

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

Complaint no. : 861 of 2024
Date of filing of complaint: 20.03.2024
Date of Order: 23.12.2025

Vipul Singhal

R/o: House no.-63, Pocket-A-1, Sector-6,
Rohini, Rithala, North-West Delhi, Delhi-
110085

Complainant

Versus

ILD Millenium Pvt. Ltd.

Regd. Office at: B-418, First floor, New
Friends Colony, New Delhi-110065

Corporate Office at: 9th floor, ILD Trade
Centre, Sector-47, Sohna Road, Gurugram-
122018

Respondent

CORAM:

Shri Arun Kumar

Shri Phool Singh Saini

APPEARANCE:

Sh. Shajad Ahmed (Advocate)

Ms. Himani (Advocate)

Chairman

Member

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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"ILD Spire Greens" at sector-37 C, Gurugram
2.	Nature of the project	Residential
3.	Project area	15.4829 acres
4.	DTCP license no.	13 of 2008 dated 31.01.2008
5.	Name of licensee	Jubliant Malls Pvt. Lt. and 3 others
6.	Unit no.	720 & Tower-2 A (As per page no. 64 of the complaint)
7.	Unit area admeasuring	1450 sq. ft. (Super area) (As per application for allotment on page no. 60 of the complaint) 1828 sq. ft. (Super area) (As per SOA dated 20.05.2021 on page no. 25 of the complaint) 2106 sq. ft. (Final saleable area) (As per page no. 64 of the complaint)
8.	Date of booking	04.04.2008 (As per page no. 58 of the complaint)
9.	Date of execution of buyer's agreement	25.07.2011 (As per page no. 27 of the reply to the rejoinder filed by the complainant)
10.	Possession clause	10.1 Schedule for possession of the said unit <i>The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said</i>

		<p>building/said unit by 30th June 2013 with grace period of six months, unless there shall be delay or there shall be failure due to reasons mentioned in clauses 11.1, 11.2, 11.3 and clause 41 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments given in Annexure-C as per the demands raised by the developer from time to time or any failure on the part of the allottee(s) to abide by all or any of the terms or conditions of this agreement. (As per page no. 27 of the reply to the rejoinder filed by the complainant)</p>
11.	Due date of possession	30.12.2013 (Note: 30.06.2013, as mentioned in possession clause plus grace period of 6 months being unqualified)
12.	Basic sale consideration	Rs.35,46,320/- (As per email dated 09.03.2023 on page no. 64 of the complaint)
13.	Total sale consideration	Rs.47,66,988/- (As per email dated 09.03.2023 on page no. 64 of the complaint)
14.	Amount paid by the complainant	Rs.22,46,548/- (As per SOA dated 20.05.2021 on page no. 66 of the complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Demand letter	14.02.2014, 01.05.2014, 06.08.2014, 25.09.2014 and 17.02.2017 (As per notice of cancellation on page no. 105 of the complaint)
18.	Reminder letter	21.04.2015, 25.05.2015, 09.12.2015 and 19.06.2017

		(As per notice of cancellation on page no. 105 of the complaint)
19.	Final reminder cum cancellation	21.04.2016 and 22.09.2016 (As per notice of cancellation on page no. 105 of the complaint)
20.	Notice of Cancellation	08.12.2023 (As per page no. 105 of the complaint)
21.	Agreement to sell with third-party	02.02.2024 (As per page no. 54 of the reply to the rejoinder filed by the complainant)

B. Facts of the complaint:

3. The complainant has made the following submissions:

- I. That the complainant is peace loving and law-abiding citizens of India, who nurtured hitherto an un-realized dream of having his own house in upcoming society with all facilities and standards, situated around serene and peaceful environment.
- II. That in furtherance of the booking of the residential unit in the said project, the complainant and the respondent executed an agreement dated 04.04.2008 with vide terms & conditions and believing upon the assurances and promises of the respondent. Therefore, the complainant made direct booking to the respondent's project for the allotment of a flat admeasuring approximately 1450 sq. ft. of super area in the project.
- III. That the complainant pursuant to direct booking of the flat in the project, made a payment of Rs.4,00,000/- by vide cheque dated 04.04.2008 in favour of the respondent as the basic booking amount and further paid Rs.1,62,600/- on 06.06.2008 in favour of above-said company.

