



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

Complaint no.:	1825 of 2023
Date of filing.:	11.08.2023
Date of first hearing.:	12.09.2023
Date of decision.:	05.02.2026

1. Gaurav Mahani S/o Sh. Shyam Sunder  
2. Shyam Sunder S/o Sh. Sidhu Ram  
Both R/o 84-85, Guru Ram Dass Nagar, Laxmi Nagar,  
Main Market, New Delhi 110092

....COMPLAINANTS

VERSUS

M/S BPTP Limited  
M-11, Middle Circle, Connaught Circus,  
New Delhi-110001

...RESPONDENT

**CORAM:** Parneet Singh Sachdev

**Chairman**

Nadim Akhtar

**Member**

Dr. Geeta Rathee Singh

**Member**

Chander Shekhar

**Member**

**Present:** - Mr. Anuj Yadav, Counsel for complainants through VC.  
Mr. Hemant Saini, Counsel for the respondent.

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**ORDER (PARNEET S. SACHDEV-CHAIRMAN)**

1. Present complaint has been filed by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**A. UNIT AND PROJECT RELATED DETAILS**

2. The particulars of project, details of sale consideration, amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Premium, Faridabad.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Registered HREERA-PKI-FBD-191-2020
4.	Details of unit.	G-203, 1128 sq. ft.

5.	Date of Allotment	16.12.2009
6.	Date of builder buyer agreement	05.01.2011
7.	Due date of possession	<p>Cannot be ascertained. 36 months from date of sanction letter of project. As such, no date of sanction letter has been provided by parties.</p> <p>No specific date has been provided by parties in its pleadings.</p> <p>05.01.2014-taking 3 years as reasonable period in terms of Fortune judgment.</p>
8.	Possession clause in BBA ( Clause 3.1)	<p>Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Flat to the Purchaser(s) within a period of 36 months from the date</p>

		of issuance of the sanction letter of the Colony The Purchaser(s) agrees and understands that the Seller / Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority The Seller / Confirming Party shall give Notice of Possession in writing to the Purchaser with regard to the handing over of possession, whereafter, within 30 days, the Purchaser(s) shall clear all his outstanding dues and complete documentary formalities and take physical possession of the Flat In case, the Purchaser(s) raises any issue with respect to any demand, the same would not entitle to the Purchaser(s) for an extension of the time for taking over possession of the Flat.
9.	Total/Basic sale consideration	₹ 22,80,997/-
10.	Amount paid by complainants	₹5,27,150/-
11.	Offer of possession.	Not made till date.
12.	Cancellation letter	Final termination notice dated 31.05.2011



**B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT**

3. That Shri Shyam Sunder who is the father of the complainant has executed a Special Power of Attorney in favour of the complainant Shri Gaurav Mahani to file the present complaint and seek remedy from this Hon'ble Authority. A Copy of Special Power of Attorney dated 06.07.2023 executed by Shri Shyam Sunder in favour of Shri Gaurav Mahani along with his photo identity card are collectively annexed herewith this complainant as Annexure No. - C2 (Colly).
4. That the complainant was approached by the respondent through its marketing agents who had allured the complainant by offering various fancy advertisements and prospects and has also made false promises by way of misrepresentations which included 5.5% discount on the basic sale price and the Complainant on believing the respondents agreed for booking of a 3bhk (with study room) flat approximately admeasuring 1128 square ft. super area in a project of the respondent builder/developer launched in the name and style of "PARK ELITE PREMIUM" vide Booking Form dated 16.12.2009 signed by the complainant and his father Shri Shyam Sunder as co-applicant wherein the complainant was made primary applicant as the father of the complainant being week and an age-old person was not capable to look after the property. The basic sale price of the property/unit/flat sought to booked was Rs. 22,81,000/- A Copy of

Booking form dated 16.12.2009 which is annexed herewith this Complaint as Annexure-C3 and a Letter dated 14.07.2009 issued by the agent / broker of the respondent to the respondent itself requesting them to provide the discount of 5% on basic sale price to the complainant which was not given to him is annexed herewith this Complaint as Annexure C4.

