

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

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| Complaint no. : | 4209 of 2020 |
| Date of filing of complaint: | 23.11.2020 |
| Date of Order: | 06.01.2026 |

Pavan Dutta
R/o: D-5/9, DLF Phase-1, Gurugram-
122002

Complainant**Versus**

Imperia Structures Ltd.
Regd. office at: Emaar MGF Business Park,
Mehrauli Gurgaon Road, Sikandarpur Chowk,
Sector-28 Gurugram-122002

Respondent**CORAM:**

Shri Arun Kumar
Shri Phool Singh Saini

Chairman
Member

APPEARANCE:

Sh. Varun Hooda (Advocate)
Sh. Dhruv Rohatgi (Advocate)

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. | Heads | Details |
|--------|---|---|
| 1. | Project name and location | Emerald Floors Premier-II at Emerald Estate, Sector 65, Gurugram. |
| 2. | Project area | 25.499 acres |
| 3. | Nature of project | Group housing colony |
| 4. | RERA registered/not registered | "Emerald Estate" registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs. |
| | RERA registration valid up to | 23.08.2022 |
| 5. | DTPC License no. & | 06 of 2008 dated 17.01.2008 |
| | Validity status | Valid/renewed up to 16.01.2025 |
| | Name of licensee | Active Promoters Pvt. Ltd. and 2 others C/o Emaar MGF Land Ltd. |
| 6. | Welcome letter in favour of the Original allottee i.e., Sumit Pahuja | 17.08.2010 (As per page no. 17 of the complaint) |
| 7. | Provisional allotment letter in favour of the Original allottee i.e., Sumit Pahuja | 17.08.2010 (As per page no. 18 of the complaint) |
| 8. | Unit no. | EFP-II-49-0401, 4 th floor, building no. 49 (As per page no. 30 of the complaint) |
| 9. | Unit area | 1600 sq. ft. approx. (As per page no. 30 of the complaint) |

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| 10. | Date of execution of buyer agreement between the Original allottee i.e., Sumit Pahuja and the respondent herein | 19.01.2010 (As per page no. 27 of the complaint) |
| 11. | Transfer/Assignment/Nomination in favor of complainant | 11.11.2010 (As per page no. 51 of the reply) |
| 12. | Due date of delivery of possession | 19.04.2013 <i>as per clause 11(a) of the said agreement i.e. 36 months from the date of execution of buyer's agreement (19.01.2010) plus 3 months grace period</i> (As per page no. 43 of the complaint) |
| 13. | Total sale consideration as per schedule of agreement annexed with the buyer's agreement | Rs.79,57,000/- (As per page no. 62 of the complaint) |
| 14. | Total amount paid by the complainant as per cancellation letter dated 28.12.2013 | Rs.27,89,527/- (As per page no. 81 of the complaint) |
| 15. | Endorsement in the name of complainant | Undated (As per page no. 80 of the complaint) |
| 16. | Payment Plan | Construction linked (As per page no. 97 of the reply) |
| 17. | Payment request letter cum demand letters in the name of complainant | 01.11.2010, 30.08.2013, 30.09.2013, 07.10.2013, 08.10.2013, 30.10.2013, 15.11.2013 (As per page no. 116-125 of reply) |
| 18. | Cancellation letter dated | 28.12.2013 (As per page no. 81 of the complaint) |
| 19. | Email trails between complainant and respondent | May 2018 (As per page no. 91-93) |

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| | | of the complaint) |
| 20. | Provisional allotment in favor of third party i.e. Rohan Bhandari and Ors. | 14.03.2019 (As per page no. 144 of the reply) |
| 21. | Offer of possession | Not offered |
| 22. | Occupation certificate | 11.11.2020 (As per page no. 146 of the reply) |