- IV. That the respondent after accepting the application form of booking from the complainant, allotted a unit no. 0720 in tower-02 in the project. It was agreed between the complainant and the respondent that the total sale consideration for the flat was Rs.39,76,500/- including the incidental expenses such as H-VAT, Electrical Electrification charges, car parking charges, club membership charges etc. Subsequently, an agreement dated 04.04.2008 was also executed between the complainant and the respondent. It is submitted here that the saleable area was changed 2 times with mutual consent of the complainant and the respondent. Therefore, the saleable area as per BBA was 1828 sq. ft. which was changed to 2106 sq. ft. vide an email dated 09.03.2023. Consequently, the total consideration was changed from Rs.39,76,500/- to Rs.47,66,988/- out of which the complainant has already paid Rs.22,44,464/-.
- V. That as per clause 10 of the agreement dated 04.04.2008, the respondent undertook to complete the construction of the project and deliver the possession of the flat to the complainant by/or within a period of 3 years from the date of execution of the said agreement with grace period of 6 months. If the respondent failed to offer the possession of the flat as per clause 18 of the agreement, the respondent would pay to the complainant/allottee @ Rs.5/- per sq. ft. of super area per month for any delay after expiry of grace period till the actual offer of possession of the said flat is made.
- VI. That the respondent failed to complete the construction of the project in the agreed time between the respondent and the complainant/allottee. As a consequence, the complainant stopped all the remaining payment(s) to the company till concrete action is taken by the respondent as there was huge delay & the project was abandoned.

Therefore, the complainant lost the hope of completion of the project by the respondent as the respondent never provided any satisfactory answer to the complainant every time any concern or query was raised through the email and other electronic modes of communication.

- a. The complainant sent various emails to the respondent about the status of the project.
- b. The complainant sent various emails to the respondent which was never addressed by the respondent. Further, the respondent did not even commit to the timeline for offering possession of the said flat.
- c. The complainant communicated with Mr. Arora, and he committed to the date of offering possession of the said flat by Mid-2015. However, in an email dated 09.06.2015, Mr. Ankur Gupta extended the date of offering possession to July 2016. Furthermore, the complainant requested Mr. Ankur Gupta to formalize the committed date on the company letterhead, duly signed by the director of the company, and send it through courier. However, the respondent refused to comply with the complainant's email.
- d. The respondent consistently threatens the complainant with cancellation of the booked flat, demanding the outstanding amount without committing to a possession date. Despite these threats, when the respondent is pressuring the complainant to cancel the booking, the complainant has been requesting the respondent personnel to provide a convenient time for a face-to-face meeting to resolve all outstanding issues. Unfortunately, the respondent has ignored the complainant's requests.
- e. In 2017, one of the allottees, namely Ashok Mehta, raised concerns about the delay in providing services such as covered car parking,

gas connection, club house, etc., despite having paid the full amount for these services. It is important to emphasize that on 01.07.2017, a meeting took place between ILD Spire Greens and ILD Greens-residents regarding the completion of the project on the committed date. However, after the meeting, none of the discussed points were completed as scheduled. As a result, on 19.07.2017, ILD Greens-residents raised serious concerns when none of the promised deadlines from the meeting were met on the ground, as scheduled. They further accused the respondent of unlawfully withholding the hard-earned money of the allottees.

- f. Suddenly, in 2023, the respondent sent an email to the complainant and cancelled the said booking in a very unlawful manner, after 15 years of the initial booking.
- VII. That there was no construction or development on the site of the project from 2017 to 2023. Further, there was no communication by the respondent to the complainant/allottee between such periods of time. On 08.12.2023, the respondent suddenly cancelled the said booking of the flat after 15 years after making a payment of Rs.22,46,548/- to the respondent. The respondent cancelled the booking of the flat and refunded the money vide DD dated 11.12.2023 after deducting 10% of earnest money along with applicable interest on account of non-payment of dues from the complainant. Further, a notice of cancellation was also attached along with the said DD. It is important to inform to the Hon'ble Authority that the respondent promised to offer the possession of the said flat within 3 years from the date of booking and in case of failure, the respondent would be liable to pay damages or compensation to the complainant/allottee as per agreement. It is also submitted before this Hon'ble Authority that the

complainant only stopped/ froze the further instalments because the respondent failed to adhere to the terms of the agreement. Furthermore, the respondent failed to inform the complainant about the delays and the actual date of completion of the project. Therefore, the complainant after observing the ill and fraudulent intention of the respondent stopped the payments of instalments demanded by the respondent.