5. That the complainant at the time of booking itself has paid an amount of Rs 2,50,000/- as down payment against the total consideration of basic sale price of Rs. 21,66,946/- of the flat/unit in question. Thereafter respondent company raised another demand of Rs. 2,77,000/- vide demand letter dated 28.09.2009 and accordingly the complainant had paid an amount of Rs. 2,77,150/- on 23.10.2009 vide cheque no. 272969 drawn on PNB Bank and the same has been acknowledged by the respondent vide receipt no. - 2009/1400029411. It is pertinent to mention here that the respondent did not execute the builder buyer agreement despite the total payment of Rs. 5,27,150/-. Copy of payment receipts and proof are annexed herewith this complaint as Annexure - C5.
6. That the respondent accordingly on 16.12.2009 allotted a unit i.e., 3bhk flat no.- G-203 admeasuring super area of 1128 square ft. (104.79 Sq. Mtrs.) on 2nd floor, in its project "Park Elite Premium" located at Parklands of Sector 84 in Faridabad of Haryana vide allotment cum demand letter dated 16.12.2009 and through the aforesaid allotment cum

demand letter has also concurrently raised a demand of Rs. 3,28,923/-. A Copy of Allotment cum demand letter dated 16.12.2009 is annexed herewith this complaint as Annexure - C6.

7. That the complainant in view of aforesaid fresh demand letter dated 16.12.2009 approached various banks including PNB Bank, SBI, ICICI, Axis Bank and a few other banks and financial institutions for securing home loan to pay remaining sale consideration, however the bank asked for certain documents and accordingly the complainant requested the respondent company to provide the necessary documents to be submitted before the bank which were as follows:

- a) Builder Buyer Agreement
- b) Copy of Title Documents with entire chain of title of respondent property on which project was going to be developed with Legal and Technical Search Reports.
- c) No objection Certificate from the Builder / Respondent.
- d) Project clearance Report of BPTP/Respondent/Builder.

8. That the respondent had failed to provide above mentioned documents required for loan sanction and consequently the concerned banks rejected the loan of the complainant one by one on the following grounds:

- a) The project was not approved.
- b) Mandatory documents like copy of the title documents with entire chain not made available by the builder i.e., BPTP

c) Flat Buyer Agreement or Builder Buyer Agreement was not executed and thus not available.

9. That upon rejection of the loan application of the complainant, the complainant informed the same to the official of the BPTP who has confirmed that the project is unregistered and lacking sanction from the concerned authorities and offered the complainant to secure the loan from their known banker but at the higher rate of interest and applicable charges. Official of the BPTP specifically Ms. Neelam pressurized the complainant to get the loan sanction from their known banker or to suffer heavy penalty and rate of interest on due amount. It is because of this reason the complainant agreed for the same and applied loan before HDFC Bank and the same was sanctioned vide letter No. 589430767/NEHAK dated 30.04.2010. A Copy of the loan sanction letter issued by HDFC Bank dated 30.04.2010 bearing reference no. 589430767/NEHAK is annexed herewith this complaint as Annexure C7 and a draft Tripartite agreement to be executed between the Banker, Borrower and Builder is annexed here with this Complaint as Annexure - C8.

10. That the complainant had visited to the office of the respondent for perusing them several times for securing the essential documents including the Builder Buyer Agreement or Flat Buyer's Agreement but all got in vain and after passing of considerable delay, the respondent





company finally gave the Flat Buyer's Agreement on 07.01.2011 and the complainant was compelled by necessity of arrangement of funds forced to sign the Flat Buyer's Agreement despite the fact that most of the terms and conditions of the said agreement was unreasonable and were favourable to the respondent builder. However same was of no use as other documents required by the banks were not supplied by the respondent and the banker refused to disburse the sanctioned amount of loan to the respondent builder because of the following reasons:

- a) The project of the respondent was not approved by the concerned Authorities,
- b) The other documents mandatorily required for unapproved projects were not provided by the respondent,
- c) Further Banker was not satisfied with the progress of the project.

