

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

Complaint no.	:	6409 of 2024
Date of first hearing	:	09.04.2024
Order pronounced on	:	23.12.2025

- 1. Meenakshi Malhan**
- 2. Rohit Malhan**

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

Complainants

Versus

M/s. Imperia Structures Limited

Office: A-25, Mohan Cooperative Industrial Estate,
Mathura Road, New Delhi-110044

Respondent

Coram:

Shri Arun Kumar

Shri Phool Singh Saini

Chairman

Member

APPEARANCE:

Sh. Sanjeev Kumar Sharma (Advocate)

Sh. Prashant Sheoran (Advocate)

Complainants

Respondent

ORDER

1. The present complaint has been filed on 07.01.2025 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 provisions of the Act or the Rules and regulations made there under or to the allottees 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 of the project	Mindspace, sector-62, Gurugram
2.	Nature of the project	Commercial Complex
3.	RERA Registered/ not registered	Registered vide registration no.240 of 2017 dated 25.09.2017
4.	License no. and validity	86 of 2010 dated 23.10.2010
5.	Unit no.	52, 10 th floor, tower-A [as per agreement at Page 26 of reply]
6.	Unit area admeasuring	501.33 sq. ft.
7.	Date of Unit buyers Agreement	17.08.2018 [Page 15,21 of reply]
8.	Payment Plan	DOWN PAYMENT PLAN At time of booking (INR) (10% of BSP) 90% of BSP within 30 days (INR) [Page 27 of complaint]
9.	Assured Return Clause as per Agreement dated 17.08.2018	<i>33.ASSURED RETURN: Where the Allottee has opted for Payment Plan as per Annexure-A attached herewith and accordingly, the Company has been paying/agreed to pay Rs.33,100/- (Rupees Thirty three thousand Only) per month by way of assured return to the Allottee from 05.08.2018 till the date of possession of the Unit. The return shall be inclusive of all taxes whatsoever</i>



		<p>payable or due on the return. [as per agreement at page 37 of reply]</p>
10.	Lease Clause as per Agreement dated 17.08.2018	<p>34.LEASING ARRANGMENT: A. FOR VIRTUAL/UNLOCKABLE ONLY (a) The Company will pay to the Allottee Rs.29,077/- (rupees Twenty nine thousand seventy seven only) (including GST) per month as committed return for upto three years from the date of notice of possession of the Unit or till the same is put on lease, whichever is earlier. After the Unit is put on lease, then payment of the aforesaid committed return will come to an end and the Allottee will start receiving lease rental in respect of the Unit as described hereinafter. (e) The Company expects to lease out the Unit (individually or in combination with other adjoining units) at a minimum lease rental of Rs.58/- per sq. ft. super area per month for the first term (of whatever period). If on account of any reason, the lease rent achieved in respect of the first term of the lease is less than the aforesaid Rs.58/- per sq. ft. super area per month, then the Company shall pay to the Allottee a one time compensation calculated at the rate of @120/- (rupees one hundred twenty only) per sq. ft. super area for every one rupee sq. ft. super area per month. This provision shall not apply in cases of second and subsequent leases/lease terms of the Unit. (f) However, if the lease rental in</p>

		<p>respect of the aforesaid first term of the lease exceeds the aforesaid minimum lease rental of Rs.58/- per sq. ft. super area, then the Allottee shall pay to the Company additional basic sale price calculated at Rs.60/- (rupees sixty only) per sq. ft. super area of the Unit for every one rupee increase in the lease rental over and above the said minimum lease rental of Rs.58/- (rupees Fifty eight only) per sq. ft. super area per month. This provision is confined only to the first term of the lease and shall not be applicable in case of second and subsequent leases/lease terms of the Unit.</p> <p>[as per agreement at page 38 of reply]</p>
11.	Possession clause	Not available
12.	Due date of possession	17.08.2021 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>]
13.	Basic sale consideration excluding EDC/IDC and IFMS & FFC	Rs.36,59,709/- [as per agreement at Page 26 of reply]
14.	Amount paid by the complainants	Rs.39,00,000/- [As per receipts available at page 20-23 of complaint]
15.	Date of approval of Building Plan	04.12.2015 [Page 4 of reply]
16.	Occupation certificate	28.11.2019 [As per data available on DTCP site]
17.	Notice of possession for fit-outs and offer of lease rent of Rs.29,077/- per month subject to the payment of the outstanding sale	10.10.2019 [Page 17 of complaint]