B. Facts of the complaint:

3. The complainant has made the following submissions:
 - I. That the project 'Capital Gateway' came to the knowledge of the complainant, who is a resident of New Delhi, through the authorized marketing representatives of the respondent. The marketing representatives approached the complainant, for and on behalf of the respondent, making tall claims in regard to the project and the respondent lured the complainant to book a unit in the above said project of the respondent.
 - II. That in 2009, the respondent announced the launch of Group Housing Colony "Emerald Estate" at Sector 65, Gurugram consisting of Premium Floors, multi storied apartments, villas, penthouses, residential units, car parking spaces, recreational facilities, landscaped gardens along with certain committed amenities.
 - III. That the complainant being interested in the purchase of residential floors for himself and his family for living purposes was approached by the respondent for selling a residential floor in the project mentioned-above.
 - IV. That the complainant had paid a booking amount of Rs.5,00,000/- on 05.07.2010 as per the payment plan opted by him and the respondent allotted a unit bearing no.-EFP-II-49-0401, "Emerald

Floors Premier Phase-II" admeasuring area approx. 1600 sq. ft. in the Group Housing Colony situated at "Emerald Estate", Sector-65, Gurugram.

- V. That the respondent to dupe the complainant in their nefarious net even executed buyer's agreement signed between Mr. Sumit Pahuja and M/S Emaar MGF Land Limited on 29.10.2010, finally respondent endorsed the said agreement in favor of complainant (Mr. Pavan Datta). By this endorsement complainant became legal allottee and purchaser of the said property. The respondent created a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant.
- VI. That the total cost of the said flat is Rs.79,57,000/- out of this a sum of Rs. 29,06,819/- is paid by the by the complainant in time bound manner. The complainant on further reading of buyer's agreement observed that certain terms and conditions were completely one sided.
- VII. That the complainant raised objection to the clauses of BA to which respondent replied that it being a standard format, no change of any nature shall be done. The complainant had no option but to accept the terms of the "buyer's agreement" without any negotiation because complainant had already paid a sum of Rs 29,06,819/- much before the start of construction as per the construction linked payment plan.
- VIII. That the buyer's agreement proposed the possession of the unit within 36 months from the date of execution of buyer's agreement. The possession of the unit was scheduled by 29.10.2013. The

payments made by the complainant were based on the construction on the ground but unfortunately the demands being raised was not corresponding to the factual situation on ground. The complainant approached the respondent and raised objections towards the slow progress which was not as per the payment plan, the respondent cunningly answered that they have set procedure and accordingly they have raised demand note. As is the practice with all the builders, before RERA came into existence, nothing was being disclosed and the payment was being asked on regular basis.

- IX. That the complainants having dreams of his own residential apartment signed the agreement and made the payments in the hope that he shall be delivered the floor within 36 months of having signed the BA which was done on 29.10.2010 and hence the period of 36 months comes to an end on 29.10.2013.
- X. That as the delivery of the apartment was due on 29.10.2013 which was prior to the coming into of force of the GST Act, 2016 i.e. 01.07.2017, it is submitted that the complainant is not liable to incur additional financial burden of GST due to the delay caused by the respondent. Therefore, the respondent should pay the GST on behalf of the complainant as it was only due to respondent's fault that the additional liability of GST has to be borne by the complainant.
- XI. That the respondent sent demand letter in 2013 without construction on site and respondent sent the cancellation letter dated 28.12.2013 after that respondent also received payment Rs 1,00,000/- from complainant through cheque dated 18.02.2014 against allotted unit. That the complainant approached the respondent seeking project handover date with amenities, made regular visits and did numerous calls but only assurance given by the

respondent that the possession of fully constructed unit as promised would be handed over soon, which had not happened till date.

- XII. That the respondent miserably failed to complete the construction of work of the project "Emerald floors Premier Phase-II" within assured time limit, thereby grossly violating the terms and conditions of the printed agreements as entered between the complainant and respondent.
- XIII. That the complainant was regularly chasing with the officers of the respondent accusing them for raising a demand note without achieving the scheduled construction for which no reply was ever received from the respondent. The complainant has fairly booked the said unit in the year 2010 and had no idea about the fate and future of the project while losing a major chunk of their lifelong. Evidently, the respondent has miserably failed in keeping the promises and assurances causing irreparable losses and injury to the complainant.
- XIV. That the cause of action accrued in favour of the of the complainant and against the respondent on the date when the respondent advertised the said project, it again arose on diverse dates when the complainant entered into their respective agreement, it also arose when the respondent inordinately and unjustifiably and with no proper and reasonable legal explanation or recourse delayed the project beyond any reasonable measure continuing to this day, it continues to arise as the complainant have not been delivered the apartments and the infrastructure facilities in the project have not been provided till date and the cause of action is still continuing and subsisting on day to day basis.
- XV. That the instant complaint has occurred within the jurisdiction of the Hon'ble Authority as the apartment which is the subject matter

