

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

Complaint no. : 4655 of 2025
Date of Filing: 08.09.2025
Date of decision : 13.01.2026

Prahalad Meena

R/o: - RZF-767/44A, Gali No. 7, Rajnagar-2, Palam
Colony, New Delhi- 110077.

Complainant

Versus

Roshni Builders Private Limited.

Regd. office: - LGF, F-22, Shushant Shopping Arcade
Sushant Lok Phase- I, Gurugram- 122002, Haryana

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Rishab Jain (Advocate)

Complainant

Ms. Shriya Takkar (Advocate)

Respondent

ORDER

1. The present complaint dated 08.09.2025 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of 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. N.	Particulars	Details
1.	Name of the project	"M3M Broadway, Sector- 71, Gurugram.
2.	Project area	7.84875 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	71 of 2018 dated 25.02.2018 valid till 24.10.2023
5.	Name of licensee	Roshni Builders Pvt. Ltd., Highrise Propbuild Pvt. Ltd
6.	RERA Registered/ not registered	Registered vide no. 31 of 2018 dated 14.12.2018 valid upto 31.10.2023
7.	Allotment letter	07.07.2021 (page 87 of reply)
8.	Unit no.	R5-LGK-18A, lower ground floor, block-5 (Page no. 31 of the complaint)
9.	Area admeasuring	157.30 sq. ft. (Carpet area at page no. 32 of the complaint)
10.	Letter w.r.t. execution of BBA	29.07.2021 (page 96 of reply)
11.	Reminder-I for payment	31.08.2021 (page 99 of reply)
12.	Pre-cancellation	15.09.2021 (page 100 of reply)
13.	Offer of possession	16.12.2021 (page 101 of reply)
14.	Cancellation	01.02.2022 (page 109 of reply)
15.	Letter for request for adjustment of amount from the previous unit into new unit	05.03.2022 (page 110 of reply)
16.	New allotment letter 15.04.2022	R2 LG 04 (page 111 of reply)
17.	Letter w.r.t. execution of BBA	03.05.2022 (page 118 of reply)
18.	Agreement for substitutions of units	10.06.2022 (page 122 of reply)

19.	Pre-cancellation notice	01.07.2022 (page 126 of reply)
20.	Cancellation	20.07.2022 (page 127 of reply)
21.	Acknowledgement letter	21.02.2023 (page 128 of reply)
22.	Offer of possession	12.09.2023 (page 134 of reply)
23.	Pre-cancellation	07.11.2023 (page 141 of reply)
24.	Cancellation	25.01.2024 (page 142 of reply)
25.	Possession clause	NA
26.	Due date of possession	31.10.2023 [as per application form]
27.	Total sale consideration	Rs.1,12,97,913/- (As per customer ledger at page no. 46 of the complaint)
28.	Amount paid by the complainant	Rs.1,11,84,934/- (till Feb 2024) (As per customer ledger at page no. 46 of the complaint)
29.	Occupation certificate /Completion certificate	13.12.2021 (Page no. 50 of the reply)
30.	Request for refund due to medical emergency	24.07.2025 (page 49 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the grievances of the complainant relate to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent in regard to the **Commercial Space No. R2-LG-04 on Lower Ground Floor in Block-2**, having a carpet area of 223.36 square feet and super area of 467.74 square feet in the project '**M3M Broadway**' at Sector 71, Gurugram, Haryana, bought by the complainant paying his hard earned money. The complainant paid a sum of Rs.8,00,000/- to the respondent company.

