

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

Complaint no.: 6506 of 2024
Date of filing of complaint: 07.01.2025
Date of Order: 23.12.2025

Brajesh Kumar Khurana
R/o: - E-11/C, MIG Vatika Apartments, Mayapuri,
South West Delhi-201011

Complainant

Versus

M/s KS Propmart Private Limited.
Regd. office at: A-22, Hill View Apartments, Vasant
Vihar, New Delhi-110057
Corporate office at: Plot No. 14, Ground Floor,
Sector- 44, Institutional Area, Gurugram- 122003
Haryana

Respondent

CORAM:
Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:
Shri Manoj Shukla
Shri Jagdeep Yadav

**Complainant
Respondent**

ORDER

1. This 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 allottee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Park Street", Sector 85, Gurugram
2.	Area of project	2.85 acres
3.	Nature of project	Commercial
4.	DTCP license no. and validity	100 of 2013 dated 02.12.2013 valid up to 01.12.2019
5.	Name of licensee	KS Propmart Pvt. Ltd.
6.	RERA registration and validity	41 of 219 dated 30.07.2019 valid up to 30.06.2022
7.	Extension of RERA registration	Extension no. 07 of 2023 dated 10.04.2023 valid up to 30.06.2023
8.	Unit and floor no.	G-30 & Ground floor (As per page no. 60 of the complaint)
9.	Area admeasuring	281.91 sq. ft. (Carpet area) and 563.82 sq. ft. (As per page no. 61 of the complaint)
10.	Allotment letter	16.12.2020 (As per page no. 41 of the complaint)
11.	Date of execution of memorandum of understanding	16.12.2020 (As per page no. 44 of the complaint)
12.	Date of execution of agreement for sale	26.04.2022 (As per page no. 57 of the complaint)
13.	Basic sale consideration	Rs.71,34,014/- (As per page no. 61 of the complaint)
14.	Total sale consideration	Rs.74,66,668/- (Including EDC/IDC of Rs.3,32,654/-) (As per page no. 17 of the reply)
15.	Amount paid by the complainant	Rs.50,32,589/- (As per SOA dated 17.05.2024 on page no. 109 of the complaint)
16.	Assured return clause	3. Lease Rental 3.1.1 Pre-Possession lease rental: No pre possession lease rental is payable to the allottee for the period of first 24 months starting from the

		<p>date of 07.11.2020. If the filing of application for occupation certificate is delayed beyond 24 months from the date of 07.11.2020 for any reason other than force majeure as defined herein then the developer shall pay pre possession lease rental per month to be calculated after taking into account received consideration to the allottee on pro-rata basis from 25th month till the application for occupation certificate is filed for retail block of the building.</p> <p>(As per page no. 26 of the reply)</p>
17.	Possession clause	<p>7. Possession of the unit for Commercial Usage</p> <p>7.1 Schedule for possession of the said unit for commercial usage: The promoter agrees and understands that timely delivery of possession of the unit for commercial usage along with parking (if applicable) to the Allottee(s) and the common areas to the association of allottees or the competent authority within a period of 60 months with additional grace period of 5 months from the date of execution of this agreement subject to such extension as may be permitted by Haryana Real Estate Regulatory Authority, as the case may be, is the essence of the agreement.</p> <p>(As per page no. 68 of the complaint)</p>
18.	Due date of possession	<p>26.09.2027</p> <p>(Note: Due date to be calculated 60 months from the date of execution of agreement i.e., 26.04.2022 plus grace period of 5 months)</p>
19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered
21.	Cancellation letter	<p>28.05.2024</p> <p>(As per page no. 101 of the complaint)</p>

22.	FIR lodged against the respondent	12.06.2024 (As per page no. 102 of the complaint)
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B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

- I. That in September 2020, the complainant received a marketing call from a real estate agent who represented himself as authorised agent of the respondent and marketed a commercial project 'Park Street' situated at sector 85 Gurugram. Marketing staff of respondent also came to visit complainant at his residence and gave information about the project "Park Street".
- II. That the officials of the respondent with malafide intention and to induce the complainant to purchase the said unit flat promised that the construction of the said project will be completed within a very short span of time and until then the complainant will get an assured rental from the respondent. Believing on representations and assurance made by the respondent regarding the timely possession and the assured rental plan on the aforesaid project, the complainant booked a unit and was allotted a unit bearing number G30 at the ground floor having a carpet area of 281.91 sq. ft.
- III. That at the time of booking the said unit, the officials of the respondent have categorically stated that the possession of the said unit will be handed over to within 3 and half years i.e., 42 months and the same is being incorporated in the booking form.
- IV. That being lured by the false commitments of the respondent company, the complainant paid an advance amount of Rs.24,01,809/- to the respondent to get the booking confirmed for the unit bearing no. G30 having carpet area of 281.91 sq. ft. and super area of 563.82 sq. ft. for the total sale consideration of Rs.74,66,668/-, inclusive of EDC/IDC.