- VIII. That the respondent has never addressed the grievances and requirements of the complainant during all these years and have not effectively responded to the queries of the complainant. There is no intimation as to when the possession will be delivered. The complainant sent various email regarding the date of possession, statement of account etc. and the complainant found that there was no scope of delivery of the possession of the said flat/apartment nor any other affirmative action is forthcoming from respondent. The respondent is even refusing to divulge as to when they would deliver possession of the said residential flat to the complainant. All those phone enquiries, email are illicit, false and contradictory statements from the employees of the respondent. Hence, the present complaint is being filed by the complainant under section 31 of the Act of 2016 read with the Rule 28 of the Rules, 2017.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to set aside the "Notice of Cancellation" dated 08.12.2023 sent by the email and return the apartment in the original condition to the allottee as per the agreement.

- ii. Direct the respondent to complete the construction as per the agreement with specification as agreed between the allottee and promoter.
- iii. Direct the respondent to compensate the complainant for the delay in possession of the project with interest @12% p.a. from date of payment to date of completion of the said apartment.
- iv. Direct the respondent to pay compensation of Rs.5,00,000/- on account of harassment, mental agony and undue hardship caused to the complainant on account of deficiency in service and unfair trade practices.
- v. Direct the respondent to pay legal expenses of Rs.2,00,000/- incurred by the complainant.

D. Reply by the respondent:

5. The respondent has contested the complaint on the following grounds:
 - a. That at the outset each and every averment, statement, allegation, contention of the complainant which is contradictory and inconsistent with the reply submitted by the respondent is hereby denied and no averment, statement, allegation, contention of the complainant shall deem to be admitted save as those specifically admitted to be true and correct. It is respectfully submitted that the same be treated as a specific denial of the complaint. The respondent is a leading real estate company aiming to provide state of art housing solutions to its customers and have achieved a reputation of excellence for itself in the real estate market.
 - b. That the present complaint, filed by the complainant, is bundle of lies and hence liable to be dismissed as it is filed on baseless grounds.
 - c. That the complainant herein, have failed to provide the correct/complete facts and the same are reproduced hereunder for

proper adjudication of the present matter. The complainant is raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.

- d. That the complainant has not approached the Authority with clean hands and has suppressed relevant material facts. The complaint under reply is devoid of merits and the same should be dismissed with cost.
- e. That at the outset, the complainant herein, learned about the project launched by the respondent titled as 'ILD Spire Greens' and approached the respondent repeatedly to know the details of the said project. The complainant further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
- f. That after having keen interest in the project constructed by the respondent the complainant herein decided to purchase a unit bearing no. 0720 admeasuring area 1828 sq. ft. in Block/Tower No. 2 in ILD Spire Greens, Sector-37C, Gurugram, vide transfer letter dated 25.06.2015.
- g. That accordingly, an apartment buyer's agreement dated 04.04.2008 entered between the respondent and complainant, was duly transferred/assigned/endorsed in the name of the complainant as well as the supplementary apartment buyer's agreement executed on 04.04.2008 in the name of the complainant. The complainant was aware of the project and were also satisfied with every proposal deemed necessary for the development of the project in question.
- h. That the project of the respondent got delayed due to reasons beyond control of the respondent. It is submitted that major reason for delay in the construction and possession of the project is lack of infrastructure in the said area. The twenty-four-meter sector road was

not completed on time. Due to non-construction of the sector road, the respondent faces many hurdles to complete the project. For completion of road, the respondent totally dependent upon the Govt. Department/machinery and the problem is beyond the control of the respondent. The aforementioned road has been recently constructed.

- i. That the building plan has been revised on 16.06.2014 vide Memo No. ZP370/AD(RA)/2014/16 dated 16.06.2014 and further revised on 21.09.2015 vide Memo No. ZP370/AD(RA)/2015/18145 dated 21.09.2015. It is further submitted that the building plan has been changed for the benefit of the purchaser/allottee and due to said reason the project got delayed.
- j. That due to ban levied by the competent Authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Despite, after lifting of ban by the Hon'ble Court the construction activity could not resume at full throttle due to such acute shortage.
- k. That the project was not completed within time due to the reason mentioned above and due to several other reasons and circumstances absolutely beyond the control of the respondent, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely affected the progress of the project. In past few years construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and

Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.