	consideration/dues Rs.4,88,985/-	i.e.,
18.	Reminder Notice	10.06.2020 [Page 57 of reply]
19.	Final Notice with outstanding due of Rs.7,17,475/-	11.05.2022 [Page 65 of reply]
20.	Cancellation due non- payment of dues (as alleged)	31.10.2022 [Page 66 of reply]

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- a. 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.
- b. That the complainants purchased/booked an office/space/unit No. IMP-MS-0142 admeasuring super area of 501.33 sq. ft. at the rate of Rs.7,500/- per sq. ft. amounting total to Rs.40,30,000/- 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.39,00,000/- paid to promoter /developer vide cheque no. 000098 & 000099 dated 20-08-2018 for Rs.34 Lacs & Rs.5 Lacs respectively.
- c. That an amount of Rs.39,00,000/- paid to the respondent prior to the execution of the MoU. The MoU was never executed between both the parties i.e., M/s. Imperia Structures Limited and the complainants. The amount of additional charges come out to be Rs.2,70,718/- consist of EDC + IDC @Rs.390/- per sq. ft.

(Rs.1,95,518/-) and IFMS @ Rs. 150/-per sq. ft. Rs.75,199/-. The total cost shall be Rs.40,30,693/- out of which Rs.39 lacs were paid outrightly initially. The remaining amount was waived out originally between promoter/builder/respondent and complainants against onetime payment.

- d. The promoter/respondent and complainants were in agreement for assured return against the investment made @39 lacs. The cheque handover to complainants started dishonouring right from the beginning itself.
- e. To the utter shock of complainants, they received a cancellation of booking for the unit dated 31st of October 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.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - (i) Direct the respondent to pay interest for delay possession charges till the actual handover of the unit in question.
 - (ii) Direct the respondent to handover of possession of the unit.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds:
- a. That the respondent company is filing this reply/written statement in response to the complaint no. 6409/2024 filed by the complainants herein, before the Authority. That the respondent is a company, duly registered under the Companies Act, 1956 and filing this reply through Ms.Mohini Tyagi, authorized representative of the respondent company, who has been authorized to represent the respondent company vide board resolution dated 02.08.2024.
 - b. That the respondent company is denying all averments made in the complaint, save and except the averments which have been specifically admitted in the paragraphs below. No averment made in the complaint may be deemed to be admitted for mere non-traverse. That the complaint is *prima facie* not maintainable and must be dismissed for being vexatious to law.
 - c. That the complainants have approached the Authority with malice and have tried to mislead the 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 mis-stated 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.
 - d. 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.

- e. That the complaint is barred by limitation as even as per the admission of the complainant, 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.
- f. That, in light of the cancellation of the complainants' unit in the year 2022—owing solely to complainants own default—the complainants no longer qualify as '**allottees**' within the meaning of the Real Estate (Regulation and Development) Act, 2016.
- g. That the respondent company has already completed the construction, procured Occupation Certificate (*hereinafter referred to as "OC"*) and has started giving out possession of the said Project way back. This is a mere attempt on behalf of the complainants to harass the respondent company and to extort money from them.
- h. That the complainants have not approached the 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.
- i. That the complainants at their own free will, booked a virtual office space unit admeasuring 501.33 sq. ft., in our Project "Mindspace", located at sector 62, Gurugram (hereinafter referred to as the 'said Project'), for a total sale consideration of Rs.43,47,136/- including applicable tax and other charges. The complainants were allotted Virtual Office Space, 10th floor for a down payment plan.
- j. That the complainants' claim that no Memorandum of Understanding (hereinafter referred to as MoU) was signed is completely denied. That the complainants and the respondent

company duly signed a builder-buyer agreement (hereinafter referred as BBA") on 17.08.2018 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.