11. That the complainant at this time came to know that the project of the respondent was not sanctioned and realized that his money got stuck therein as neither the respondent's project was registered nor the construction and development of the project was going on as per the prescribed schedule and same is evident from the possession clause mentioned there under the Flat Buyer's Agreement dated 05.01.2011 wherein Sub-Clause 3.1 of Clause 3 reads hereinafter as follows:  
*"Subject to clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the seller/confirming party and any*



*restraints/restrictions from any courts/authorities and subject to the Purchaser having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller /Confirming Party, whether under this agreement or otherwise from time to time, the Seller/Confirming Party proposes to hand over the possession of the flat to the purchaser(s) within a period of 36 months from the date of issuance of the sanction letter of the Colony. The purchaser(s) agrees and understands that the seller / confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the colony from the Authority. The Seller/Confirming Party shall give Notice of Possession in writing to the Purchaser with respect to the handing over of possession, within 30 days, the Purchaser(s) shall clear all his outstanding dues and complete documentary formalities and take physical possession of the Flat in case, the Purchaser(s) raises any issue with respect to any demand, the same would not entitle to the Purchaser(s) for an extension of the time for taking over possession of this Flat." A Copy of Flat Buyer's Agreement dated 05.01.2011 is annexed herewith this complaint as Annexure-C 9.*



12. The very reading of Sub-Clause 3.1 of Clause 3 of the Flat Buyer's Agreement itself suggests that the terms and conditions were unreasonable and biased in favor of the respondent. Further bare reading of the aforesaid clause would suggest that at the time of execution of the flat buyer's agreement the respondent's project was not sanctioned from the concerned Authorities.
13. That the respondent builder without fulfilling obligations pending at its end, keep demanding further payments unreasonably from the complainant and the complainant on noticing the default of the respondent and its mala fide intention to cheat the money from the respondent has filed a Consumer Complaint Case bearing CC No. -822 of 2012 titled as Gaurav Mahani & Anr. Versus M/s BPTP Ltd., before the concerned Consumer Court at Delhi, wherein the respondent had admitted the payments made by the complainant and filed its written statement.
14. That the above-mentioned consumer complaint case was returned to the complainant on the ground of pecuniary Jurisdiction as the subject matter of the complaint was exceeding the then pecuniary limit of Rs. 20,000,00/- (Rupees Twenty Lakh) in the opinion of the concerned Hon'ble District Consumer Disputes Redressal Commission at Vikas Bhavan, I.P. Estate Delhi vide its final order dated 16.04.2018. A Copy of final order dated 16.04.2018 in Consumer Complaint Case bearing CC

No. - 822 of 2012 titled as Gaurav Mahani & Anr. Versus M/s BPITP Ltd along with the proceeding sheet and a copy of complaint are annexed herewith this complaint as Annexure - C10 (Colly).

15. That the respondent has not obtained Completion certificate and Occupation certificate so far and has also not completed the construction to that extent. Further the respondent is also not filing the Quarterly Progress Report which is supposed to be filed on every quarter is evident of the facts that the respondent is a wilful defaulter and involved in unethical and unfair trade practices as it has taken the money and booked the flats without having the necessary approvals and for cancellation of the flat buyer's agreement unilaterally without serving notice in this regard and without intimation to the complainant in contraventions of the law of the land and withholding the hard earned money of the complainant by not refunding the same with interest.

16. That the respondent is neither ready to refund the hard-earned money of the complainant nor it is ready to provide necessary documents to the complainant for securing loan from bank and in apposite has maintained the status that it has cancelled the allotment of the flat of the complainant and the said fact came to the knowledge of the complainant during the court proceedings before the Consumer Court in the Consumer complaint case filed by the complainant earlier as mentioned in the preceding paragraphs. It is submitted that the complainant has paid almost more

than 25% of basic sale price and the respondent cannot cancel the allotment of the complainant unilaterally and without issuing the legal Notice in this regard and thus the respondent is holding money of the complainant illegally and unreasonably.

17. That in view of the above-mentioned facts and circumstances of the present case the complainant as a last resort has approached this Hon'ble Authority for Justice. Hence this Complaint.

18. Complainants had also filed rejoinder in registry on 28.04.2025 reiterating the submissions already made in pleadings and denying the plea of respondent that complainants were at default. It is being stated that respondent was not able to provide any approvals/completion status on time. Moreover, respondent failed to produce any termination letter till date.