- l. That the Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "*MC Mehta vs. Union of India*" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
- m. The demonetization and new tax law i.e. GST, affected the development work of the project. In view of the facts stated above it is submitted that the respondent has intention to complete the project soon for which the respondent is making every possible effort in the interest of allottees of the project.
- n. That Covid-19 pandemic has resulted in serious challenges for the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated 24.03.2020 bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020. By virtue of

various subsequent notifications of the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated 13.05.2020 regarding extension of registrations of real estate projects under the provisions of Act of 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after 25.03.2020. Despite, after such obstacles in the construction activity and before the normalcy could resume the entire nation was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances.

- o. That the complainant in the present mater has failed to pay the entire instalment as per the agreed payment schedule. It is evident that the complainant was well aware of the payment schedule and despite after being aware of the same the complainant has failed to make any such payments on time. The complainant never paid on due date of payment reminders nor when the builder sent demand letters to the complainant.
- p. That the Authority filed a suo-moto complaint no. 6046/2019 for the construction of remaining work of Tower 2 in which most of the flat buyer's approached to the Hon'ble Authority in which they form an

association namely ILD Green Flat Buyer Association. In such suo-moto complaint, the Authority passed an order dated 25.07.2023 in which it has mentioned that construction of the remaining work will be completed in Joint Resolution Plan in supervision of the Authority, RWA and M/s Rapti Timeline Infra (INDIA) (Investor & Contractor). It is also mentioned in the detailed order also DPC would not be claimed by any of the home buyer/allottees.

- q. That the respondent is committed to complete the development of the project at the earliest for which every necessary action is being taken by the respondent. The development of the project was delayed due to the reasons beyond the control of the respondent, the complainant is not entitled for compensation in any which way and the same was agreed into between the complainant and the respondent under clause 11.1, 11.2, 11.3 and clause 41. Therefore, the complainant is not entitled for compensation for delay.
- r. That the builder has already sent many payment reminders /demand letters to the complainant in regard of this the complainant never showed any interest for the due payments nor the complainant replied on email for the same. The developer/builder sent notice of cancellation to the complainant on 08.12.2023 after many payment reminders and cancelled the unit of the complainant.
- s. That the complainant has alleged some baseless allegations without stating as to how they are being aggrieved by the respondent. The complainant be put to the strict proof of the same. The complainant has not come to this court with clean hands and has withheld crucial information and the said complaint is liable to be dismissed on this ground alone.

- t. That the present complaint is an abuse on the due process of law and on this sole ground alone, the present complaint is liable to be dismissed.
- u. That the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story, hence, the present complaint filed by the complainant deserves to be dismissed with heavy costs. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the Authority. The present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

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

8. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on objections raised by the respondent:

F.1 Objection regarding force majeure conditions:

9. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various construction bans, default of contractors, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization of currency. But all the pleas advanced in this regard are devoid of merit. As the events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact the project being

developed by the respondent and are to be considered while fixing the timelines for completion of the project. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to set aside the "Notice of Cancellation" dated 08.12.2023 sent by the email and return the apartment in the original condition to the allottee as per the agreement.

10. The complainant was booked a unit in the project of respondent "ILD Spire Greens" situated in Sector 37 C, Gurugram vide booking application dated 04.04.2008 for a basic sale consideration of Rs.35,46,320/-. A buyer's agreement was executed between the parties on 25.07.2011 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.22,46,548/.
11. The counsel for the complainant has filed a rejoinder on 28.08.2025 and brought to the notice of the Authority that the respondent has unilaterally cancelled on 08.12.2023 the unit of the complainant without providing a sufficient cause and requested to reinstate the unit of the complainant. However, the respondent has filed a reply to the same on 09.10.2025 and stated that the unit of the complainant was cancelled on account of non-payment by the complainant and the unit cannot be restored as third-party rights on the unit of the complainant has already been created. Now, the question arises before the Authority is that the cancellation letter dated 08.12.2023 is valid or not?
12. The Authority has gone through the documents placed on record and observed that the complainant has opted for construction linked payment

