

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

Complaint no. :	648 of 2024
Date of filing of complaint:	12.03.2024
Date of Order:	20.01.2026

Indu Sharma

R/o: Flat no.-702, Block-F, Ambience Lagoon
Apartment, Behind Ambience Mall, DLF Phase 3,
Gurgaon-122505**Complainant**

Versus

Elan Buildcon Pvt. Ltd.

Regd. Office at: L-1/1100, First floor, Street No.
25, Sangam Vihar, New Delhi-110062**Corporate Office at:** 3rd floor, Golf View
Corporate tower, Golf Course Road, Sector-42,
Gurugram-122001**Respondent****CORAM:**

Shri Arun Kumar

Shri Phool Singh Saini

**Chairman
Member****APPEARANCE:**

Sh. Jagdeep Kumar (Advocate)

Sh. Ishaan Dang (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.	Particulars	Details
1.	Name of the project	Elan Town Centre, Sector 67, Gurugram.
2.	Nature of the project	Commercial
3.	Area of the project	2 acres
4.	DTCP license no. and validity	84 of 2012 dated 28.08.2012 valid up to 27.08.2024
5.	Name of licensee	Khanna Developers Pvt. Ltd. and 2 others
6.	RERA registration and validity	23 of 2018 dated 02.02.2018 valid up to 01.02.2022
7.	Unit no.	KIOSK-0327, third floor (As per page no. 40 of the complaint)
8.	Unit admeasuring	270 sq. ft. (As per page no. 40 of the complaint)
9.	Allotment letter	23.12.2016 (As per page no. 34 of the complaint)
10.	Date of execution of buyer's agreement	Annexed not executed
11.	Possession clause	11.(a)Schedule for possession of the said unit <i>The developer based on its project planning and estimates and subject to all just exceptions endeavours to complete construction of the said building/said unit within a period of 36 months from the date</i>

		<i>of this agreement with an extension of further 12 months unless there shall be delay or failure due to govt. department delay or due to any circumstances beyond the power and control of the developer or force majeure conditions..... (As per page no. 51 of the complaint)</i>
12.	Due date of delivery of possession	Cannot be ascertained
13.	Basic sale consideration	Rs.24,30,000/- (As per payment plan on page no. 68 of the complaint)
14.	Total sale consideration	Rs.27,06,750/- (including PLC, EDC/IDC and car parking) (As per payment plan on page no. 68 of the complaint)
15.	Total amount paid by the complainant	Rs.7,11,000/- (As per SOA on page no. 53 of the reply)
16.	Reminder letter	20.01.2017, 20.04.2017, 29.01.2018 (As per page no. 45-47 of the reply)
17.	Demand letter	23.02.2018 & 23.04.2018 (As per page no. 48-49 of the reply)
18.	Offer of possession	Not offered
19.	Pre-cancellation letter	19.09.2018 (As per page no. 50 of the reply)
20.	Cancellation letter	28.10.2020 (As per page no. 83 of the complaint)
21.	Occupation Certificate	09.03.2021 (As per page no. 58 of the reply)

B. Facts of the complaint:

3. The complainant has made the following submissions:

- I. That the complainant i.e., Mrs. Indu Sharma is law-abiding citizen of India, currently residing at flat no.-702, Block-F, Ambiance Lagoon Apartment, Behind Ambiance Mall, DLF Phase 3, Gurgaon.
- II. That the respondent had advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. The respondent while launching and advertising any new housing project always commits and promises to the targeted consumer that her dream home will be completed and delivered to her within the time agreed initially in the agreement. They also assured to the consumers like complainant that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.
- III. That somewhere in the month of March 2016, the respondent through its Business Development Associate approached the complainant with an offer to invest and buy a commercial space in the proposed project of respondent, which the Respondent was going to launch the project namely "Elan Town Centre" in the Sector-67, Gurugram. On 04.04.2016, the complainant had a meeting with respondent at the respondent's branch office where the respondent explained details of the project and highlight the amenities of the project like the project is a blended development of high street retail with food court & multiplex and close proximity to proposed metro station. A luxurious 2 acres high street retail with food court and multiplex with fine dining restaurants and multi-cuisine outlets & cafes. Relying on these details, the complainant enquired the availability of commercial space at third floor which is a Kiosk of 270 sq. ft. The respondent represented to the complainant