- II. That in the agreement for sell (**hereinafter referred to as "Agreement"**), it is stated that the respondent developer is the owner of freehold land to the extent of 353/500 share and Highrise Propbuild Private Limited is the owner to the extent of 147/500 share, out of the total land measuring 31762.76435 square meters (7.84875 acres) located in revenue estate of village Fazilpur Jharsa, Sector 71, Gurugram-Manesar Urban Complex, Gurugram, Haryana (**hereinafter referred to as the "Project Land"**). Highrise Propbuild Private Limited has granted irrevocable development rights to the respondent developer in respect of its share (147/500), and thus, the respondent developer has been vested with complete authority and all requisite rights and powers over the project land for undertaking and carrying out construction and development of commercial colony with high street retail experience on the project land.
- III. That the Director General, Town and Country Planning, Haryana vide licence no. 71 of 2018 dated 25th October, 2018 has granted permission for development of a commercial project known as '**M3M Broadway**'.
- IV. That the complainant booked a commercial unit no. **R5-LG-18A on Lower Ground Floor in Block-5** in the project and paid Rs.4,50,000/-. The welcome letter dated 21st July, 2021 issued by the respondent, roshni builder private limited clearly shows that the Logo, Letter Pad, Office, Email Address, Website Address, Sales Gallery, CRM Cell, and Project Site, etc. all carry the impressions that the project, M3M

Broadway is the project of M3M India Private Limited, and not by Roshni Builders Private Limited. All publicity materials, and Welcome Letter, Allotment Letter, Agreement for Sale & Customer Ledger, all show that M3M Broadway is the project of M3M India Private Limited. In the year 2022, the respondent changed the allotted unit from **unit No. R5-LG-18A on Lower Ground Floor in Block-5** to **Unit No. R2 LG 04 on Lower Ground Floor in Block-2** after increasing the size measuring carpet area of 223.36 square feet and super area of 467.74 square feet for a total sale consideration of ₹1,12,97,913/-, without the Allottee's consent or approval.

- V. That the respondent violated the Section 12 of the Real Estate (Regulation and Development) Act, 2016, and cheated the complainant by creating wrong impressions that the project was developed by M3M India Private Limited. So, the complainant via email dated 24th July, 2025 requests the respondent for initiation of refund process, with interest.
- VI. That the respondent violated the Section 12 of the Real Estate (Regulation and Development) Act, 2016, and cheated the complainant by creating wrong impressions that the project was developed by M3M India Private Limited. So, the complainant via email dated 24th July, 2025 requests the respondent for initiation of refund process, with interest.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Refund the entire consideration paid by the complainant along with interest.
 - II. Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant for filing and pursuing the instant case.
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 present complaint has been filed with malafide intentions to wriggle out of contractual obligations as no cause of action in favour of the complainant for the relief sought has been made out in the present complaint.
 - II. That the occupation certificate for the present phase of the project M3M Broadway, a commercial project being developed in a planned and phased manner consisting of modern office spaces, entertainment, food and beverage outlets, modern office spaces, upscale efficient lofts situated in Sector 71, Gurugram was granted by the competent authorities after due verification and inspection on 13.12.2021.
 - III. That the complainant herein being well aware of the respondents' good standing and reputation in the market and further having conducted his own independent due diligence and after being completely satisfied with the project, approached the respondent requesting a provisional

- allotment of a unit in "M3M Broadway" vide application form. The complainant while submitting the application form after reading and understanding the conditions stated thereinunder and paid an amount of Rs. 5,00,000/- towards the booking of the same.
- IV. That in due consideration of the complainant's commitments to make timely payments, the complainant was allotted unit No R5 LG 18A on lower Ground Floor in the commercial Project "M3M Broadway" vide Allotment letter dated 07.07.2021. It is submitted that the cost of the unit for carpet area 157.30 Sq. Ft. as per the allotment letter is Rs. 83,62,975/- plus other applicable charges.
- V. That immediately after issuance of the allotment letter, the respondent company vide cover letter dated 29.07.2021, sent triplicate copies of the buyer's agreement for due execution at the complainant's end. However, for the reason best known to the complainant, the complainant failed to execute the buyer's agreement and did not come forward for the registration process.
- VI. Thereafter the respondent company as per the payment plan opted by the complainant raised a demand vide demand note dated 02.08.2021 for an amount of Rs. 20,08,892/-, along with an a that was due "on or before 30.08.2021". Since the complainant herein, did not come forward for clearing his outstanding dues within stipulated time frame, the respondent issued a reminder letter dated 31.08.2021 to come forward and clear his outstanding dues. Since the complainant failed to make payment of his outstanding dues, the respondent issued a pre-cancellation notice dated 15.09.2021 requesting the complainant to come forward and remit the outstanding dues.