### **C. RELIEF SOUGHT**

19. That the complainants seeks following relief and directions to the respondent:-

- a. Refund of entire amount of Rs. 5,27,150/- (Rupees Five Lakh Twenty-Seven Thousand One Hundred and Fifty), along with the interest amount of Rs. 8,76,104/- (Rupees Eight Lakh Seventy-Six Thousand One Hundred and Four), for withholding the principal amount of the complainant for almost 13 years in past. Or



- b. Deliver the de-facto possession of the plot in question allotted to the complainant after furnishing all the necessary approvals and NOC from the concerned authorities with delayed penalty and interest thereon as per law and
- c. Or pass any other Order as the Hon'ble Authority may deem fit in the interest of the Justice in favour of the complainant and against the respondent.
- d. It is pertinent to mention here that complainants at the time of hearing dated 17.03.2025 had clarified that they are interested in having refund of paid amount with interest.

#### **D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS**

Learned counsel for the respondents filed detailed reply on 19.04.2024 pleading therein:

20. That as per the FBA clause 3.1 read with clause 10, the possession was proposed to be handed over within a period of 36 months from the date of issuance of the sanction letter of the colony, along with grace period of 180 days. At this stage, it is submitted that benefit of grace has to be given as has also been considered by the Ld. Tribunal, Chandigarh in the case titled as Emaar MGF Land Ltd vs Laddi Paramjit Singh Appeal no. 122 of 2022 that if the grace period is mentioned in the clause, the benefit of the same is allowed.



21. That subject to the incidence of force majeure circumstances and the timely payment by the complainant. The construction of the unit was deeply affected by such circumstances, the benefit which is bound to be given to the respondent in accordance with clause 10 of the FBA. In year 2012, on the direction of Hon'ble Supreme Court of India, the mining activities of minor minerals was regulated. The Hon'ble Supreme Court directed framing of modern mineral concessional rules. Reference in this regard may be taken from the judgment of Deepak Kumar vs State of Haryana 2012, where the competent authorities took substantial time in framing the rules in case where the process of availability of building materials including sand which was an important raw material for the development of the said project became scarce. Besides this, there were other events including but not limited to non availability of raw materials due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water etc. Despite all the efforts, the raw materials were procured at 3-4 times the rate and the construction of the project continued without shifting any extra burden to the customer. It is to be noted that the development and implementation of the said project have been hindered on account of several order/directions passed by



various authorities/forums/courts. Like Ban by National Green Tribunal vide order dated 19.07.2016 for 30 days; Ban by Environment Pollution prevention and control Authority vide order dated 07.11.2017 and 01.11.2019 for 90 days and 4 days respectively; Ban by Hon'ble Supreme Court of India vide order dated 04.11.2019 for 102 days. Additionally, Covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. As such, various lockdowns and restrictions were imposed in year 2022 and 2021 to curb the spread of Covid-19.

22. In addition to the above, the construction was also affected by the act of non-receipt of timely payment against the unit. As such complainant had only made payment of Rs 5,27,150/- out of total demand of Rs 13,01,798/-. Complainant is in default of payment of Rs 7,74,648/- and the same is evident from the statement of accounts dated 10.01.2024. Complainant is bound to make payment as per the obligations cast upon by Section 19(6) and 19 (7) of RERA Act, 2016.

23. That the binding rights and obligations of the parties are derived from FBA dated 05.01.2011, which was executed prior to implementation of RERA Act, 2016 and in such a circumstance, the Act cannot be allowed to re-open or re-write a contract.

24. In respect of loan, it is stated that banks have refused to provide loan to complainants based upon its own deficiencies. Despite of the fact that the





complainant could not sanction its loan the respondent being customer centric company ensured that the loan must get sanctioned and thus, HDFC bank offered the loan to the Allottee. The said loan got sanctioned because of the goodwill of the respondent.

#### **E. ARGUMENTS OF COUNSEL FOR COMPLAINANTS AND RESPONDENTS**

25.Ld. counsel for complainants submitted that complainants had made payment of Rs 5,27,150/- in year 2009. Till date, respondent has neither refunded any amount nor had issued any termination letter. She requested that paid amount be refunded with interest.

