 11.01.2017.
- n) That on account of non-fulfilment of the contractual obligations by the complainant despite several opportunities extended by respondent the allotment of the complainant was cancelled and the earnest money deposited by the complainant along with other charges were forfeited vide Cancellation Letter dated 11.01.2017 in accordance with Clause 21 read with Clause 21.3 of the Apartment Buyer's Agreement and the complainant is now left with no right, claim, lien or interest whatsoever in respect of the said booking/allotment.
- o) That despite failure of the complainant to adhere to his contractual obligations of making payments in a timely manner, the respondent has completed the construction of the tower in which the unit previously allotted to the complainant was located.
- p) That thus, the complaint is liable to be dismissed being absolutely time barred. Without prejudice to the rights of the respondent, it is submitted that if for any reason, this Hon'ble Authority comes to the conclusion that the complaint is not liable to be dismissed on the ground of limitation, in that event the complainant is entitled to receive the amount of refund of



Rs. 27,84,522/- after deduction of forfeiture of earnest money, brokerage charges, delayed interest etc. as per the terms and conditions contained in the buyer's agreement as agreed by the complainant himself.

- q) That in case the Authority comes to the conclusion that the said amount of Rs. 27,84,522/- is not to be refunded to the complainant, in that event it is necessary to mention here that earnest money agreed between the parties as per the booking application form and Buyer's Agreement is 20% of the sale consideration of the unit. This is a contractual term agreed between the parties out of their own free will much before coming into force of RERA Act, 2016 and the same cannot be varied unilaterally by anyone. In fact, the complainant himself agreed to obtain the amount arrived at by the respondent keeping in mind the terms and conditions of the apartment buyer's agreement, so the present complaint is absolutely misconceived and untenable.
- r) That thus, according to agreed clauses of the Booking Application Form and the Apartment Buyer's Agreement, timely payment of instalments within the agreed time schedule was the essence of allotment. The complainant is real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, his calculations went wrong on account of slump in the real estate market, and the complainant did not possess sufficient funds to honour his commitments. Left with no other option, the respondent was constrained to cancel the unit in question in 2017, and the present complaint has been filed by the complainant in the year 2025 by concealing the true and correct facts. The present complaint is totally misconceived, untenable, barred by limitation on the face of it and is liable to be dismissed outrightly.



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

E. Jurisdiction of the authority

8. 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

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be
10. the 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 allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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



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.

F. Findings on the objections raised by the respondent.

F. I Objection regarding complainant is in breach of agreement for non-invocation of arbitration.

13. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

"35. Dispute Resolution by Arbitration

"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".

14. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of



the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

15. Further, in ***Aftab Singh and Ors. v. Emaar MGF Land Ltd and Ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. Further, while considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court ***in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in Revision Petition No. 2629-30/2018 in Civil Appeal No. 23512-23513 of 2017 decided on 10.12.2018*** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. Therefore, in view of the above judgements and considering the provision of the Act, the Authority is of the view that complainant is well within his right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation

in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.II Objections regarding complaint being barred by limitation.

16. The respondent contended that the present complaint is not maintainable and barred by the law of limitation. The Authority observes that the cause of action arose in January 2017, when the cancellation letter was issued to the complainant. However, post cancellation of the unit, the respondent has failed to refund the refundable amount to the complainant so far, which clearly shows a subsisting liability. Moreover, 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 1969(2) SCC 554* and where in it was held that a reasonable amount by way of earnest money be deducted on cancellation and the amount so deducted should not be by way of damages to attract the provisions of section 74 of the Indian Contract Act,1972. Thus, the objection of the respondent w.r.t. the complaint being barred by limitation stands rejected.

F. III Objection regarding the complainant being investor.

17. The respondent has taken a stand that the complainant is an investor and not the consumer, therefore, he is not entitled to the protection of the Act and entitled to file the complaint under Section 31 of the Act. The Authority observes that any aggrieved person can file a complaint against the promoter if it 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 buyer's agreement, it is revealed that the complainant is a buyer and has paid Rs.72,10,277/- 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;"

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between the parties, it is crystal clear that the complainant is an 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 Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in **Appeal No. 0006000000010557** titled as **M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And Anr.** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings regarding relief sought by the complainants

G.1 Direct the respondent to refund the amount paid by the complainant to the respondent along with interest accrued over the years as per the RERA Act.

19. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest as per Section 18(1) of the Act and the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or



(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

20. Clause 13 of the buyer's agreement (in short, the agreement) dated 07.11.2014, provides for handing over possession and the same is reproduced below:

13. Possession and Holding Charges

"Subject to force majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having default under any provisions of this Agreement but not limited to the timely payment of all dues and charges including the total sale consideration, registration chares, stamp duty and other charges and also subject to the allottee having complied with all the formalities or documentation as prescribed by the company, the company proposes to offer the possession of the said apartment to the allottee within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder(Commitment Period). The Allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days (Grace Period), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the Company."

(Emphasis supplied)

21. The respondent promoter has proposed to handover the possession of the subject unit within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder plus 180 days grace period for unforeseen delays beyond the reasonable control of the company i.e., the respondent/promoter.