- VII. That the complainant on his own free will remitted his outstanding dues and the respondent has issued the receipts in lieu of the same. The respondent completed the construction and development of the retail component of the complex well within time and the respondent No.2 applied to the competent authority for the grant of occupation certificate on 31.08.2021 after complying with all the requisite formalities. That the occupation certificate was granted by the competent authorities after due verification and inspection on 13.12.2021.
- VIII. That the respondent company fulfilled its promise had completed the construction before the agreed timeline i.e.31.10.2023 by investing its own fund. That the respondent vide Letter dated 16.12.2021 offered the possession of the unit and requested the complainant to clear the outstanding dues amounting to Rs. 64, 64,799/- /- payable on or before 15.01.2022. It is submitted that for the reasons best known to the complainant, he failed to clear his outstanding dues as per the demand letter dated 16.12.2021, thus the respondent was constrained to issue a pre- cancellation dated 17.01.2021.
- IX. That, post issuance of the pre- cancellation notice dated 17.01.2021 the complainant did not come forward to clear his outstanding dues. Thus, the respondent was constrained to cancel the allotment of the complainant herein for the unit no. R5 LG 18A.
- X. That in due consideration of the complainant's commitment to make timely payments, the complainant was allotted a ready to move in unit No. R2- LG-04 (hereinafter referred to as 'new unit') on Lower Ground floor in the commercial project "M3M Broadway "vide allotment dated 15.04.2022. It is submitted that the cost of the unit for carpet area

admeasuring 223.36 Sq. Ft. as per Allotment Letter is Rs.1,12,30,905/- plus other applicable charges. It is submitted that the relevant clauses of the allotment letter are already reproduced for the reference of the Authority and the same is reiterated and not repeated for sake of brevity and convenience.

- XI. That immediately after issuance of the allotment letter, the respondent company vide cover letter dated 03.05.2022, sent triplicate copies of buyer's agreement for due execution at the complainant's end. However, for the reason best known to the complainant, the complainant failed to execute the buyer's agreement and did not come forward for the registration process. Thereafter, the respondent company as per the payment plan opted by the complainant raised a demand vide demand note dated 30.05. 2022 for an amount of Rs. 62,69,773/- payable on or before 30.06.2022.
- XII. To accommodate the Complainant, the respondent revived the old unit— which had been cancelled on account of the complainants payment defaults— and agreed to facilitate the transfer of funds from the old unit to the new unit. Pursuant to discussions, negotiations, and a mutual settlement between the parties, it was agreed that, after making the necessary deductions, an amount of Rs. 23,08,641/- would be transferred from the old Unit No. R5 LG K 18A to the new Unit No. R2 LG 04. Accordingly, the complainant, of his own free will and understanding, executed the substitution agreement dated 10.06.2022. It is further submitted that the respondent, being a customer-oriented organisation and as a one-time goodwill gesture, acceded to the request made by the complainant for substitution of units, subject to the complainant completing all requisite formalities.