of this complaint is situated in Sector 65, Gurugram which is within the jurisdiction of this Hon'ble Authority.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
 - i. Direct the respondent to handover the physical possession of residential unit no.-EFP-II-49-0401 having area of 1600 sq. ft. in habitable condition with all amenities.
 - ii. Direct the respondent to pay interest on paid amount of Rs.29,06,819/- along with pendent lite and future interest from 29.10.2013 to till actual physical possession thereon @ 24 % equal to what respondent charges from complainant as per the agreement.

D. Reply by the respondent:

5. The respondent has contested the complaint on the following grounds:
 - a. That the present complaint is not maintainable in law or on facts. The Complainant has filed the present complaint seeking possession and interest for the alleged delay in delivering possession of the unit in question. That complaints pertaining to interest, compensation and refund are to be decided by the Adjudicating Officer under Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act" for short) read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as "the Rules") and not by this Hon'ble Authority. The present complaint is liable to be dismissed on this ground alone. Moreover, the Adjudicating Officer derives his jurisdiction from the central act which cannot be negated by the rules made thereunder.
 - b. The complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The

Complainant has no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the Buyer's Agreement dated 19.01.2011.

- c. That Mr. Sumit Pahuja (hereinafter "original allottee") had booked the unit in question, bearing number EFP-II-49-0401, situated in the project 65, Gurugram, Haryana. That the original allottee prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the original allottee was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the original allottee took an independent and informed decision to purchase the unit, uninfluenced in any manner by the respondent.
- d. That the original allottee had executed an agreement to sell dated 10.11.2010 with complainant for transferring and conveying his rights, entitlement and title of in the unit in question to the complainant.
- e. That the complainant on executing the aforesaid agreement to sell had approached Respondent requesting it to endorse the provisional allotment of the unit in question in his name.
- f. The complainant had further executed an affidavit dated 10.11.2010 and an indemnity cum undertaking dated 10.11.2010 whereby the complainant had consciously and voluntarily declared and affirmed that he would be bound by all the terms and conditions of the provisional allotment in favour of the original allottee. It was further declared by the complainant that the complainant having been

substituted in the place of the original allottee in respect of the provisional allotment of the unit in question was not entitled to any compensation for delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from respondent.

- g. That without admitting or acknowledging in any manner the legality or truth of the allegations levelled by the complainant and without prejudice to the contentions of respondent, it is submitted that the interest demanded by the complainant in the instant complaint is compensatory in nature for indemnifying the complainant for the alleged delay and hence the complaint preferred by the complainant is barred by estoppel.
- h. A buyer's agreement dated 19.01.2011 was executed between the complainant and the respondent. The complainant had undertaken to remit the instalments prescribed under the schedule of payments incorporated in the agreement on time. However, the complainant consciously defaulted in timely remittance of instalments to the respondent and the same is evident from the payment request letters, reminders, notices etc. issued to the complainant.
- i. That in terms of clause 1.2(i)(ii) the complainant had agreed that the respondent has the right to forfeit the earnest money along with the processing fee, any interest paid, due or payable, any other amount of a non- refundable nature including brokerage paid by the respondent to the brokers (in case of booking done through a broker) in the event of the failure of the complainant to perform his obligations or non-fulfilment of all/any of the terms and conditions prescribed in the buyer's agreement. The complainant was conscious and aware of the defaults committed by him as well as the aforesaid covenant of the

buyer's agreement and has consequently refrained from objecting against the cancellation of the allotment of the unit in question in his favor. The instant complaint is unsustainable both in law and on facts.