22. On a bare reading of the clause 13 of the agreement, it becomes apparently clear that the possession in the present case is linked to the “fulfilment of the preconditions” which is so vague and ambiguous in itself. Nowhere in the agreement it has been defined that fulfilment of which conditions forms a part of the pre-conditions, to which the due date of possession is subjected to in the said possession clause. If the said possession clause is read in entirety the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the “fulfilment of the preconditions” has been mentioned for the timely delivery of the subject apartment. It seems to be just a way to evade the liability towards the timely delivery of the subject apartment. According to the established principles of law and the principles of natural justice when a certain glaring illegality or irregularity comes to the notice of the adjudicator, the adjudicator can take cognizance of the same and adjudicate upon it. The inclusion of such vague and ambiguous types of clauses in the agreement which are totally arbitrary, one sided and totally against the interests of the allottees must be ignored and discarded in their totality. In the light of the above-mentioned reasons, the Authority is of the view that the date of sanction of building plans i.e., 23.07.2013 ought to be taken as the date for determining the due date of possession of the unit in question to the complainant. Therefore, the due date of possession comes out to be 23.01.2017.
23. The complainant was allotted a unit bearing no. 1003, 10th floor, in tower-B7, admeasuring 1539.84 sq. ft., in project of the respondent named “The Corridors” situated at Sector-67A, Gurugram vide allotment letter dated 07.08.2013, and buyer’s agreement was also executed between the complainant herein and the respondent regarding the said allotment on

- 07.11.2014. The complainant has paid an amount of Rs.72,10,277/- against the sale consideration of Rs.1,65,69,085/-.The complainant has submitted that due to poor progress of work at the project site, the complainant sought refund of the entire amount deposited with the respondent, however, they refused to return the same. However, no document in support of their claim has been placed on record by them. The occupation certificate for the subject unit has been obtained by the respondent promoter on 27.01.2022.
24. The respondent has submitted that reminder letters dated 22.06.2016, 22.07.2016, 12.08.2016, 23.08.2016, 16.09.2016, 07.10.2016, 25.10.2016, 21.11.2016 and 14.12.2016 were sent to the complainant to pay the outstanding dues. However, the complainant defaulted in making payments and the respondent was constrained to cancel the allotment of the unit vide cancellation letter dated 11.01.2017. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 11.01.2017 is valid or not ?
25. On consideration of documents available on record and submissions made by both the parties, the Authority is of the view that on the basis of provisions of buyer's agreement, the complainant has paid an amount of Rs.72,10,277/- against the total sale consideration of Rs.1,65,69,085/- and no payment was made by the complainant after 31.10.2015. Although the respondent/builder issued nine reminders calling upon the allottee to clear the outstanding dues, the complainant had already conveyed his unwillingness to continue with the project and accorded consent for cancellation on 20.05.2016 i.e., before the expiry of due date of possession (23.01.2017). This fact stands corroborated by the e-mail dated 21.11.2016, placed on record by the respondent at pages 44-45 of the reply. Therefore, the unit allotted to the complainant was cancelled by the respondent on 11.01.2017. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the

buyer's agreement dated 07.11.2014 as well as request of the complainant is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. The respondent has submitted that earnest money is clearly defined in the booking application form and builder buyer's agreement as 20% of the sale consideration of the unit.

26. The Authority after taking into consideration the scenario prior to the enactment of the Act, 2016 as well as the judgements passed by Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, has already prescribed vide Regulation 11(5) of 2018 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. Therefore, in view of the above, the contention of the respondent w.r.t forfeiture of 20% of the sale consideration/cost of the property to be considered/treated as earnest money stands rejected.
27. Further, 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***, 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."

28. In so far as the relief seeking refund of the amount paid along with interest under the provisions of the RERA Act is concerned, the respondent is directed to refund the paid-up amount of Rs.72,10,277/- after deducting 10% of the sale consideration being earnest money within the timelines provided in Rule 16 of the Haryana Rules, 2017 *ibid*. However, the Authority is not inclined to grant interest on the said refund. Even if it is assumed that there was a delay on the part of the respondent in effecting the refund after deduction of the earnest money, the complainant/allottee was equally required to exercise due diligence and invoke the remedies available under



law within a reasonable period. Admittedly, the allotment was cancelled in the year 2017, whereas the present complaint has been filed only in the year 2025, after an unexplained and inordinate delay of approximately 8 years. Such prolonged inaction disentitles the complainant from claiming interest for the intervening period. Grant of interest in these circumstances would amount to rewarding laches and would result in unjust enrichment, which is impermissible in law. The law is well settled that a party who sleeps over his rights and approaches the court belatedly is not entitled to equitable relief. Accordingly, while the respondent is directed to refund the amount paid by the complainant after deduction of 10% earnest money in accordance with Regulation 11(5) of 2018, the claim for interest under the RERA Act is hereby rejected.

G.II Direct the respondent to pay a sum of Rs.1,00,000/- to the complainant towards litigation costs.

29. The complainant is seeking the above-mentioned relief with respect to compensation. The Hon'ble Supreme Court of India in *Civil Appeal nos. 6745-6749 of 2021 titled as "M/s Newtech Promoters and Developers Ltd. V/s State of UP and Ors."* has held that an allottee is entitled to claim compensation and 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 and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

H. Directions of the authority: -

30. 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 promoter as per the functions entrusted to the authority under Section 34(f) of the Act: -

- I. The respondent/promoter is directed to refund the paid-up amount of Rs.72,10,277/- to the complainant after deducting 10% of the total sale consideration of Rs.1,65,69,085/- being earnest money 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 directions given in this order and failing which legal consequences would follow.

31. Complaint stands disposed of.

32. File be consigned to the registry.



(Phool Singh Saini)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.01.2026

HARERA
GURUGRAM