Pursuant to making payment thereto by the complainant, the respondent builder issued an allotment letter for the unit bearing no. G30 to the complainant.

- V. That the respondent had also executed a MOU with the complainant on 16.12.2020. As per article 3 of the said MOU, pre-possession lease rental shall be payable by the respondent to the complainant if, the occupation certificate is delayed beyond 24 months, however, till date no pre-possession lease rental has been paid by the respondent to the complainant.
- VI. That the respondent has acted in contravention to the rules of RERA as the respondent has taken way much more than amount from the complainant than allowed before executing the BBA/ATS with the complainant. The respondent malafidely and mischievously took out the terms from the MOU on the pretext of which the respondent lured the complainant to book a unit with them.
- VII. That despite receiving a hefty amount from the complainant than allowed before the execution of agreement to sell/BBA, the respondent deliberately avoided the execution of the agreement to sell/BBA and despite of chasing the respondent's official multiple times, the respondent did not bother to execute agreement to sell.
- VIII. That finally after passing of 1 year and 4 months from the date of issuance of allotment letter, the respondent company executed the agreement to sell with the complainant on 26.04.2022 and to the utter shock and surprise of the complainant, the time to handover the possession of the unit was stipulated to be of 60 months from the date of execution of the ATS, which was in complete contravention to the terms and conditions as contained in the booking form. Not only this, but the respondent also played a fraud upon the complainant by not

- incorporating the clause of assured rentals within the agreement to sell.
- IX. That after coming to know about the aforesaid fact, the complainant took the issue with the concerned official of the respondent who brushed aside the said fact and said to the complainant that the clause mentioned in the ATS is for the name's sake as the respondent company is going to handover the possession within 2 years of the execution of this ATS. The complainant having no other option as he was trapped into the lies laid by the respondent, the complainant had no option but to sign on the dotted line and to accede to the demand of the respondent company as they were in the dominant position.
- X. That just after the execution of the agreement to sell, the respondent company raised a demand of Rs.30,58,822/- and the complainant paid the same to the respondent on 04.05.2022.
- XI. That after chasing the respondent multiple times on various modes, finally, the complainant received an acknowledgement from the respondent regarding the assured rental vide letter dated 17.04.2023 wherein, the respondent stated that payment of assured rentals/returns are going to be adjusted towards the balance sale consideration.
- XII. That the unjust, unlawful, illegal, and arbitral act of the respondent did not stop there. On 16.05.2023, the complainant visited the office of the respondent company and he came to know about the fact that the respondent has illegally, arbitrarily and without his permission increased the area of the shop and the complainant also received an email on 18.05.2024 from the respondent stating therein that area of the shop has been increased by a margin of 180.52 sq. ft. which is in

- complete contravention to the Rules, 2017 as well as agreement to sell duly executed by the respondent company with the complainant.
- XIII. That the respondent raised demand from the complainant on the increased area, upon which the complainant asked the concerned official of the respondent to not increase the area as it was illegal, arbitral and against the duly executed agreement between the parties as well as against the rules and laws of RERA.
- XIV. That the respondent's intent was to cheat and to extort the money as much as they could from the complainant which is clearly evident from the fact that the price per sq. ft. charged by the respondent on the increased area of the unit was too exorbitant than the agreed rates between the complainant and the respondent. The rate per sq. ft. agreed between the parties was of Rs.12,184/- per sq. ft. however, the rates charged by the respondent on the increased area was of Rs.16,445/-.
- XV. That the complainant was shooting mails to the concerned officials regarding the said aspect and out of sudden the respondent sent a letter to the complainant that his unit has been cancelled as they have tried to contact the complainant multiple times but there has been no response from the complainant's side. The respondent has mischievously and with bad intent has cancelled the unit of the complainant by citing the reason which are contrary to the facts. The complainant was very much in touch with the officials of the respondent and was writing mails to them. The complainant had written numerous emails and communicated on WhatsApp with the officials of the respondent and was continuously asking them not to increase the area of the unit.