- j. That the complainant consciously and maliciously chose to ignore the payment request letters, reminders and notice issued by the respondent and defaulted in making timely payments of the instalments which was an essential, crucial and an indispensable requirement under the buyer's agreement. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondent. The complainant chose to ignore all these aspects and wilfully defaulted in making timely payments. The respondent despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainant.
- k. That since the complainant was not forthcoming with the payments due and payable by him, the respondent was constrained to issue a cancellation letter dated 28.12.2013 to the complainant. The complainant was categorically informed that the application form and buyer's agreement executed by him in respect of the unit in question have been terminated. The complainant was further informed that the earnest money deposited by him with the respondent has been forfeited and other amounts on account of overdue interest were deducted from the amount deposited with the respondent. The complainant did not raise any objection in any manner at the relevant

time and duly accepted the termination of the buyer's agreement as well as the allotment of the unit in question. The complainant is left with no right, title, lien or entitlement in respect of the unit in question or against the respondent after 28.12.2013. The instant complaint is a gross misuse process of law.

- I. That the rights and obligations of the complainant as well as respondent were completely and entirely determined by the covenants incorporated in the buyer's agreement. As per clause 11 of the buyer's agreement dated 19.01.2011 the time period for delivery of possession was 36 months alongwith grace period of 3 months from the date of execution of the buyer's agreement subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement. The complainants have completely misconstrued, misinterpreted and miscalculated the time period as determined in the buyer's agreement. That it was categorically provided in clause 11(b)(iv) that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent. Furthermore, it has been categorically provided in the agreement that the time period for delivery of project shall also stand extended on occurrence of facts and circumstances which are beyond the power and control of the respondent. Since, the complainant had defaulted in timely remittance of payments as per

schedule of payment the date of delivery of possession is not liable to be determined in the manner sought to be done in the present case by the complainant.

- m. That clause 13 of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. In case of delay caused due to non- receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. As delineated hereinabove, the complainant, having defaulted in payment of instalment, is/was thus not entitled to any compensation or any amount towards interest under the buyer's agreement.
- n. That after cancellation of the allotment of the complainant, Mr. Roshan Bhandari had approached the respondent for purchasing the said unit. Mr. Rohan Bhandari had executed an application form for obtaining allotment of the unit in question. The respondent, in pursuance thereof, had issued a provisional allotment letter dated 14.03.2019 in favor of Mr. Roshan Bhandari. It is manifest that no relief can be legally granted in favor of the complainant in the facts and circumstances of the case. The instant complaint is liable to be dismissed at the threshold.
- o. That the respondent had submitted an application dated 20.07.2020 for grant of occupation certificate to the concerned statutory authority. The occupation certificate thereafter was granted vide Memo bearing no. ZP-441-Vol.-II/AD(RA)/2020/20094 on

11.11.2020. The respondent has already offered possession of the unit in question to Mr. Rohan Bhandari. Once an application for issuance of occupation certificate is submitted before the concerned competent authority, the respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any control over the matter. Therefore, the time period utilised by the concerned statutory authority for granting the occupation certificate needs to be necessarily excluded from computation of the time period utilised in the implementation of the project in terms of the buyer's agreement. As far as the respondent is concerned, it has diligently and sincerely pursued the development and completion of the project in question.

- p. That needless to mention that the complainant had purchased the unit in question as a speculative investment. The complainant, however, was not able to effect a beneficial transaction in respect of the unit in question. Furthermore, the complainant did not have adequate funds to remit the instalments pertaining to the unit in question. The complainant has intentionally concealed all these facts from this Hon'ble Authority and has preferred the instant complaint on wholly extraneous and fallacious grounds. The complainant needlessly avoided the payments of the instalments and defaulted in their obligations and liabilities enumerated in the buyer's agreement. The complainant has needlessly distorted the real and true facts of the matter in order to generate an unwarranted controversy.
- q. The project of the respondent is an "Ongoing Project" under RERA and the same has been registered under RERA Act, 2016 and HRERA Rules, 2017. Registration certificate granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-(Reg.)482/2017/829

dated 24.08.2017. Without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted the Hon'ble Authority has granted registration till 23.08.2022. The respondent has already offered possession of the unit in question to Mr. Rohan Bhandari. Thus, no delay can be attributed to the respondent in the facts and circumstances of the case. The allegations advanced by the complainant are absolutely false and frivolous.