- k. That the construction of the said project was completed way back in 2019 and the occupancy certificate was applied for. The OC has been received on 28.11.2019 (sic. 02.06.2020) by the respondent company.
- l. That the complainants are misleading the Authority and hiding the fact that the respondent company has time and again issued offers of possession and demand notices to the complainant. That an offer of possession for fit-out was issued by the respondent company dated 10th October 2019. Although the issuance of the OC 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 OC, thereby allowing sufficient time for touch-ups and other preparations before the final possession is offered.
- m. That, at the time of applying for the OC, the respondent company had already obtained all requisite approvals. As per the applicable office order, in the absence of any objections, the application for OC is deemed to be approved on the eighth day from the date of submission. In view of the observations made by the Hon'ble Uttar Pradesh Real Estate Regulatory Authority in its Order dated 16.10.2019, that the project, under such circumstances, qualifies

as having attained a deemed OC status. Thereafter, upon receipt of the OC, the respondent company promptly issued the offer of possession to the complainant.

- n. That the State Government had acquired the land which comprises the said project land and transferred the same to the respondent company, for development of the said Project in accordance with its Master Plan and then it had carved out various Sectors and Plots therein. In pursuance to this, the Respondent Company started construction over the said project land, after obtaining all necessary sanctions/approvals/clearances from different state/central agencies/authorities. It is pertinent to mention that the respondent company received initial approval of building plans on 4th of December, 2015, and started the milestone construction of the present Project.
- o. That after receiving the building plans, as mentioned above, the respondent company started the construction and also began allotting units to the concerned allottees. Furthermore, the respondent company on certain recommendation changed the name of the project from the 'Imperia Byron' to 'Imperia Mindspace'.
- p. That the complainants are the investors, who have made investment in the Esteemed Project namely "Imperia Mindspace", located at Sector 62 Gurgaon Haryana. The complainants had purchased the said unit for a total sale consideration of Rs.43,47,136/- including applicable taxes and additional miscellaneous charges that shall be paid by the complainants at the time of handing over possession of unit.

- q. That the respondent company has duly complied with its obligation of paying AR to both complainants in equal proportions, from August 2018 to October 2019, with the total amounting to ₹4,92,229/-. The said amount was paid in equal proportions to both complainants, signifying compliance with the agreed terms and obligations. That the BBA clearly stipulates that the respondent company is liable to pay AR to the complainants up to the date of the offer of possession. In adherence to this condition, the respondent company issued the offer of possession contemporaneously with the application for the OC, and share the offer of possession in October 2019. Subsequently, the OC was obtained in June 2020, thereby fulfilling the criteria and extinguishing any further liability towards AR post that period.
- r. That the complainants contends that no agreement was ever executed. However, as previously stated, the respondent company and the complainants duly entered into a BBA, and the respondent company has consistently adhered to its terms and conditions. That the 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.
- s. 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 company 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. The claim that no agreement

- was executed is patently false and appears to be a deliberate attempt to mislead the adjudicating authority.
- t. That the respondent company 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 company has successfully procured the OC dated 28.11.2019 (sic. 02.06.2020), which exhibits the bona fide intention of the respondent company to complete the project.
- u. 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 company, the complainants herein filed the present complaint and the same is based on concocted and misconceived statements.
- v. The complainants were well aware that there might be unforeseen and untoward incidents or circumstances, being beyond the control of the respondent company, which will cause hindrances in the timely completion of construction of the project.
- w. 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 November 4, 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 December 9, 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 14th February, 2020.

- x. That Clause 57 of the said MOU 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."

- I. That the complaint filed by the complainants is merely a tactic to harass the respondent as the complainants were duly informed from time to time regarding the status of the project.
- II. That the complainants have stated in her 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 company denies the said claim in its entirety.

