

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

**Complaint no.:** 6408 of 2024  
**Date of filing of complaint:** 01.01.2025  
**Date of order:** 23.12.2025

1. Meenakshi Malhan
2. Rohit Malhan

**Complainants**

**Both R/o:** - D-6/14, Ground Floor, Exclusive Floor, DLF Phase-5, Galleria DLF-IV, Haryana-122002

**Versus**

M/s Imperia Structures Limited.

**Respondent**

**Regd. office at:** A-25, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi-110044

**Corporate office at:** Plot No. 14, Ground Floor, Sector- 44, Institutional Area, Gurugram-122003

**CORAM:**

Shri Arun Kumar  
Shri Phool Singh Saini

**Chairman  
Member**

**APPEARANCE:**

Sh. Sanjeev Kumar Sharma (Advocate)  
Sh. Shubham Mishra (Advocate)

**Complainants  
Respondent**

**ORDER**

1. This complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and

functions under the 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 complainants, 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 and location of the project	"MINDSPACE" at sector-62, Golf Course Extn. Road, Gurgaon.
2.	Project area	8.36 acres
3.	Nature of Project	IT Park Colony
4.	DTCP license no. and validity status	86 of 2010 dated 23.10.2010 valid up to 22.10.2020
5.	Name of Licensee	Baakir Real Estates Private Limited
6.	RERA registered/ not registered and validity status	<b>Registered</b> 240 of 2017 dated 25.09.2017 valid up to 31.12.2020 (Lapsed Project)
7.	Unit No.	58, 10 <sup>th</sup> floor, Tower-A (As per page no. 21 of the reply)
8.	Unit area admeasuring	335.43 sq. ft. (super area) (As per page no. 21 of the reply)
9.	Date of unit buyer's agreement	13.08.2018 (As per page no.32 of the complaint)
10.	Possession clause	<b>12. Handing over possession:</b> <i>That the allottee shall be handed over possession of the unit from the company only after the allottee has fully discharges all his obligations and entire total price (including interest due, if any, thereon) against the unit has been paid and all other applicable charges/dues/taxes of the allottee have been paid and conveyance deed has been executed and registered in his favour. The company shall hand over possession of the unit to the allottee is</i>

		<p><i>not in default of any of the terms and conditions of this agreement and has complied with all provisions, formalities, documentation, etc. as may be prescribed by the company in this regard.</i></p> <p>(As per page no. 27 of the reply)</p>
13.	Due date of possession	Not specified
14.	Assured return clause	<p><b>33. Assured Return</b>  <i>"Where the allottee has opted for payment plan as Annexure-A attached herewith and accordingly, the company has been paying/agreed to pay Rs.21,523/- per months by way of assured return to the allottee from <u>10.08.2018</u> till the date of possession of the unit. The return shall be inclusive of all taxes whatsoever payable or due on the return.</i></p> <p><b>34. Leasing Arrangement:</b>  <i>"A. (a) the company will pay to the allottee Rs.19,455/- per month as committed return for upto three years from the date of notice of offer of possession of the unit or till the same is put on lease, whichever is earlier..."</i></p> <p><b>(Emphasis Supplied)</b>                  (As per page no. 32 of the reply)</p>
15.	Basic sale consideration	Rs.25,15,725/- (As per cost sheet on page no. 24 of the complaint)
16.	Total Sale Consideration	Rs.26,96,857/- (As per cost sheet on page no. 24 of the complaint)
17.	Amount paid by complainants	Rs.24,23,851/- (As per receipt information on page no. 20 & 22 and details on page no. 27 of the complaint)
18.	Assured return paid by the respondent	Rs.3,16,601/- (As per page no. 4 of the reply)
19.	Offer of possession for fit-out	10.10.2019 (As per page no. 54 of the reply)

20.	Occupation certificate	28.11.2019 (for tower-A) (As per details on DTCP website))
21.	Reminder notice for possession	10.06.2020 (As per page no. 56 of the reply)
22.	Final notice for possession	11.05.2022 (As per page no. 58 of the reply)
23.	Cancellation letter	31.10.2022 (As per page no. 19 of the complaint)