- XVI. That along with the cancellation letter, the respondent company has also sent WhatsApp messages to the complainant mentioning that his cheque of refund has been duly prepared by the respondent company and have also sent an image of the cheque to the complainant. The complainant objected on the calculation sheet and the mode of calculation of the total amount, however, considering that he is getting his hard-earned money back, the complainant went to the office of the respondent, upon which the respondent did not handover the cheque to the complainant and instead of that criminally intimidated and threatened the complainant.
- XVII. That finding no alternative the complainant filed a police complaint before the Police Station of Sector 85, bearing number 13227061241037 dated 12.06.2024 against the respondent for cheating and playing a fraud upon the complainant. The said complaint is under the investigation and the respondent has been called by the concerned investigating officer of the complaint multiple times.
- XVIII. That the complainant has already paid an amount of Rs.55,96,582/- out of the total sale consideration of since the booking till date to the respondent. The complainant had not defaulted in any payment, and it was made as and when the demand was raised by the respondent.
- XIX. That the building plan of the project has been sanctioned by the concerned authorities in 2013 and the respondent has not given possession to any of the single allottee since then. Further, despite of getting extensions in the dates of completion by the concerned authorities, the project is still way far from the completion and would take years to be completed. The license granted by the Authority has also been expired. The complainant visited the project site of the respondent and was shocked to look at the state of affairs. No work was

being carried out by the respondent. Only the partial structure was erected by the respondent. The state of affairs of construction and the conduct of the respondent as demonstrated above clearly reflects that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the unit without completing the work and not handing over the possession on time.

- XX. That despite receiving more than 70% of the total sale consideration of the unit on time, and after numerous requests and reminders over phone calls and personal visits by the complainants, the respondent is no way nearby of getting the occupation certificate of the project. The construction of the unit is nowhere near to the completion and the respondent has played upon fraud on the complainant through one mean or by the other and has been deceiving the complainant on one pretext or the other as described above; which clearly depicts the ulterior motive of respondent to fraudulently extract money from the innocent people.
- XXI. That due to this omission on the part of the respondent and because of its fraudulent and illegal acts, the complainant has been suffering from disruption on there working arrangement, mental torture, and agony and also continues to incur severe financial losses.
- XXII. That the possession of any of the units in the project have not been handed over to any of the allottee. Further, it is pertinent to mention here that the respondent has delayed the construction of the said project and caused un-due hardships to the complainant. At present the respondent is least worried about completing the construction work and handing over the possession to the unit buyers. As such, the construction work that is being carried out at the construction site is

bare minimal and at a very slow rate. There is no chance of completion of construction in near future.

XXIII. That since the complainant is highly susceptible of the respondent's intent to peacefully handover the possession of the unit to the complainant, considering the previous acts and conduct of the respondent and in addition to that, his unit has also been illegally cancelled by the respondent, the complainant having left with no other option wants to withdraw from the project as the promoter has not acted in accordance with the terms of the ATS/MOU/Allotment Letter and booking form and hence as per obligations duly engraved in section 12, 11 (4), 19(4), the promoters are liable to refund the paid amount and assured rental along with interest at the prescribed rate i.e., 12% p.a.

XXIV. That the cause of action for filing of the present complaint arose when the respondent got signed an illegal and arbitrary ATS from the complainant. The cause of action subsequently arose on when the respondent illegally and arbitrarily increased the area of the unit. The cause of action arose when the respondent mischievously and illegally cancelled the unit of the complainant. The cause of action further arose when the respondent did not compute the refund amount fairly and as per legal norms. The cause of action further arose when the respondent did not pay the refund amount to the complainant. The cause of action is continuous one and still subsisting, hence the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to refund the entire amount paid by the complainant along with prescribed interest from the date of respective deposit till its actual realization.

- ii. Direct the respondent to pay interest at the rate of 14% on the Rs.55,96,582/- paid as booking/upfront amount.
 - iii. Direct the respondent to pay the assured rental for 27 months to the tune of Rs.14,68,989/-.
 - iv. Direct the respondent to pay a compensation of Rs.1,00,000/- towards legal expenses incurred by the complainant.
 - v. Direct the respondent to pay an amount of Rs.2,00,000/- to the complainant towards mental and physical harassment.
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:
- i. That the complainant made an application for provisional allotment of a unit bearing no. G-30 located on ground floor in the project developed by the respondent known as "VSR 85 Avenue" which is now known as "Park Street" vide an application form.
 - ii. That one of the offers made by the respondent at that point of time was that the respondent will pay an assured return at the rate of Rs.44.74/- per sq. ft. of the super area from 01.11.2019 till the notice for the offer of possession subject to force majeure conditions and other conditions mentioned in the MOU. That the complainant accordingly entered into an MOU dated 27.11.2018 with the respondent determining all the rights and liabilities of the parties.
 - iii. That as per MOU, the price of the unit for an area admeasuring 563.82 sq. ft. was Rs.74,66,668/- exclusive of EDC, IDC, Interest Free Maintenance Security (IFMS), Electricity Connection Charges, Power