26.In rebuttal, ld. counsel for respondent stated that complainants were silent for a good number of 14 years in claiming refund of paid amount. As such, their claim is hopelessly time barred affected by doctrine of delay and laches. He referred to Section 19(6) whereby the word used is 'Shall', the allottee is duty bound to comply with terms and conditions of agreement. Complainants herein have not made any payment after year 2009 despite issuance of several reminders. Infact, complainants duly washed away their hands from the responsibility of complying with agreement executed in year 2011. He relied upon issuance of final opportunity letter stating that the allotment of unit stood terminated in lieu of said letter. Now, no claim/title/right is left with complainants to



approach this Authority. Even if, any refund is to be awarded to complainants then same shall be subject to forfeiture of earnest/booking amount.

27. At this stage, a query was posed to respondent's counsel as to what steps were taken by it to return the paid amount to complainants even after forfeiture of earnest money, if any in consonance with final opportunity letter dated 31.05.2011. To this, it has been stated that no amount was refunded to complainants.

#### **G. ISSUES FOR ADJUDICATION**

28. Whether the complainants are entitled to the relief sought or not? If yes, the quantum thereof.

#### **H. OBSERVATIONS OF THE AUTHORITY**

29. Factual matrix of the case is that a unit no. G-203 having area of 1128 sq. ft. was allotted in the project- 'Park Elite Premium' being developed by the respondent situated at Faridabad, vide allotment letter dated 16.12.2009. A builder buyer agreement was executed between both the parties on 05.01.2011 and as per clause 3.1 of the agreement, possession of the unit was to be delivered within a period of 36 months from the date of sanction letter of the colony. As such, no date of any sanction letter has been provided by parties. Taking time period of 3 years as reasonable to complete the project, in terms of



Fortune Infrastructure (Now Known as Hicon Infrastructure and Anr) vs. Trevor D'Iima and Ors (2018), wherein Hon'ble Supreme Court established that when no specific delivery period is stipulated in an agreement, a time period of 3 years is considered reasonable for the completion of a construction project. Deemed date of possession works out to 05.01.2014. However, offer of possession has not been made till date by respondent to complainants. In order to get the issues adjudicated, Complainants initially had preferred consumer case no. 822/2012 which was returned back due to lack of pecuniary jurisdiction.

30. Respondent in its written reply has admitted the fact pertaining to allotment, execution of agreement and receipt of paid amount. He objected to the complaint by stating that unit stands terminated vide final opportunity letter dated 31.05.2011. Complainants as on 23.10.2009, had paid only an amount of Rs 5,27,150/- against basic sale price of Rs 22,80,997/-. Fact of not making any payment since 2009 has not been denied by complainants also. Complainants have approached the Authority after gap of around 13-14 years, so claim of complainants for is hopelessly time barred.

31. Grievance of the complainants herein is that respondent had cancelled the allotment of unit in year 2011 without serving any termination letter. Moreover, respondent did not choose to act upon said termination as no refund of any paid amount has been made till date. It is the stand of respondent that complainants

themselves were not keen to make payments on time and due to their continuous defaults, the allotment of unit was terminated.

32. After considering submissions of both parties, Authority is of view that relevant provisions of agreement dated 05.01.2011 along with payment plan opted by complainants needs to be examined which are as follows:-

**Clause 2.10 of agreement**

*In case, the Purchaser(s) has opted for a construction linked Payment Plan as mentioned in the Annexure D, the Seller/Confirming Party shall send call/demand notices for payment of installments on commencement of the respective stages of construction to the purchaser at the address of purchaser available in records of the seller. . The call/demand notices shall be sent by either Speed Post or Courier and shall be deemed to have been received by the Purchaser(s) within 05 days of dispatch by the Seller/Confirming Party.*