- r. That a contract dated 1 November 2010 was executed between the Respondent and M/s B L Kashyap and Sons (BLK/Contractor) in terms of which the Contractor was to construct residential projects being developed by the Respondent in the name and style of "Emerald Estate" and "Emerald Floors Premier", including civil, structure, finishing, MEP, external development, infrastructure, horticulture, EWS, clubhouses, swimming pools, convenience shopping etc. The start date of the project as determined by the parties was 26 July 2010 and the scheduled date of completion of the project was 25 July 2013.
- s. The contractor was not able to meet the agreed timelines for construction of the project. The progress of work at the project site was extremely slow on account of various defaults on the part of the contractor, such as failure to deploy adequate manpower, shortage of materials etc. in this regard, the respondent made several requests to the contractor to expedite progress of the work at the project site. However, the contractor did not adhere to the said requests and the work at the site came to a standstill. at in the aforesaid circumstances, the Respondent was constrained to issue Notice of Termination dated 16.01.2015, terminating the Contract and calling upon the contractor

to remove itself from the Project site without removal/ damage to the materials, equipment, tools, plant & machinery, and to hand over the contract documents.

- t. That the arbitration proceedings titled as B L Kashyap and Sons Vs Emaar MGF Land Ltd (arbitration case number 1 of 2018) before Justice A P Shah (Retd), Sole Arbitrator have been initiated. The hon'ble Arbitrator vide order dated 27.04.2019 gave liberty to the respondent to appoint another contractor w.e.f. 15.05.2019.
 - u. That all the demands raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement duly executed between the parties. There is no default or lapse on the part of the respondent. The respondent has acted strictly in accordance with the terms and conditions of the buyer's agreement. The complainant, on the other hand, has consciously and willfully defaulted in due observance of the terms and conditions of the buyer's agreement. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.
 - v. It is wrong and denied that the respondent has contravened any provision of sections 11 and 18 of the Act or of rule 15 of the Rules as alleged. The allegations of the complainant in this regard are devoid of material particulars and absolutely false and frivolous to their positive knowledge.
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. Finding on objections raised by the respondent:

F.I Objection regarding delay due to force majeure circumstances.

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, issue of second staircase, 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. The respondent has specifically stated in its reply that due to issue of staircase and default of contractor, the respondent was unable to complete the unit. 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. 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 handover the physical possession of residential unit no.-EFP-II-49-0401 having area of 1600 sq. ft. in habitable condition with all amenities.
- G.II Direct the respondent to pay interest on paid amount of Rs.29,06,819/- along with pendent lite and future interest from 29.10.2013 to till actual physical possession thereon @ 24 % equal to what respondent charges from complainant as per the agreement.

10. The complainant was allotted a unit in the project of respondent "Emerald Floors Premier-II" at Emerald Estate in Sector 65, Gurugram for

a basic sale consideration of Rs.79,57,000/-. A flat buyer's agreement was executed between the original allottees i.e., Mr. Sumit Pahuja and the respondent on 19.01.2010. Thereafter, the nomination letter was issued by the respondent in the favour of the complainant herein on 11.11.2010. The complainant after nomination started paying the amount due against the allotted unit and paid a total sum of Rs.27,89,527/-. As per clause 11(a) of the buyer's agreement, the possession of the subject unit is to be handed over on or before 19.04.2013.

11. The respondent has mentioned in its reply that the unit of the complainant was cancelled on 28.12.2013 on account of non-payment of the outstanding dues. Further, the respondent has issued numerous payment request letter cum demand letter to the complainant herein but the complainant failed to pay the same. The respondent has completed the construction of the project and obtained occupation certificate on 11.11.2020 from the competent Authority and the complaint has been filed on 23.11.2020 after a lapse of almost 7 years from the date of cancellation and hence the present complaint is barred by limitation. Now, the question arises before the Authority is that the cancellation letter dated 28.12.2013 is valid or not?
12. On perusal of documents placed on record and submissions made by the parties, the Authority observed that the present complainant was filed on 23.11.2020 and the same was disposed off vide order dated 12.10.2021 and held that the cancellation made by the respondent is valid and respondent was directed to refund the balance amount of Rs.13,79,696/- as no refund was made after cancellation till the date of above-mentioned order of the Authority.
13. The complainant has approached the Hon'ble Appellate Tribunal and filed an appeal no. 152 of 2022 challenging the order dated 12.10.2021 passed

by the Authority. The Hon'ble Tribunal disposed off the appeal vide order dated 10.12.2024 and held that the order passed by the Authority is cryptic and needs to be set-aside and the matter needs to be put before the Authority for fresh decision after affording the opportunity to both the parties.