- Back up charges, Air Conditioning Charges, service tax and such other levies/cessess/VAT as may be imposed by the any statutory authority.
- iv. That the complainant has made payment of Rs.23,72,612/- including service taxes to the respondent at the time of allotment. However, in addition to the above additional cost the complainant is also supposed to make other payments in the nature of EDC, IDC, Interest Free Maintenance Security (IFMS), Electricity Connection Charges, Power Back up charges, Air Conditioning Charges, service tax and such other levies/cessess /VAT as per the demands raised by the respondent. Further, as per the annexed payment plan with MoU and application form, an amount of Rs.24,52,070/- plus interest is still pending.
- v. That as per the terms of the MOU, it was also agreed that the respondent will pay an assured return at the rate of Rs.44.74/- per sq. ft. of the super area from 01.11.2019 till the notice for the offer of possession. However, the payment of assured return was subject to force majeure clause as provided under clause 6.1 of the MOU and other clauses of the MOU. It is submitted that an amount of Rs.1,08,955/- for a period of 7 months has been paid by the respondent as an assured return to the complainant.
- vi. That the complainant was entitled to pre-possession lease rental subject to force majeure conditions in developing the said project. It is submitted that the construction and development of the project was affected due to force majeure conditions and the same are enumerated herein below:
- a. Shortage of labour
 - b. Increase in the cost of construction to a great extent.
 - c. Moreover due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru

National Urban Renewal Mission, there was also more employment available for labours at their hometown despite the fact that the NCR region was itself facing a huge demand for labour to complete the projects.

- d. That the Ministry of Environment and Forest and the Ministry of Mines had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of sand which is the most basic ingredient of construction activity. That said ministries had barred excavation of topsoil for manufacture of bricks and further directed that no more manufacturing of bricks be done within a radius of 50 km from coal and lignite-based thermal power plants without mixing 25% of ash with soil.
- e. That shortage of bricks in region has been continuing ever since and the respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project.
- f. That same further cost huge delay in project and stalling various parts and agencies at work in advanced stages, for now the respondent had to redo, the said work causing huge financial burden on respondent, which has never been transferred to complainant or any other customers of project.
- g. That in addition to that the Government has declared demonetization on 08.11.2016 which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and

resulted in the labourers not accepting demonetized currency after demonetization.

- h. That in July 2017 the Government of India further introduced a new regime of taxation under the Goods and Service Tax which further created chaos and confusion owing to lack of clarity in its implementation. That ever since July 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.
- i. That further the construction has also been delayed due to the Covid-19 pandemic which kicked start in March 2020 and is still ongoing.
- vii. That the complainant in the present case is seeking relief of assured return as per the MOU signed between the parties. That as per Act of 2016 complaint can be filed only under Section 12, 14, 18 & 19 for any violation. However, the complainant has failed to plead any violation under Section 12, 14, 18 & 19 and thus the present complaint needs to be dismissed.
- viii. That the complainant is praying for the relief of "Assured Return " which is beyond the jurisdiction of the Authority. The compensation for assured return/lease rental and other relief, if any cannot be awarded by the Hon'ble Authority, as the Authority does not have the jurisdiction to award any reliefs qua assured return/lease rental as

provided under section 18 of the Act and in accordance with the rules, framed there under.

- ix. That the enforcement of memorandum of understanding entered into between the parties on the same date with regard to assured return/pre-possession lease rental before and after offer of possession is a matter of civil nature, only to be dealt with by a civil court/consumer court as the case may be.
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 submissions 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

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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) 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.

9. 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 force majeure conditions:

10. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as demonetisation, certain environment restrictions, weather conditions in NCR region, shortage of labour, increase in cost of construction material, and implementation of GST and major spread of Covid-19 across worldwide. However, all the pleas advanced in this regard are devoid of merit. Further, the Authority has gone through the possession clause of the agreement and observed that due date for possession is 26.09.2027. The events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on basis of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to refund the entire amount paid by the complainant along with prescribed interest from the date of respective deposit till its actual realization.