**Clause 11.2 of agreement-Termination and Forfeiture:**

*It is agreed between the Parties that in case the Purchaser fails, for any reason whatsoever, to pay to the Seller / Confirming Party the due amounts / installments as per this Agreement on time, as stated hereinabove, and commits any breach of the undertakings and covenants contained herein, for any reason whatsoever, then the Seller/Confirming Party shall be entitled to terminate this Agreement forthwith and may refund the balance amount to the Applicant without any interest after deduction of any interest amount, due or payable, and any other amount of a non-refundable nature including brokerage charges paid by the Seller / Confirming Party to the broker in case the booking is done through a broker within (120) One Hundred Twenty Days from the date of full realization of the sale price after the sale of the Flat by the company to any third Party Furthermore, the Seller/Confirming Party shall be free to deal with the Flat in any manner, whatsoever in its sole and absolute discretion and if the Purchaser(s) has entered in the said Flat then the Seller/Confirming Party shall also be entitled to re-enter upon and resume possession of the said Flat and everything whatsoever contained therein In such event, the Purchaser(s) hereby undertakes and agrees to relinquish / waives off all his rights, title and interest in the Flat and thereupon the Purchaser(s) and / or any other person /occupant of the Flat shall also be liable to immediate ejectment as an unlawful*

*occupant/trespasser This is without prejudice to any other rights available to the Seller/Confirming Party against the Purchaser(s) under the Agreement.*

33. Payment plan opted Annexure D-Construction Linked Plan in reference to payments made therein is mentioned below for reference:-

Sr. No.	Installments as per plan	Demand raised	Receipt date (payments made by Bank)
1.	Booking Amount	-----	Paid Rs 2.5 lacs on 15.07.2009
2.	Within 90 days of booking-Complete 25% of BSP	28.09.2009 for Rs 2,91,737/-	Paid Rs 2,77,150/- on 23.10.2009.
3.	Within 150 days of booking-10% of BSP+20% of P.L.C+DC+Car parking.	16.12.2009 for Rs 3,28,923/-	<b>Not paid. Reminder dated 04.01.2010.</b>
4.	At the start of construction-10% of BSP+20% of P.L.C+DC+Car parking.	06.09.2010 for Rs 2,90,372/- plus previous outstanding amount.	<b>Not paid. Reminder dated 11.10.2010 and 20.12.2010.</b>  <b>Final opportunity letter dated 31.05.2011.</b>
5.	On casting of ground floor slab-10% of BSP+20% of P.L.C+DC+Car parking.	-----	-----
6.	On casting of first floor slab-10% of BSP+20% of P.L.C+DC+Car parking.	-----	-----
7.	On casting of second floor slab-10% of BSP+20% of P.L.C+DC+Car parking.	-----	-----
8.	On casting of fourth floor slab-10% of BSP	-----	-----
9.	On casting of six floor slab-5% of BSP	-----	-----
10.	On completion of ninth floor slab-5% of BSP	-----	-----
10.	On offer of possession-5% of BSP +100% IFMS+	-----	-----



CMC/PBIC.

34. Aforesaid table clearly provides that complainants had duly honored the demands upto stage of casting of 'within 90 days of booking' by making payment of Rs 5,27,150/- on 23.10.2009. Thereafter, respondent had raised demand on account of 150 days of booking on 16.12.2009 which was not honored by complainants. Accordingly, demand was raised by respondents on 06.09.2010 on account of start of construction, which was also not honored by complainants. Hence, final opportunity letter wherein it was clarified that in case of non-payment, unit shall stands terminated was issued by respondent on 31.05.2011 after issuing reminders notice on 11.10.2010 and 20.12.2010.

35. Be as it may be, complainants has not been able to justify the act of not making the payment in terms of demand letters raised after year 2009. It is not denied by the complainants that final opportunity letter was not served upon them. In fact, all demand letters and final opportunity letters are duly attached by complainants in its complaint. After issuance of final opportunity cum termination letter in year 2011, the complainants choose to file consumer complaint which was returned in year 2018 due to lack of pecuniary jurisdiction. Thereafter, complainants after availing cooling period of 4 years had filed the present complaint for refund of paid amount. As such, the terms of agreement, if any, between the parties ended after the complainants had accepted the fate of cancellation of unit. Thus, the complainants cannot now lay



objections/allegation upon respondent for not getting the unit constructed or not delivering possession of the unit.