- XIII. That the complainant failed to make good the due amount in the demand letter dated 30.05.2022, raised by the respondent as per the payment plan opted by them, therefore the respondent was constrained to issue a pre- cancellation notice dated 01.07.2022 but to no avail from the complainant's end. Due to complainant's failure to make payment even after pre-cancellation notice, the respondent was constrained to cancel the allotment of the new unit vide cancellation letter dated 20.07.2022.
- XIV. That post cancellation of the allotment, the complainant approached the respondent and requested the respondent to re-instate the allotment. That the respondent being a customer-oriented company acceded to the said request subject to receipt of the entire outstanding dues. Accordingly, the complainants cleared his outstanding dues in various tranches.
- XV. That the respondent issued acknowledgment letter dated 21.02.2023 to the complainant stating the benefits pertaining to the rebate and other benefits. As per the Acknowledgement letter, the respondent shall pay the discount/rebate amount to the complainant till 18 months provided the complainant was in not in default of any of his obligations including but not limited to timely payment of the demands raised. Despite the complainant being a defaulter, the respondent paid an amount of Rs. 5,77,286/- towards discount/rebate amount from 12.02.2022 to 01.10.2023.
- XVI. That respondent issued notice of offer of possession dated 12.09.2023 and requested the complainant to clear the outstanding sum of Rs. 5,396,660/- on or before 11.10.2023. For the reasons best known to the complainants, he only made a part payment of Rs. 19,50,000/- and

- thereafter did not come forward for clearing his remaining outstanding dues and take the symbolic possession within the stipulated time. Thus, the Respondent Company was constrained to issue Pre- Cancellation Notice dated 07.11.2023, for an outstanding amount of Rs. 26,88,876/-
- XVII. That the complainants did not come forward for clearing their outstanding dues despite issuance of Pre- Cancellation Notice dated 07.11.2023, the respondent was constrained to issue cancellation notice dated 25.01.2024. Despite the cancellation, the complainant cleared the outstanding dues and once again the respondent company being a customer-oriented company considering the requests of the complainant agreed to re-instate the allotment. That the complainant as on 02.02.2024 had made a payment of Rs. 1,11,84,934/- towards the total sale consideration of Rs. 1,12,30,905/- plus other charges.
- XVIII. That the respondent in furtherance to the re-instatement of the allotment, once again brought in attention of the complainant, the importance of executing the buyer's agreement and requested the complainant to come forwards for execution and registration of the buyer's agreement vide email dated 18.04.2024 and thereafter sent a reminder vid email dated 26.07.2024 but to no avail from the complainant's end.
- XIX. That the respondent again vide email dated 17.10.2024 followed by reminder email dated 11.03.2025 requested the complainant to come forward and clear his outstanding dues amounting to Rs. 1,12,979/- along with the interest amount, IFMS amounting to Rs. 67,008/- and other charges such as Stamp duty, Registration fee and CAM Charges as applicable.

- XX. That the present Complaint has been filed with total disregard to the terms of the Application Form/Allotment Letter. The default of the complainant in making the payment towards the amount due, amounts to default as per the allotment letter. The complainant, thus an attempt to avoid the consequences of the breach of allotment letter and application form has filed the present malafide complaint and thereby in essence, the quashing of the terms of the allotment letter and application form.
- XXI. That the complainant is liable to clear his pending dues as stated in the offer of possession along with delayed interest and other charges including but not limited to maintenance charges, holding charges, municipal taxes etc. etc. The complainant is a defaulter who did not clear his pending dues. It is submitted that the complainant is raising these frivolous issues as an afterthought in order to unjustly enrich themselves. Thus, the complainant is not entitled to get any reliefs as sought from the Authority. Failure on the part of the complainant to perform his contractual obligations disentitles them from any relief.
7. All other averments made in the complaints were denied in toto.
8. 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**
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 allottee 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 complainant at a later stage.

13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant

F.I Refund the entire consideration paid by the complainant along with interest.