14. The Authority has provided ample opportunities to the parties vide hearing dated 13.05.2025, 29.07.2025, 30.09.2025, 21.10.2025, 11.11.2025 and 09.12.2025 for effective hearing and after many adjournments finally the matter was heard effectively on 09.12.2025.
15. The counsel for the complainant vide proceedings of the day dated 09.12.2025 stated that the complainant is seeking physical possession of the unit in habitable condition with all amenities and to pay interest on amount paid till actual physical possession. He further mentioned that the respondent has accepted payment of Rs.1,00,000/- post cancellation and acknowledged the same but did not set aside the cancellation and deducted more than 10% of the sale consideration and no amount has been credited in the account of complainant.
16. However, the counsel for the respondent stated that the unit of the complainant was cancelled in the year 2013, hence the present complainant is to be dismissed being barred by limitation. Moreover, the complainant in the present complaint is not seeking the relief of setting aside the cancellation. He further stated that despite various reminders issued by the respondent, the complainant has failed to pay the outstanding dues as per the payment plan and paid only Rs.1,00,000/-.
17. On consideration of the documents place on record and submissions made by the parties, the Authority has observed that the complainant-allottee is under an obligation to make payment of outstanding as agreed between the parties vide agreement dated 19.01.2010 as the same was

applicable on the complainant after nomination dated 11.11.2010. 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 complainant-allottee has not obliged with the terms of the agreement. The respondent has raised demands vide payment request letter cum demand letter dated 01.11.2010, 30.08.2013, 30.09.2013, 07.10.2013, 08.10.2013, 30.10.2013 and 15.11.2013 for payment of outstanding dues as per the agreed payment plan but the complainant has failed to make the payments within the stipulated time. Therefore, the cancellation dated 28.12.2013 of the unit stands valid.

18. Moreover, the respondent has raised a contention that the complainant has filed the present complaint on 23.11.2020 after a lapse of almost 7 years from the date of cancellation and the Authority has decided a plethora of complaints stating that a 3 years period is a considerable period to approach the competent forum to seek the relief arising out of continuing cause of action. In the present case, the 3 years from the date of cancellation comes to an end on 28.12.2016 and the complaint is filed much after on 23.11.2020. Thus, the relief sought in the present complaint is not maintainable being barred by limitation. 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.

19. The counsel for the complainant vide proceedings of the day dated 09.12.2025 stated that no amount has been credited in the account of the complainant after cancellation of the unit and deduction of earnest money as per clause 1.2 (c) of buyer's agreement dated 19.01.2010 thus,

the Authority has presumed that the respondent has not refunded any amount to the complainant after cancellation of the unit. Clause 1.2(c) of the buyer's agreement is reproduced below for the ready reference:

1.2 (c) EARNEST MONEY

In case of delay in making payment by the Allottee(s) to the company as per the Schedule of Payments as stated in Annexure-3, the company shall have the right to terminate the agreement and forfeit the earnest money.

20. 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."

21. Keeping in view the aforesaid factual and legal provisions, the respondent can retain the earnest money paid by the complainant against the allotted unit and shall not exceed 10% of the consideration amount. So, the same was liable to be forfeited as per clause 1.2(c) 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 complainant i.e., Rs.27,89,527/- 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., 28.12.2013 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the Authority:

22. 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:
- The respondent/promoter is directed to refund the amount i.e., **Rs.27,89,527/-** received by him from the complainant after deduction of 10% of basic sale consideration of Rs.72,00,000/- 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., 28.12.2013 till the actual realization.

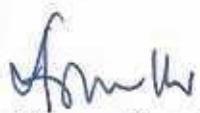
- ii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.

23. The complaint stand disposed of.

24. Files be consigned to the registry.


(Phool Singh Saini)

Member


(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 06.01.2026