**B. Facts of the complaint:**

3. The complainants have made the following submissions:
- I. That the respondent company M/s. Imperia Structures Limited advertised for construction of commercial complex on piece of land admeasuring 8.35 acres called Cyber/IT Park "MindSpace" in the revenue estate Village Maidawas, in Sector 62, Gurgaon Haryana.
  - II. That the complainants purchased/booked an office/space/unit No. IMP-MS-0144 admeasuring super area 335.43 sq. ft. at the rate of Rs.7,500/- per sq. ft. amounting total to Rs.26,96,857/- including other charges etc. on the assurance that construction shall be completed in time and possession would be handed over in time. At the time of booking Rs.24,23,851/- paid to promoter/developer vide cheques dated 08.08.2018 for Rs.14,00,000/- Rs.2,00,000/- & Rs.23,051/- respectively.
  - III. That an amount of Rs.26,96,857/- paid to the respondent prior to the execution of the MOU. The MOU was never executed between the parties i.e., M/s. Imperia Structures Limited and the complainants. The remaining amount was waived out originally between promoter/builder/respondent and the complainants against onetime payment.
  - IV. That the promoter/respondent and the complainant were in agreement for assured return against the investment made

Rs.26,23,851/-. The cheque handover to complainants started dishonouring right from the beginning itself.

- V. That to the utter shock of complainants, they received a cancellation of booking for the unit dated 31.10.2022 and nothing was paid back to the complainants without any truthful reason as the unpaid dues was false and fabricated reason hence complaint u/s 11(5) read with section 18 is made for relief for direction to the promoter respondent. The respondent be asked to revoke the cancellation of unit and pay delay possession interest on the amount paid till handing over of the possession immediately.
- VI. That the complainants also reserve their right to file separate complaint for compensation as and when required before the Authority.

**C. Relief sought by the complainant:**

4. The complainants have sought following relief(s):
- i. Interest for delay possession charges till the actual handover of the unit in question.
  - ii. Handover of possession of the unit.

**D. Reply by the respondent:**

5. The respondent has contested the complaint on the following grounds:
- i. That the complaint is *prima facie* not maintainable and must be dismissed for being vexatious to law.
  - ii. That the complainants have approached this Hon'ble Authority with malice and have tried to mislead this Hon'ble Authority by making incorrect and false averments and stating untrue and/or incomplete facts and, as such, the complainants are guilty of *suppressio very suggestion falsi*. The complainants have suppressed and/or misstated the facts and, thus, the complaint, apart from being wholly

misconceived, is also an abuse of the process of law. On this short ground alone, the complaint is liable to be dismissed.

- iii. That the complaint filed by the complainants is baseless, vexatious and is not maintainable in the eyes of law therefore, the complaint deserves to be dismissed at the very threshold.
- iv. That the complaint is barred by limitation as even as per the admission of the complainants, the last cause of action arose in October, 2022 and hence no steps whatsoever were taken by the complainants since then to file the complaint.
- v. That the complainants have not approached this Hon'ble Authority with clean hands. The complainants are attempting to raise absurd and illegitimate grounds in order to acquire benefits, for which the complainants are not entitled in the least.
- vi. That the complainants at their own free will, booked a virtual office space unit admeasuring 335.43 sq. ft., in the project "Mindspace", located at sector 62, Gurugram for a total sale consideration of Rs.12,87,902/- including applicable tax and additional miscellaneous charges. The complainants were allotted virtual office space, 10<sup>th</sup> floor for a down payment plan.
- vii. That the complainants claim that no Memorandum of Understanding was signed is completely denied. That the complainants and the respondent duly signed a builder buyer's agreement on 13.08.2018. By signing the agreement, the complainants expressly accepted its provisions. Therefore, stating that no MoU was signed is incorrect, as the BBA is a more detailed and legally binding document that both parties willingly agreed to.