15. The complainant herein submits that he booked a commercial space No. R2-LG-04, located on the Lower Ground Floor, Block-2, admeasuring 223.36 sq. ft. (carpet area) and 467.74 sq. ft. (super area) in the project "M3M Broadway" at Sector 71, Gurugram, Haryana, by paying an amount of Rs.8,00,000/-. Initially, the complainant had booked unit no. R5-LG-18A in Block-5 by paying Rs.4,50,000/-. In the year 2022, at the request of the complainant, the respondent changed the allotment to unit no. R2-LG-04 in Block-2, which had a larger area and a total sale consideration of Rs.1,12,97,913/-. Subsequently, the complainant sought a refund along with interest vide email dated 24.07.2025.
16. On the other hand, the respondent submits that the complainant repeatedly defaulted in making timely payments and failed to execute the Buyer's Agreement despite multiple reminders. It is further stated that the project "M3M Broadway" received its occupation certificate on 13.12.2021 and that possession was offered within the agreed timeline. The respondent contends that the unit was cancelled more than once due to the complainant's payment defaults, however, it was reinstated each time upon the complainant's request as a gesture of goodwill. This included the execution of a substitution agreement, whereby funds from the earlier unit were transferred to the newly allotted unit.

17. It further states that when the unit was cancelled on 20.07.2022 due to non-payment, the complainant again approached the respondent and requested reinstatement of the allotment. Accordingly, the respondent issued an acknowledgment letter dated 21.02.2023. As per the said letter, the respondent agreed to pay the discount/rebate amount to the complainant for a period of 18 months, subject to the condition that the complainant would not be in default of any of his obligations, including timely payment of the demands raised. Despite the complainant being in default, the respondent paid a sum of Rs. 5,77,286/- towards the pre-handover amount for the period from 12.02.2022 to 01.10.2023 and the details of the payment are reproduced herein below:

Project Name	Unit No.	Vendor Name Final	Gross Amount	TDS Amount	Net Amount	NEFTS/Cheque no.	NEFTS/Cheque date	VVV
M3M BROADWAY	R2 LG 04.	PRAHALAD MEENA	111909	11191	100718	ICIB223 180052 629	14-Nov-22	Nov 01, 2022
M3M BROADWAY	R2 LG 04.	PRAHALAD MEENA	42307	4231	38076	ICIB223 430110 508	09-Dec-22	Dec 01, 2022
M3M BROADWAY	R2 LG 04.	PRAHALAD MEENA	42307	4231	38076	ICIB230 020055 021	02-Jan-23	Jan-23
M3M BROADWAY	R2 LG 04.	PRAHALAD MEENA	84614	8461	76153	ICIB230 600020 630	01-Mar-23	Mar-23
M3M BROADWAY	R2 LG 04.	PRAHALAD MEENA	42307	4231	38076	ICIB230 930029 743	03-Apr-23	Apr-23
M3M BROADWAY	R2 LG 04.	PRAHALAD MEENA	42307	4231	38076	ICIB231 220024 916	02-May-23	May-23

M3M BROAD WAY	R2 LG 04.	PRAHALAD MEENA	42307	4231	38076	ICIB231 570003 379	06-Jun-23	Jun-23
M3M BROAD WAY	R2 LG 04.	PRAHALAD MEENA	42307	4231	38076	ICIB231 820079 964	01-Jul-23	Jul 01, 2023
M3M BROAD WAY	R2 LG 04.	PRAHALAD MEENA	42307	4231	38076	ICIB232 160015 125	04-Aug-23	Aug 01, 2023
M3M BROAD WAY	R2 LG 04.	PRAHALAD MEENA	42307	4231	38076	820	05-Sep-23	Sep 01, 2023
M3M BROAD WAY	R2 LG 04.	PRAHALAD MEENA	42307	4231	38076	821	06-Oct-23	Oct 01, 2023
			577,286	57,731	519,555			

18. Thereafter, the respondent issued a notice of offer of possession dated 12.09.2023 and requested the complainant to clear the outstanding dues. However, the complainant failed to do so. Consequently, a pre-cancellation notice dated 07.11.2023 was issued, followed by a cancellation notice dated 25.01.2024. Despite the cancellation, the complainant subsequently cleared the outstanding dues and once again requested reinstatement of the allotment, which the respondent considered. The respondent further states that it made several attempts to contact the complainant through phone calls and emails, requesting him to come forward for execution of the conveyance deed, however, the complainant failed to respond.
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 under section 18(1) of the Act. Sec. 18(1) of the Act 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."