that the respondent is a very ethical business house in the field of construction of residential and commercial project and in case the complainant would buy the commercial space in the project of respondent then they would deliver the possession of proposed commercial space on the assured delivery date as per the best quality assured by the respondent. The respondent proposed the payment plan as 30% within 90 days of booking plus 30% on completion of superstructure and rest of 40% on offer of possession as mentioned on printed brochure which was successfully negotiated by the complainant with respondent as 30:70 + Other Charges (30% on or before allotment and 70% on possession of commercial space along with other charges). The respondent had further assured to the complainant that the respondent has already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant given by the respondent and assured that the allotment letter and builder buyer's agreement for the said project would be issued to the complainant within one week of booking to be made by the complainant. Accordingly, the complainant has paid Rs.11,000/- through cheque as booking amount on 04.04.2016 and total amount of Rs.7,11,000/- paid before issuing the allotment of commercial space.

- IV. That in the said application form, the price of the said commercial space was agreed at the rate of Rs.9,000/- per sq. ft. mentioned in the said application form. At the time of execution of the said application form, it was agreed and promised by the respondent that there shall be

no change, amendment or variation in the area or sale price of the said flat from the area or the price committed by the respondent in the said application form or agreed otherwise. On 23.12.2016, the respondent issued an allotment letter to the complainant.

- V. That approximately after one year on 26.02.2018, the respondent issued a buyer's agreement which consisted very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafted in a one-sided way and a single breach of unilateral terms of BBA by the complainant, will cost him forfeiting of 10% of total consideration value of unit. The respondent with his ulterior motives changed the payment schedule by placing Annexure III (Payment Plan) in buyer's agreement which is different from the mutually agreed payment plan of 30:70 + Other Charges (30% on allotment and 70% on possession of commercial space along with other charges).
- VI. That the complainant opposed these illegal, arbitrary, unilateral and discriminatory terms of buyer's agreement, the complainant visited office of the respondent on 15.03.2018 to register her grievances and to remind the respondent on the agreed payment plan which 30:70. The complainant return both the pre-printed copy of buyer's agreement to the respondent to amend the payment plan in accordance with the agreed terms which are mutually decided between the complainant and respondent at the time of booking of said unit. The respondent assured the complainant that the respondent will do the requisite changes in payment plan and for the same respondent request for a written request from the complainant, which complainant furnished to respondent on the same day.

- VII. That the complainant on 15.04.2018 and several other times telephonically enquired from the respondent about the amended buyer's agreement in which the respondent assured that the complainant need not to worry and no further demand of payment will be raised to complainant till the building will be ready for possession.
- VIII. That as per the clause 11(a) of the said unit buyer's agreement dated 26.02.2018, the respondent had agreed and promise to complete the construction of the said unit within 36 months with an extension of further twelve months unless there shall be delay or failure due to Govt. However, the respondent has breached the terms of builder buyer's agreement and failed to fulfil its obligations and has not delivered possession of said unit within the agreed time frame of the builder buyer's agreement. The proposed possession date as per buyer's agreement was due on 26.02.2021.
- IX. That from the date of booking i.e., 04.04.2016 to date of allotment i.e., 23.12.2016, the complainant has duly paid and satisfied her part of obligation of making payment of 30% of basic sale price of the said flat and without any default or delay on her part and also fulfilled otherwise also her part of obligations as agreed with the respondent. The complainant was and has always been ready and willing to fulfil their part of agreement, if any pending.
- X. That as per allotment letter dated 23.12.2016 of said unit the sale consideration for said commercial unit was Rs.27,06,750/- (which includes the charges towards Basic Price of Rs.24,30,000/-, PLC Charges (Food Court Courtyard Facing) of Rs.1,21,500/-, Govt. Charges (EDC & IDC) of Rs.1,14,750/- and IFMS of Rs.40,500/-).
- XI. That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the builder buyer's