- viii. That the construction of the said project was completed way back in 2019 and the occupation certificate was applied for. The occupation certificate has been received on 02.06.2020 by the respondent.
- ix. That the complainants are misleading this Hon'ble Authority and hiding the fact that the respondent has time and again issued offer of possession and demand notices to the complainants. It is submitted that an offer of possession for fit-out was issued by the respondent on 10.10.2019 and a reminder regarding the same was sent on 10.06.2020 to the complainants at the time of anticipation of the occupation certificate. Although the issuance of the occupation certificate was delayed due to the unforeseen circumstances arising from the COVID-19 pandemic, it is customary in real estate practice for the offer of possession for fit-out to be provided at least six months in advance of the occupation certificate, thereby allowing sufficient time for touch-ups and other preparations before the final possession is offered. After obtaining the occupation certificate, the respondent promptly issued an offer of possession.
- x. That the complainants are investors, who has made investment in the project. The assured return was duly paid by the respondent from August 2018 to October 2019 totalling to Rs.3,16,601/- which is a significant amount.
- xi. That the complainants contends that no agreement was ever executed. However, as previously stated, the respondent and the complainants duly entered into a BBA, and the respondent has consistently adhered to its terms and conditions. If the complainants maintains that no agreement was ever executed, then any claim for AR on the basis of such a non-existent agreement is wholly invalid and devoid of merit.

- xii. That it is factually and legally improbable for the complainants to seek AR when the very foundation of such a claim—the alleged agreement—never existed. Furthermore, the respondent issued the cheques for a specific fixed amount which has been duly mentioned in the BBA, and hence, the absence of any such agreement is entirely baseless.
- xiii. That the respondent directs all the payments received from the allottees, towards the construction of the undertaken project and thus, default in depositing the payment by the allottees disrupts the construction speed and hinders the completion of the committed project, which eventually affects the delivery of the project to allottees. It is also necessary to bring in notice that despite of several hindrances and certain *force majeure*, such as recent COVID-19 pandemic, the respondent has successfully procured the OC dated 02.06.2020, which exhibits the *bona fide* intention of the respondent to complete the project.
- xiv. That despite being fully aware of the status of the project and the reasons for delay, which were absolutely unforeseeable and beyond the control of the respondent, the complainants herein filed the present complaint and the same is based on concocted and misconceived statements.
- xv. That the complainants were well aware that there might be unforeseen and untoward incidents or circumstances, being beyond the control of the respondent, which will cause hindrances in the timely completion of construction of the project.
- xvi. That owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court issued a ban on construction activities in the region from 04.11.2019 onwards, which was a blow to realty



developers in the city. The Air Quality Index (AQI) at the time was running above 900, which is considered severely unsafe for the city dwellers. In pursuance to the Central Pollution Control Board (CPCB) declaring the AQI levels as not severe, the SC lifted the ban conditionally on 09.12.2019, allowing construction activities to be carried out between 6 a.m. and 6 p.m., and the complete ban was lifted by the Hon'ble Supreme Court on 14.02.2020.

- xvii. That clause 57 of the said BBA states that if the dispute or difference shall arise between the parties, the same shall be referred for arbitration proceedings. The said clause 57 has been reproduced below for this Hon'ble Authority's perusal:

*"All or any disputes arising out of or touching upon or in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms hereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussions, failing which the same shall be settled through reference to a sole Arbitrator to be appointed by the Company, whose decision shall be final and binding upon the Parties. The Allottee hereby confirms that it shall have no objection to the appointment of such Sole Arbitrator and the Allottee hereby accepts and agrees that this shall not constitute a ground for challenge to the independence or impartiality of the said Sole Arbitrator to conduct the arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereto and shall be held at the Company's offices or at a location designated by the said Sole Arbitrator in Delhi. The language of the arbitration proceedings and the Award shall be in English. The Award of the Sole Arbitrator shall be final and binding on the Parties. Both the Parties will share the fees of the Arbitrator in equal proportion."*

- xviii. That the complainants have stated in their complaint that the outstanding amount was adjusted and waived against a one-time payment. However, no such condition was ever agreed upon by the parties. Therefore, the respondent denies the said claim in its entirety.