G.II Direct the respondent to pay interest at the rate of 14% on the Rs.55,96,582/- paid as booking/upfront amount.

11. The above-mentioned relief(s) sought by the complainant are taken together being inter-connected.
12. The complainant was allotted a unit in the project of respondent "Park Street" in Sector-85, Gurugram vide allotment letter dated 16.12.2020 for a total sum of Rs.74,66,668/- including EDC/IDC of Rs.3,32,654/-. The agreement for sale was executed on 26.04.2022 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.50,32,589/-.
13. The respondent has cancelled the unit vide cancellation letter dated 28.05.2024 before the due date of handing over of possession i.e., 26.09.2027 on account of outstanding dues. The complainant has paid an amount of Rs.50,32,589/- i.e., 70% of the basic sale consideration of Rs.71,34,014/-. The payment plan opted by the complainant is construction linked and as per the payment plan, the 33% of the total sale consideration is to be paid till completion of superstructure of retail block and 33% amount has to be paid on application of occupation certificate and remaining amount on notice of offer of possession. The respondent has not even applied for the occupation certificate till date but the complainant has already paid 67% of the total sale consideration way back in April, 2022. The respondent has cancelled the unit on 28.05.2024 before the due date on account of non-payment but the complainant has abided by the agreed by the payment plan and already paid 70% of the basic sale consideration which is more than what he was supposed to pay as per the agreed payment

plan. Thus, in view of the aforementioned facts, the cancellation of the unit stands invalid.

14. The Authority has gone through the documents placed on record and observed that though the cancellation letter dated 28.05.2024 stands invalid but the complainant has filed the present complaint for refund of the paid-up amount on 07.01.2025 which is prior to the due date of possession i.e., 26.09.2027. In the instant complaint, the complainant never expressed his wish to withdraw from the project before filing of this complaint on 07.01.2025. Thus, the date of filing of complaint for refund of the paid-up amount can be considered as date of surrender of the unit by the complainant. Thus, the respondent is entitled to deduction of earnest money as per the provisions of Act of 2016.

15. Now when the complainant approached the Authority to seek refund, it is observed that under clause 7.5 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:

7.5 Cancellation by Allottee-

"The Allottee shall have a right to cancel/withdraw his allotment in the project as provided in the Act:

Provided that where the allottee proposes to cancel/withdraw from the project without any fault of the promoter, the promoter herein is entitled to forfeit the earnest money, interest component on delayed payment (payable by the customer for breach of agreement) and non-payment of any due payable to the promoter and other applicable charges. The rate of interest payable by the allottee to the promoter shall be the State Bank of India highest marginal cost of lending rate plus 2% (two percent). The balance amount of money paid by the allottee shall be returned by the promoter to the allottee after the promoter finds a buyer in respect of that unit within a reasonable period of time."

"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 complainant i.e., Rs.50,32,589/- after deducting 10% of the basic sale consideration i.e., Rs.71,34,014/- and also the amount already

paid to the complainant and return the remaining amount along with interest at the rate of 10.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of filing of this complaint i.e., 07.01.2025 (Inadvertently mentioned as from date of each payment in proceedings of the day dated 23.12.2025) till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.III Direct the respondent to pay the assured rental for 27 months to the tune of Rs.14,68,989/-.

18. As the Authority is allowing refund of the amount to the complainant as per provisions of the Act of 2016 and Rules, 2017 as detailed out in para 16 of this order, the above-mentioned relief become redundant. Thus, no direction to this effect.

G.IV Direct the respondent to pay a compensation of Rs.1,00,000/- towards legal expenses incurred by the complainant.

G.V Direct the respondent to pay an amount of Rs.2,00,000/- to the complainant towards mental and physical harassment.

19. The above-mentioned relief(s) sought by the complainant are taken together being inter-connected.

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

H. Directions of the Authority:

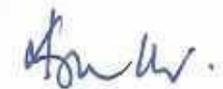
21. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the paid-up amount of Rs.50,32,589/- after deducting 10% of the basic sale consideration of Rs.71,34,014/- being earnest money along with an interest @11.10% p.a. (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 on the refundable amount, from the date of filing of the complaint i.e., 07.01.2025 till the actual date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondents/promoter to comply with the directions given in this order and failing which legal consequences would follow.

22. Complaint stand disposed of.

23. File be consigned to registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 23.12.2025