agreement is 26.02. 2021, the complainant had regularly visited the project site for inquiring the status of delivery of possession but building construction was not completed till February, 2021. The complainant thereafter kept running from pillar to post asking for the delivery of her commercial unit but could not succeed in getting any reliable answer.

- XII. That the conduct on part of respondent regarding delay in delivery of possession of the said flat has clearly manifested that the respondent never ever had any intention to deliver the said flat on time as agreed. It has also cleared the air on the fact that all the promises made by the respondent at the time of sale of involved flat were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainant to buy the said unit on basis of its false and frivolous promises, which the respondent never intended to fulfill. The respondent in its advertisements had falsely represented the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainant.
- XIII. That on 08.09.2023, the complainant visited the project site and enquired the status of offer of possession from the project office but to her utter shock and surprise the complainant come to know from the representatives of the respondent that the unit is no longer belong to complainant and it's in the name of someone else and the complainant was advised to enquire the same from CRM through email i.e., crm@elanlimited.com and over the phone or complainant can visit the corporate office.
- XIV. That the complainant enquired the status of commercial unit over the phone on 09.09.2023 from the respondent and wrote an email on 10.09.2023 to the respondent to express her grievance and for

immediate resolution of the same. The complainant expressly stated that the respondent's sales representatives allure the complainant by agreeing the payment plan of 30:70 and later they cheated by arbitrarily cancelling the unit without any information to the complainant. The respondent did not pay any heed to the grievances raised by the complainant and did not respond to the email dated 10.09.2023.

- XV. That the complainant again sends an email to the respondent on 14.01.2024 after got extremely harassed & frustrated by non-responsive behaviour of respondent. The complainant in her email dated 14.01.2024 demanded the refund with interest if the respondent is not in position to handover the unit. The respondent replied to the email on 15.01.2024 with a forged cancellation letter dated 28.10.2020 which was never delivered to complainant ever.
- XVI. That the complainant wrote an email dated 17.01.2024 to apprise the respondent that the complainant will approach the appropriate authorities for the redressal of grievances if the respondent will not amicably give possession of said unit to the complainant.
- XVII. That the present complaint is within the prescribed period of limitation.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Restrain the respondent from cancelling the said commercial unit and pass an order to restrain the respondent from creating any third party right on said commercial unit.
 - Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs.7,11,000/- paid by the complainant

as sale consideration of the said commercial Unit from the date of payment till the date of delivery of possession.

- iii. Direct the respondent to provide the possession of said commercial unit to complainant after raising the payment demand of remaining 70% consideration value of commercial unit.
- iv. Direct the respondent to pay an amount of Rs.55,000/- to the complainant as cost of the present litigation.

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 and is liable to be dismissed at the very threshold.
- b. That the complainant has no locus standi or cause of action to file the present complaint.
- c. That the complainant is estopped from filing the present complaint by her own acts, conduct and acquiescence.
- d. That the complaint is barred by limitation. The allotment in favour of the complainant was cancelled as far back as on 28.10.2020 due to persistent and wilful defaults on the part of the complainant in making payments as per the applicable payment plan. Pertinently, the complainant has failed to challenge cancellation of the allotment by the respondent and is yet seeking the relief of possession, interest etc.
- e. That the present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint can only be adjudicated by the civil court. The present complaint deserves to be dismissed on this ground alone.