- xix. That the complainants have alleged that the respondent has intentionally cancelled the said unit. The respondent made multiple

attempts to seek the complainant's compliance by sending various reminders and making numerous phone calls regarding the clearance of outstanding dues and the execution of the conveyance deed. A final notice dated 11.05.2022 was issued to the complainants, explicitly requesting payment of the outstanding dues amounting to Rs.4,20,839/-. Despite repeated communications and follow-ups, the complainants failed to fulfil their obligations and clear the outstanding dues. That, consequently, due to the complainant's inaction and non-compliance, the respondent company was left with no alternative but to cancel the said unit through a formal letter dated 31.10.2022.

- xx. That the respondent has duly fulfilled all its obligations and exercised the necessary due diligence in accordance with the agreed terms. Therefore, the sole responsibility for the cancellation of the unit rests with the complainants, owing to her failure to comply with the requisite financial and contractual obligations.
- xxi. That the contentions raised by the complainants are misleading and devoid of merit. The demand for outstanding dues raised by the respondent is in strict accordance with the agreed contractual terms and constitutes a necessary financial obligation. The complainants cannot selectively evade their financial responsibilities while simultaneously seeking to retain rights over the allotted unit.
- xxii. That the complainants are attempting to unjustly enrich themselves at the expense of the respondent by concealing material facts and making baseless allegations. That these actions appear to be an attempt to exert undue pressure on the respondent for unwarranted financial gain. In light of the foregoing, no valid cause of action has

arisen in favor of the complainants to justify the filing of the present complaint.

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 submissions made by the complainants.

**E. Jurisdiction of the Authority:**

7. The authority has complete territorial and 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)(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 complainants at a later stage.

**F. Findings on the objections raised by the respondent:**

**F.I Objection regarding regarding the circumstances being 'force majeure':**

9. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as COVID-19 outbreak, certain environment restrictions, weather conditions in NCR region and non-payment of instalment by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. 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 on the project being developed by the respondent. 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.

**F.II Objection regarding agreements contains an arbitration clause which refers to the dispute resolution system mentioned in agreement.**

10. The buyer's agreement executed between the parties dated 13.08.2018 contains a clause 57 relating to dispute resolution between the parties. The clause reads as under:

57.

*"All or any disputes arising out or touching upon or in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled through amicably by mutual discussions, failing which the same shall be settled through reference to a sole arbitrator to be appointed mutually, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole arbitrator and the allottee hereby accepts and agrees that this shall not constitute a ground for challenge to the independence or impartiality of the said sole arbitrator to conduct the arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments / modifications thereto and shall be held at the Company's offices or at a location designated by the said sole arbitrator in Delhi. The language of the arbitration proceedings and the award shall be in English. The Award of the sole arbitrator shall be final and binding on the parties. Both the parties will share the fees of the arbitrator in equal proportion.*

**(Emphasis Supplied)**

11. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506**, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

12. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer.
13. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainants are well within their right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.
- G. Findings on the relief sought by the complainants:**
- G.I Interest for delay possession charges till the actual handover of the unit in question.**
- G.II Handover of possession of the unit.**
14. The above-sought reliefs by the complainants are taken together being inter-connected and finding of one relief will definitely affect the other.
15. The complainants were allotted a unit in the project of respondent "MindSpace", in Sector-62, Golf Course Extension Road, Gurugram for a basic sale consideration of Rs.26,96,857/-. A unit buyer's agreement was executed between the parties on 13.08.2018 and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs.24,23,851/.
16. The counsel for the respondent vide proceedings of the day dated 23.12.2025 has mentioned that the respondent has obtained the occupation certificate on 28.11.2019 and the offered the fit-out possession on 10.10.2019. Thereafter, the respondent has sent reminder for offer of possession on 10.06.2020 and 11.05.2022. Further, the unit