36. However, aforesaid observation does not change the fact that the complainants have been wronged by the respondent by illegally retaining the paid amount even after cancellation of unit on 31.05.2011. Herein, it is relevant to refer to the language/words used in final opportunity letter which are *'Please be informed that the refund, if any, shall be processed after deduction of earnest money deposit, accumulated interest and brokerage paid, if any. The said return, if any shall be disbursed only after the unit is sold to third party and realization of the sale proceeds'*. Fact remains that no amount has been refunded by the respondent to the complainants. Though the complainants are not in a position to lay claim over the unit in question but that does not entitle the respondent to wrongfully enrich itself over the hard earned money of the complainants. Therefore, equity demands that complainants are entitled to receive refund of their paid amount along with interest as per prescribed rate under RERA Act from respondent for causing wrongful loss to the complainants. Said refund shall be subject to forfeiture of earnest money as termination was validly carried out by respondent in terms of clause 11.1 of agreement.

37. In the interest of justice, the respondent is duty bound to refund the amount of Rs 5,27,150/- subject to forfeiture of the earnest money with interest from date of cancellation till date of this final order, i.e. 31.05.2011 to



05.02.2026 at the rate prescribed in Rule 15 of HIRERA Rules, 2017, SBI MCLR + 2% which as on date comes to 10.80%.

38. Earnest money is defined by Hon'ble Supreme Court in judgment dated 03.02.2025 passed in Godrej Projects Development Limited vs Anil Karlekar & Ors. Civil Appeal no. 3334 of 2023.

"This Court in the case of Satish Batra v. Sudhir Rawal (supra), after considering the earlier judgments of this Court, has observed thus:

*"15. The law is, therefore, clear that to justify the forfeiture of advance money being part of "earnest money" the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the depositor to be forfeited in case of nonperformance by the depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get double the amount, if it is so stipulated. It is also the law that part-payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards partpayment of consideration and not intended as earnest money then the forfeiture clause will not apply.*

*16. When we examine the clauses in the instant case, it is amply clear that the clause extracted hereinabove was included in the contract at the moment at which the contract was entered into. It represents the guarantee that the contract would be fulfilled. In other words, "earnest" is given to bind the contract, which is a part of the purchase price when the transaction is carried out and it will be forfeited when the transaction falls through by reason of the default or failure of the purchaser. There is no other clause that militates against the clauses extracted in the agreement dated 29-11-2011.*

*We are, therefore, of the view that the seller was justified in forfeiting the amount of Rs 7,00,000 as per the relevant clause, since the earnest money was primarily a security for the due performance of the agreement and, consequently, the seller is entitled to forfeit the entire deposit. The High Court has, therefore, committed an error in reversing the judgment of the trial court."*

39. As such, builder buyer agreement provides for 25% of sale consideration as earnest money. However, the same is not justified. In support, decision in





Appeal no. 292/2019 titled as Experion Developers Pvt Ltd vs Sanjay Jain & Smt. Kokila Jain is relied upon, wherein Hon'ble Appellate Tribunal has observed that 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. Relevant part of the order is reproduced below for reference:-

*"17. The legal position with regard to the earnest money has been dealt in detail by Hon'ble Supreme Court in citations Maula Bux v. Union of India (1969)(2) SCC 554, and Satish Batra's case (supra) and the same can be condensed as follows:- "Earnest money is part of the purchase price when the transaction goes forward; it is forfeited when the transaction falls through, by reason of the fault of failure of the vendee. Law is, therefore, clear that to justify the forfeiture of advance money being part of earnest money the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the 13 Appeal No.292/2019 & 35/2021 depositor to be forfeited in case of non-performance, by the depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get the double the amount, if it is so stipulated. In other words, earnest money is given to bind the contract, which is a part of the purchase price when the transaction is carried out and it will be forfeited when the transaction falls through by reason of the default or failure of the purchaser."*

*18. The perusal of Article I Clause I(xiii) of the agreement dated 11.11.2014 shows that it has been specifically stipulated that earnest money would be 15% of the basic sale price which was meant to ensure performance, compliance and fulfillment of obligations and responsibilities of the buyer. Though, the allottees have taken the stand that the earnest money in the present case is Rs.11,00,000/- which was deposited by them at the time of booking of the plot, but the same cannot be attached any credence because the booking is only request for allotment and does not constitute a final allotment or agreement.*

*19. Now, the question to be determined is that whether the earnest money to the tune of 15% of the basic sale price, as stipulated in the Agreement of 11.11.2014 can be termed as reasonable or not? In citation Pioneer Urban Land and 14 Appeal No.292/2019 & 35/2021 Infrastructure Ltd.'s case (supra), the Hon'ble Supreme Court has laid down that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into*



between the parties, who are not equal in bargaining power. A term of a contract will not be final and binding if it is shown that flat purchaser had no option but to sign on the dotted line, on a contract framed by a builder. Further, incorporation of one-sided clauses in an agreement constitutes an unfair trade practice since it adopts unfair methods or practices for the purpose of selling the flat by the builder.