- III. That the complainants have alleged that the respondent company intentionally cancelled the said unit. This allegation is completely unfounded. The respondent company made several genuine efforts to secure the complainant's compliance by issuing repeated reminders and making numerous phone calls, specifically concerning the clearance of outstanding dues and execution of the conveyance deed.
- IV. That a final notice dated 11.05.2022 was issued to the complainant, reminding the payment of the outstanding dues amounting to Rs.7,17,475/-. Despite this, the complainants failed to take any steps to clear the dues or fulfill obligations.
- V. That owing to the continued non-compliance by the complainants and her failure to respond to repeated communications, the respondent company was constrained to cancel the said unit. Accordingly, a cancellation letter dated 31.10.2022 was issued to the complainant.
- VI. That the respondent company 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 complainant, owing to her failure to comply with the requisite financial and contractual obligations.
- VII. That the contentions raised by the complainants are misleading and devoid of merit. The demand for outstanding dues raised by the respondent company is in strict accordance with the agreed contractual terms and constitutes a necessary financial obligation. It is pertinent to mention that the complainants cannot selectively evade

her financial responsibilities while simultaneously seeking to retain rights over the allotted unit.

VIII. That the complainants are attempting to unjustly enrich themselves at the expense of the respondent company by concealing material facts and making baseless allegations. That these actions appear to be an attempt to exert undue pressure on the respondent company 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.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

10. 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.

11. 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 relief sought by the complainants:

F.I Direct the respondent to interest for delay possession charges till the actual handover of the unit in question.

F.II Direct the respondent to handover of possession of the unit.

12. The above-mentioned relief no. (i) and (ii) are interrelated to each other. Accordingly, the same are being taken up together for adjudication.
13. In the present complaint, the complainants booked a unit in the project of the respondent, namely "The Mindspace", situated at Sector-62, Gurugram. Pursuant thereto, the complainants were allotted Unit No. 52, located on the 10th floor of Tower-A, admeasuring 501.33 sq. ft. The Unit Buyer's Agreement in respect of the said unit was duly executed between the complainants and the

respondent on 17.08.2018 for a total sale consideration of ₹43,47,136/-. It is an admitted position that the complainants have paid a sum of ₹39,00,000/- towards the said consideration. The respondent completed the construction and development of the project and obtained the Occupation Certificate on 28.11.2019.

14. The complainants have averred that the respondent, despite having received a sum of ₹39,00,000/- towards the total consideration, unilaterally cancelled the allotment of their unit on 31.10.2022. It has been further contended by the complainants that no Memorandum of Understanding was ever executed between the parties. Additionally, the complainants have alleged that the cheques issued by the respondent towards assured returns were dishonoured upon presentation.
15. That the respondent has taken a contrary stand and submitted that the Unit Buyer's Agreement was duly executed between the parties on 17.08.2018, a copy whereof has been annexed at page 21 of the reply. It has been further averred by the respondent, at page 4 of the reply, that a total amount of ₹4,92,229/- was paid to the complainants towards assured returns for the period from August 2018 to October 2019. The respondent has contended that the demands were raised strictly in accordance with the payment plan annexed with the Unit Buyer's Agreement and that the complainants had paid a sum of ₹39,00,000/- up to the stage of offer of possession. It is further stated that the respondent issued the first reminder dated 10.06.2020 pursuant to the offer of possession for fit-outs, followed by a final notice dated 11.05.2022 raising the demand on account of offer of possession along with applicable interest. Despite repeated reminder and follow-ups, the complainants allegedly failed to respond and to

comply with their contractual obligations, and consequently, the allotment of the complainants' unit was terminated vide cancellation letter dated 31.01.2022 on account of non-payment of outstanding dues.