- was cancelled on 31.10.2022. Now, the question arises before the Authority is that the cancellation letter dated 31.10.2022 is valid or not?
17. In the present complaint, the complainants have opted for an instalment link payment plan. As per the opted payment plan, the complainants have to pay 10% of the basic sale price at the time of booking, 90% of the basic sale price within 30 days of the booking i.e., the complainants had to pay 100% of the basic sale consideration within 30 days of booking but the complainants have paid 96% of the basic sale consideration till date. The respondent has obtained the occupation certificate on 28.11.2019 and the offered the fit-out possession on 10.10.2019. Thereafter, the respondent has sent reminder for offer of possession on 10.06.2020 and 11.05.2022 and finally terminated the unit on 31.10.2022 on account of non-payment of outstanding dues despite issuance of reminder letters dated 10.06.2020 and 11.05.2022.
18. On consideration of the documents place on record and submissions made by the parties, the Authority has observed that the complainants-allottee in under an obligation to make payment of outstanding as agreed between the parties vide agreement dated 13.08.2018. As per section 19(6) of the Act of 2016, every allottee who has entered into an agreement to take an apartment, plot or building under section 13(2) is responsible to make necessary payments in the manner and within the time as specified in the said agreement. In the present case, the complainants-allottee have not obliged with the terms of the agreement. The respondent has issued a reminder vide reminder notice for possession on 10.06.2020 and final notice for possession dated 11.05.2022 for payment of outstanding dues as per the agreed payment plan but the complainants have failed to make the payments within the

stipulated time. Therefore, the cancellation dated 31.10.2022 of the unit stands valid.

19. Moreover, as per the possession clause the respondent shall handover the possession of the unit after the allottee has fully discharged all his obligations and entire sale price has been paid by the complainants-allottee but the complainants have not paid the entire sale consideration till date. Therefore, the due date of possession cannot be determined on the possession and as the complainants have failed to abide by the opted payment plan. Thus, the relief sought in the present complaint of delayed possession charges 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.
20. As per clause 4 of buyer's agreement dated 13.08.2018, the respondent is entitled to forfeit the earnest money if the allottee fails to perform the obligations of the buyer's agreement. Clause 4 of the buyer's agreement is reproduced below for the ready reference:

**(4) EARNEST MONEY**

*The allottee agrees and confirms that out of the total amount(s) paid/ payable by the allottee for the unit, 15%(Fifteen Percent) of the sale consideration of the unit shall be deemed to constitute the earnest money to ensure fulfilment of the terms and conditions as contained in the agreement. In the event, the allottee fails to perform any obligations or commit breach of any of the terms and conditions mentioned in the agreement, including but not limited to the occurrence of any event of default as stated in this agreement, the allottee agrees, consents and authorizes the company to cancel the allotment and on such cancellation, the allottee authorizes the company to forfeit earnest money along with the non-refundable amounts. Thereafter, the allottee shall be left with no right, title, claim, interest and lien on the unit/ project. This is in addition to any other remedy/right, which the company may have. If the amount paid by the allottee is less than the forfeitable amount, then the allottee undertakes to make good the shortfall of the forfeitable amounts.*

21. 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."*

22. 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 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.24,23,851 /- after deducting 10% of the sale consideration 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., 31.10.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid. The amount of Rs.3,16,601/- already paid on account of assured return shall be adjusted.

**H. Directions of the authority:**

23. 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 amount i.e., **Rs.24,23,851/-** received by him from the complainants after deduction of 10% of basic sale consideration of Rs.25,15,725/- 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., 31.10.2022 till the actual realization. The amount of Rs.3,16,601/- already paid on account of assured return shall be adjusted.
  - 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.

- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.
24. Complaint stands disposed of.
25. File be consigned to registry.

  
**(Phool Singh Saini)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority,  
Gurugram

**Dated: 23.12.2025**

**HARERA**  
**GURUGRAM**