- f. That the present reply is being filed by Sh. Gaurav Khandelwal, S/o Sh. Vijay Kumar for and on behalf of the respondent M/s Elan Buildcon (P) Ltd. All averments, claims, allegations and contentions raised in the complaint by the complainant are denied as false and incorrect unless specifically admitted to be true by the respondent. The contents of the complaint that are not being specifically admitted shall be deemed to have been denied and traversed.
- g. That the complainant has not come before this Hon'ble Authority with clean hands and have concealed the real and true facts and has presented the facts in a distorted manner so as to benefit herself and the true and correct facts are set out in the succeeding paras of the present reply. The complainant through property dealer/broker Geetanjali Homestate Private Limited, had approached the respondent for booking a unit in the commercial project 'Elan Town Centre' located in Sector 67, Village Badshahpur, Gurgaon-Sohna Road, Gurugram and had opted for construction linked payment plan. The complainant had approached the respondent after conducting extensive and independent investigations with regard to all aspects of the project and proceeded to book the unit after being fully satisfied with all aspects of the project including but not limited to the capability of the respondent to undertake development of the project. The complainant had duly submitted an application form dated 09.04.2016. The complainant, *inter alia*, agreed and undertook to execute the buyer's agreement in the standard format of the respondent company as and when called upon to do so. The complainant agreed and acknowledged that the provisional allotment in her favour shall take effect only upon execution of the buyer's agreement.

- h. That unit no. Kiosk-327 admeasuring approximately 270 sq. ft. located on the third floor of the project with total sale consideration of Rs.27,06,750/- was provisionally allotted in favour of the complainant vide allotment letter dated 23.12.2016. Payment schedule was annexed along with the said allotment letter.
- i. That the respondent forwarded the buyer's agreement to the complainant under the cover letter dated 26.02.2018, for execution which is admitted fact and position by the complainant. However, the complainant refrained from executing the buyer's agreement for reasons best known to herself.
- j. That right from the beginning, the complainant was extremely irregular with regard to payment of instalments and she had no intention to perform her contractual obligations. The respondent was constrained to issue demand letters dated 23.02.2018 and 23.04.2018 and reminders dated 20.01.2017, 20.04.2017, 29.01.2018 for payment to the complainant calling upon the complainant to make payment of outstanding amounts as per the applicable payment plan. However, the just and legitimate requests made by the respondent were ignored by the complainant.
- k. That since the complainant failed to clear her outstanding dues, the respondent sent the pre-cancellation letter dated 19.09.2018 to the complainant giving her the last and final opportunity to clear her outstanding dues within 15 days failing which the provisional allotment in favour of the complainant was liable to be cancelled. The complainant ignored the pre-cancellation letter as well and failed to clear her outstanding dues. The respondent again vide reminder to pre-cancellation letter dated 09.10.2018 gave another final opportunity to the complainant for clearance of the pending dues and it was clearly

communicated that in case of the failure of the complainant to rectify her default, the respondent would be constrained to cancel the allotment. Since the complainant failed to pay the outstanding amount, despite being provided enough opportunities, under these compelling circumstances, the respondent was left with no other option but to cancel the allotment of the unit vide letter dated 28.10.2020 whereby the complainant was informed that due to non-payment of dues with respect to the said unit, the respondent had cancelled the allotment of the unit and the complainant was not left with any right, title or interest whatsoever in the unit in question. However, the complainant did not even bother to contact the respondent despite receipt of the letter of cancellation and no step was initiated by her to set right her continued default.

1. That in the meanwhile the project in question was registered under the provisions of the Act of 2016 as an ongoing project. The respondent completed construction of the project and had made an application to the competent authority on 08.05.2020 for issuance of the occupation certificate with respect to the said project. The respondent has been granted occupation certificate on 09.03.2021 by Town and Country Planning Department, Haryana.
- m. That the allotment of the unit has been cancelled in accordance with the terms and conditions of allotment agreed between the parties due to wilful and persistent defaults on the part of the complainant. Cancellation of the allotment of the unit has been duly accepted by the complainant as the complainant has refrained from challenging the cancellation letter dated 28.10.2020 which itself demonstrates that the complainant was in breach of her obligations and in fact had no intention from the very beginning to perform her obligations and

purchase the unit in question. The respondent has already allotted the unit in question to a third party. The complainant cannot be granted possession of the unit in question and is not entitled to any relief claimed by way of the present complaint. The complaint filed by the complainant is baseless and nothing but an afterthought. The false and frivolous complaint is liable to be dismissed with costs.