20. In citation DLF Ltd.'s case (supra), the Hon'ble National Consumer Disputes Redressal Commission, while discussing the cases of Maula Bux's case (supra), Satish Batra's case (supra) and other cases as mentioned in para No.10 of the said order, has clearly laid down that only a reasonable amount can be forfeited as earnest money in the event of default on the part of the purchaser and it is not permissible in law to forfeit any amount beyond a reasonable amount unless it is shown that the person forfeiting the said amount had actually suffered loss to the extent of the amount forfeited by him. Further, it was held that 20% of the sale price cannot be said to be a reasonable amount which the petitioner company could have forfeited on account of default on the part of the complainants unless it can show it had suffered loss to the extent the amount was forfeited by it. In absence of evidence of actual loss, forfeiture of any amount exceeding 10% of the sale price, cannot be said to be a reasonable amount.

21. In his last desperate attempt, learned counsel for the promoter has submitted that since the allottees had specifically agreed to pay 15% of the sale price as earnest money, the forfeiture to the extent of 15% of the sale price cannot be said to be unreasonable as the same is in consonance with the terms agreed between the parties. He has also submitted that so long as the promoter was acting as per the terms and conditions agreed between the parties, it cannot be said to be deficient in rendering services to the allottees. This aforesaid submission as put forward by the learned counsel for the promoter, was also submitted before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi in DLF's case (supra) and while dealing with the same, it was observed that forfeiture of the amount which cannot be shown to be a reasonable amount, would be contrary to the very concept of forfeiture of the earnest money and if the said contention is accepted, then, an unreasonable person in a given case may insert a clause in Buyer's Agreement whereby say 50% or even 75% of the sale price is to be treated as earnest money and in the event of the default on the part of the buyer, he may seek to forfeit 50% sale price as earnest money. It was further observed and held that an agreement for forfeiting more than 10% of the sale price would be invalid since it would be contrary to the established legal principle that only a reasonable amount can be forfeited in the event of default on the part of the buyer. Here, it is also pertinent to mention that the deduction of 10% of the total sale consideration of the unit, out of the amount deposited by the allottees, is also in conformity with the Regulations 2018, as notified by the Authority.

*wherein, it has been stipulated that 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."*

40. In view of aforesaid discussion, earnest money, i.e. 10% of sale price; Sale price is Rs 22,80,997/- and amount comes out to Rs 2,28,099/-, First amount of Rs 2,50,000/- was paid on 15.07.2009. After forfeiture of earnest money (250000-228099 = 21,901), the calculation of interest are depicted below in the table:-

Sr. No.	Amount	Date of cancellation	Interest upto 05.02.2026
1.	2,99,051/-	31.05.2011	4,74,729/-
Total			299051+474729
			7,73,780/-

#### **I. DIRECTIONS OF THE AUTHORITY**

41. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

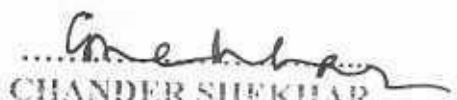
- (i) Respondent is directed to refund the entire amount of Rs 2,99,051/- with interest of Rs 4,74,729 /- to the complainant. It is further clarified that respondent will remain liable to pay the



interest to the complainant till the actual realization of the above said amount.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

42. Disposed of: File be consigned to record room after uploading on the website of the Authority.

  
CHANDER SHEKHAR  
[MEMBER]

  
DR. GEETA RATHEE SINGH  
[MEMBER]

  
NADIM AKHTAR  
[MEMBER]

  
PARNEET S. SACHDEV  
[CHAIRMAN]