20. The Authority observes that Section 18(1) of the Act, 2016, is applicable only in the eventuality where the promoter fails to complete or is unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is a case where the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession, the allottee wishes to withdraw from the project and is demanding refund of the amount paid by the complainant in respect of the unit with interest at the prescribed rate.

21. The occupation certificate for the unit of the complainant-allottees was obtained on 13.12.2021 from the competent Authority. The allottees in this case has filed this complaint on 08.09.2025 after the grant of occupation

certificate by the competent Authority. As per the section 19(10) every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be. In the present case, the complainant is seeking refund due to medical emergency vide email dated 24.07.2025. It is pertinent to mention here that the allottees never earlier opted/wished to withdraw from the project even after the due date of possession and only when offer of possession and demand for due payment was raised, he filed a complaint before the Authority seeking refund of the paid-up amount along with interest.

22. Herein, the allottee has not exercised the right to withdraw from the project after the due date of possession was over, till the offer of possession was made to him. The promoter has already invested in the project to complete it and offered possession of the allotted unit. Had the complainant wished to continue in the project, the consequences for delay provided in proviso to section 18(1) would come in force and the promoter would be liable to pay interest at the prescribed rate of every month of delay till the handing over of possession. However, in the present matter, this is not the case.
23. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale. The judgement of the Supreme Court of India (*supra*) recognized unqualified right of the allottees and liability of the promoter in case of failure to

complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The complainant has to demand and make his intentions clear that they wish to withdraw from the project. Rather tacitly they wished to continue with the project. It is observed by the Authority that such withdrawal on considerations other than delay will not be in the spirit of the section 18 which protects the right of the allottees in case of failure of promoter to give possession by due date either by way of refund if opted by the allottees or by way of delay possession charges at prescribed rate of interest for every month of delay.

24. The authority has observed that the respondent-builder has offered possession of the unit on 12.09.2023 after obtaining occupation certificate on 13.12.2021 but the complainant wants to surrender the unit and seeking refund the amount paid by him. Keeping in view the aforesaid circumstances, that the respondent builder has already offered the possession of the allotted unit after obtaining occupation certificate from the competent authority.
25. The Hon'ble Apex court of the land in cases of ***Maula Bux Vs. Union of India (1973) 1 SCR 928*** and ***Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136***, and followed by the National Consumer Dispute Redressal Commission, New Delhi in consumer case no. 2766/2017 titled as ***Jayant Singhal and Anr. Vs. M/s M3M India Ltd.*** decided on 26.07.2022, took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of

Section 74 of Contract Act, 1872 are attracted 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. So, it was held that 10% of the basic sale price is reasonable amount to be forfeited in the name of earnest money.

26. Keeping in view, the principles laid down by the Hon'ble Apex court in the above-mentioned cases, rules with regard to forfeiture of earnest money were framed and known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides 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"

27. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.1,11,84,934/- after deducting 10% of the sale consideration of Rs.1,12,97,913/- being earnest money and pre-handover amount i.e. Rs. 5,77,286/- already paid along with an interest @ 10.80% 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 seeking refund i.e. 24.07.2025 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

F. II Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant for filing and pursuing the instant case.

28. 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

29. 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):

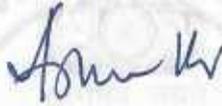
- i. The respondent is directed to refund the amount paid by the complainant i.e. Rs. 1,11,84,934/- after deducting 10% of the sale

consideration i.e. Rs. 1,12,97,913/- being earnest money and pre-handover amount i.e. Rs. 5,77,286/- already paid along with an interest i.e., 10.80%, from the date of request of seeking refund of the amount i.e. 24.07.2025 till its realization.

- 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.

30. Complaint stands disposed of.

31. File be consigned to registry.



Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

13.01.2026

HARERA
GURUGRAM