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

E. Jurisdiction of the authority:

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

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34: Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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

F. Findings on objections raised by the respondent:

F.1 Objection regarding the complaint barred by Limitation Act, 1963

9. Another contention of the respondent is that the complaint is barred by limitation as the unit was cancelled on 28.10.2020 and the complainant has filed the present complaint on 12.03.2024 after a lapse of almost 4 years. The Authority observes that although the cause of action to file the present complaint accrues on 28.10.2020 i.e. the date of cancellation of the unit but the cause of action is continuing till such obligation of refund of the paid-up amount after cancellation is fulfilled by the promoter-builder. Further, in view of Covid-19, Hon'ble Apex Court vide order dated 10.01.2022 in suo-moto W.P. (C) No. 3 of 2020 has declared period from 15.03.2020 to 28.02.2022 as zero period. Further, as per the scheme of calculating the remaining limitation as provided in the order of Hon'ble Supreme Court, the present complaint which was filed on 12.03.2024 is well within the limitation. Thus, the contention of promoter that the complaint is time barred by proviso of Limitation Act stands rejected.

G. Findings on the relief sought by the complainant:

G.I Restrain the respondent from cancelling the said commercial unit and pass an order to restrain the respondent from creating any third party right on said commercial unit.

10. The complainant was allotted a unit in the project of respondent "Elan Town Centre" situated in Sector 67, Gurugram vide allotment letter dated 23.12.2016 for a basic sale consideration of Rs.24,30,000/-. Though no flat buyer's agreement was executed between the parties but the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.7,11,000/.
11. The counsel for the complainant vide proceedings of the day dated 23.12.2025 states that the unit was booked under the 30:70 plan and the complainant has paid the 30% of the sale consideration, thereafter the respondent has issued an allotment letter on 23.12.2016. He further stated that the respondent has sent the draft buyer's agreement on 26.02.2018 but the same was not executed as the payment plan annexed with the draft buyer's agreement was different.
12. The respondent vide proceedings of the day dated 23.12.2016 has mentioned that the unit of the complainants was cancelled on 28.10.2020 on account of non-payment of the outstanding dues after issuing several reminders to the demand letters, followed by a pre-cancellation letter dated 19.09.2018. He further stated the complainant has not even challenged the cancellation in the relief sought in the present complaint, thus the complaint is liable to be dismissed. However, the counsel for the complainant stated that the complainant never received the demand letters as well as the reminders as the same were sent to wrong address. Now, the question arises before the Authority is that the cancellation letter dated 28.10.2020 is valid or not?
13. The Authority has gone through the documents placed on record and observed that in the allotment letter dated 23.12.2016 it is specifically

mentioned that the payment plan agreed between the parties is construction linked payment plan and the same is annexed (page no. 68 of the complaint) with the draft of buyer's agreement sent to the complainant on 26.02.2018. As per the opted payment plan, the complainant has to pay 95% of the sale consideration on completion of project and remaining 5% on offer of possession. The project has been completed and the occupation certificate was obtained way back on 09.03.2021 by the respondent, but till date the complainant has paid only Rs.7,11,000/- i.e., 29% of the basic sale consideration of Rs.24,30,000/-. As per the SOA placed on page 53 of the reply, the last payment was made by the complainant on 26.05.2016. Thereafter the respondent has issued reminder letters dated 20.01.2017, 20.04.2017 and 29.01.2018 for payment of outstanding dues. Further, the respondent has raised demands vide demand letters on 23.02.2018 and 23.04.2018 as per the agreed payment plan but the complainant has not made any payment. Further, the respondent has issued a pre-cancellation letter dated 19.09.2018 and gave time to the complainant to pay the outstanding dues and finally terminated the unit on 28.10.2020.