plan and the same is annexed (page no. 52 of the rejoinder). As per the opted payment plan, the complainant has to pay 94% of the sale consideration on completion of project and remaining 6% on offer of possession. The project has been completed and the occupation certificate was obtained way back on 28.02.2025 by the respondent, but till date the complainant has paid only Rs.22,46,548/- i.e., 63% of the basic sale consideration of Rs.35,46,320/-. As per the SOA placed on page no. 66 of the complaint, the last payment was made by the complainant on 08.02.2012. Thereafter the respondent has raised demands vide demand letters 14.02.2014, 01.05.2014, 06.08.2014, 25.09.2014 and 17.02.2017 followed by reminder letters dated 21.04.2015, 25.05.2015, 09.12.2015 and 19.06.2017 for payment of outstanding dues. Further, the respondent has issued a final reminder cum cancellation letter dated 21.04.2016 and 22.09.2016 and gave time to the 08.12.2023. Thereafter, the respondent has executed an agreement to sell with the third-party i.e., Mr. Chand Bir on 02.02.2024.

13. On perusal of documents placed on record and submissions made by the parties, the Authority observed the complainant has failed to pay the outstanding dues. The respondent has obtained the occupation certificate on 28.02.2025 but the complainant has paid only Rs.22,46,548/- which is 63% of the basic sale consideration of Rs.35,46,320/- till date which clearly depicts that the complainant has failed to abide the terms and conditions of the opted payment plan. Thus, the cancellation letter dated 08.12.2023 is valid. Moreover, the unit has been allotted to the third-party, thus, the relief sought in the present complaint is not maintainable but the same doesn't shed off the liability of the respondent to refund the paid-up amount by the complainant after necessary deductions as per the provisions of the Act of 2016.

14. As per clause 12 of draft buyer's agreement, the respondent-promoter is entitled to deduct the earnest money in case of default by the allottee. The relevant portion of clause 12 of the buyer's agreement is reproduced below for the ready reference:

In the event of the developer electing to cancel this agreement, any amount which is found to be refundable to the allottee(s) over and above the amounts retained as and for liquidated damages such as earnest money, interest on delayed payments, any interest paid, due or payable, any other amount of non-refundable nature, brokerage, if any paid, etc. shall be refunded by the developer after realizing such refundable amount on further sale/resale to any other party and shall be refunded without any interest or compensation of whatsoever nature and upon such cancellation and refund by the developer by registered post/hand, the allottee(s) shall be left with no right, title, interest, claim or lien over the said unit and the car parking space in any manner whatsoever.

4. EARNEST MONEY

The allotted(s) has entered into this agreement on the condition that out of the amount(s) paid/ payable by him/her/it for the said unit and the reserved parking space allotted to him/her/it, the developer shall treat 15% of the basic sale price as earnest money to ensure fulfilment, by the allottee(s), of the terms and conditions as contained in the application and this agreement.

15. 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 Indian 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 Private 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.”*

16. Keeping in view the aforesaid factual and legal provisions, the respondent can retain the earnest money paid by the complainants against the allotted unit and shall not exceed 10% of the consideration amount. So, the same was liable to be forfeited as per clause 12 read with clause 4 of the buyer’s agreement and Haryana Real Estate Regulatory Authority Regulation 11(5). So, the respondent/builder is directed to refund the amount received from the complainants i.e., Rs.22,46,458/- after deducting 10% of the basic sale consideration i.e., Rs.35,46,320/- 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 cancellation i.e., 08.12.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.II Direct the respondent to complete the construction as per the agreement with specification as agreed between the allottee and promoter.

G.III Direct the respondent to compensate the complainant for the delay in possession of the project with interest @12% p.a. from date of payment to date of completion of the said apartment.

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

G.IV Direct the respondent to pay compensation of Rs.5,00,000/- on account of harassment, mental agony and undue hardship caused to the complainant on account of deficiency in service and unfair trade practices.

G.V Direct the respondent to pay legal expenses of Rs.2,00,000/- incurred by the complainant.

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

19. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. The 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.*, 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:

20. 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 of 2016:

- i. The cancellation letter dated 08.12.2023 is valid. Therefore, the respondent/promoter is directed to refund the amount i.e., **Rs.22,46,548/-** received by him from the complainants after deduction of 10% of basic sale consideration of Rs.35,46,320/- as earnest money along with interest at the rate of 10.80% p.a. on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation i.e., 08.12.2023 till the actual realization.
- ii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

21. The complaint stand disposed of.

22. Files be consigned to the registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 23.12.2025