16. Now the question before the authority is whether the cancellation issued vide letter dated 31.10.2022 is valid or not?
17. On consideration of documents available on record and submissions advanced by both the parties, this Authority is of the considered view that the Unit Buyer's Agreement was duly executed between the complainants and the respondent on 17.08.2018. As per the said Agreement, particularly at page 26 of the reply, the basic sale consideration of the unit was fixed at ₹36,59,709/-, exclusive of EDC/IDC, IFMS and FFC. The parties had mutually agreed upon a down payment plan, clearly stipulating the manner and stages of payment to be made by the complainants. In terms thereof, 10% of the Basic Sale Price (BSP) was payable at the time of booking, followed by payment of the remaining 90% of the BSP within 30 days from the date of allotment, and the balance charges along with applicable taxes were payable at the time of offer of possession. It is an admitted position that the complainants paid an amount of ₹36,00,000/- up to the date of offer of possession. The respondent completed the construction and development of the project and offered possession of the unit for fit-outs vide communication dated 10.10.2019. Thereafter, the respondent obtained the Occupation Certificate on 28.11.2019 and subsequently issued a reminder dated 10.06.2020 informing the complainants of the grant of the Occupation Certificate and calling upon them to clear the outstanding dues as mentioned in the offer of possession for fit-outs, failing which the

respondent reserved its right to cancel the allotment. After a lapse of approximately two years from the said reminder, the respondent issued a final notice dated 11.05.2022 calling upon the complainants to clear the outstanding dues along with applicable interest, as per the payment plan, at the stage of offer of possession. Admittedly, the complainants failed to make any payment towards the said demands. Consequently, the complainants are held to be in default in making the requisite payments in terms of the Agreement.

18. The Authority observes that the respondent offered possession of the unit for fit-outs on 10.10.2019 and subsequently obtained the Occupation Certificate on 28.11.2019. Thereafter, the respondent issued a reminder notice dated 10.06.2020, followed by a final notice dated 11.05.2022, calling upon the allottee to take possession and clear the outstanding dues. It is evident from the record that the respondent issued successive reminders/notices over a span of nearly two years. So, now it is the duty of the allottee to take possession of the unit within two months of obtaining occupation certificate. The relevant section is reproduced below:

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

19. The Authority observes that the complainants had paid a sum of ₹39,00,000/- up to the date of offer of possession. However, upon issuance of the reminder letter dated 10.06.2020, subsequent to the grant of the Occupation Certificate, and thereafter the final notice dated 11.05.2022, the respondent raised a demand towards the amount payable at the stage of offer of possession. As per the said final notice, an outstanding amount of ₹4,88,985/- along with applicable interest was due and payable by the complainants. As per

section 19(10) of the Act, 2016 the allottee also has a responsibility to take physical possession of the unit within two months after receiving occupation certificate. However, the allottee failed to comply with its obligations. The respondent waited for more than two year and subsequently cancelled the agreement. Therefore, the cancellation of the unit is legally valid. Hence, No case of delayed possession charges is made out.

20. However, while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. As per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux vs Union of India 1969(2) SCC 554*** and it was held that a reasonable amount by way of earnest money be deducted on cancellation and the amount so deducted should not be by way of damages to attract the provisions of section 74 of the Indian Contract Act,1972. The same view was followed later on in a number of cases by the various courts. Even keeping in view, the principles laid down those cases, a regulation in the year 2018 was framed known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, 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. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondent is directed to refund the deposited amount of Rs.39,00,000/- after deducting 10% of the sale consideration along with an interest @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 on the refundable amount, from the date of cancellation i.e., 31.10.2022 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*. The amount paid by the respondent on account of assured return, if any, shall be adjusted from the aforesaid refundable amount.

I. Directions of the authority

22. 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 cancellation of the unit is legally valid. Hence, No case of delayed possession charges is made out.
 - ii. The respondent/builder is directed to refund the deposited amount of Rs.39,00,000/- after deducting 10% of the sale consideration along with an interest @10.80% on the refundable amount, from the date of cancellation i.e., 31.10.2022 till the date of realization of payment. The amount paid by the respondent on account of assured return, if any, shall be adjusted from the aforesaid refundable amount.

iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

23. Complaint as well as applications, if any, stands disposed off accordingly.

24. File be consigned to registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
23.12.2025