14. The counsel for the complainant proceedings of the day dated 23.12.2025 mentioned that the complainant has visited the project site on 08.09.2023 and found that the unit was re-allotted to the third party. In furtherance of the same, during proceedings dated 23.12.2025, the counsel for the respondent has placed on record the allotment letter dated 29.07.2021 issued by the respondent in favour of Neelam Kothari.
15. On perusal of documents placed on record and submissions made by the parties, the Authority observed the complainant has failed to pay the outstanding dues. The respondent has obtained the occupation certificate on 09.03.2021 but the complainant has paid only Rs.7,11,000/- which is 29% of the basic sale consideration of Rs.24,30,000/- till date which clearly

depicts that the complainant has failed to abide the terms and conditions of the opted payment plan. Thus, the cancellation letter dated 28.10.2020 is valid. Moreover, the unit has been allotted to the third-party, thus, the relief sought in the present complaint is not maintainable but the same doesn't shed off the liability of the respondent to refund the paid-up amount by the complainant after necessary deductions as per the provisions of the Act of 2016.

16. As per clause 4 of draft buyer's agreement, the respondent-promoter is entitled to deduct the earnest money in case of default by the allottee. Clause 4 of the draft buyer's agreement is reproduced below for the ready reference:

4. EARNEST MONEY

The allotted(s) agrees and confirms that out of the total amount(s) paid/ payable by the allottee (s) for the said unit, 10% of the total consideration of the said unit shall be treated as earnest money to ensure fulfilment of the terms and conditions as contained in the application and this agreement. In the event, the allottee(s) fails to perform any obligations or commit breach of any of the terms and conditions, mentioned in the application and/ or this agreement, including but not limited to the occurrence of any event of default as stated in this agreement on the failure of the allottee(s) to sign and return this agreement in original to the developer within 30 days of dispatch, the allottee(s) agrees, consents and authorizes the developer to cancel the allotment and on such, the allottee(s) authorizes the developer to forfeit the earnest money, brokerage, interest on delayed payments along with non-refundable amounts and any amounts paid/payable against interest on investment as well as any other returns paid/ payable by the developer.

17. 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."

18. Keeping in view the aforesaid factual and legal provisions, the respondent can retain the earnest money paid by the complainants against the allotted unit and shall not exceed 10% of the consideration amount. So, the same was liable to be forfeited as per clause 4 of the buyer's agreement and Haryana Real Estate Regulatory Authority Regulation 11(5). So, the respondent/builder is directed to refund the amount received from the complainants i.e., Rs.7,11,000/- after deducting 10% of the basic sale consideration i.e., Rs.24,30,000/- 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., 28.10.2020 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.II Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs.7,11,000/- paid by the complainant as sale consideration of the said commercial Unit from the date of payment till the date of delivery of possession.

G.III Direct the respondent to provide the possession of said commercial unit to complainant after raising the payment demand of remaining 70% consideration value of commercial unit.

19. As the Authority is allowing refund of the amount to the complainants as per provisions of the Act of 2016 and Rules, 2017 as detailed out in para 18 of this order, all the above-mentioned reliefs become redundant. Thus, no direction to this effect.

G.IV Direct the respondent to pay an amount of Rs.55,000/- to the complainant as cost of the present litigation.

20. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. The Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the Authority:

21. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The cancellation letter dated 28.10.2020 is valid. Therefore, the respondent/promoter is directed to refund the amount i.e., **Rs.7,11,000/-** received by him from the complainants after deduction of 10% of basic sale consideration of Rs.24,30,000/- 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., 28.10.2020 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.
22. The complaint stand disposed of.
23. Files be consigned to the registry.


(Phool Singh Saini)
Member
(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 20.01.2026