

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

<b>Complaint no.</b>	<b>:</b>	<b>2355 of 2025</b>
<b>Date of Filing:</b>		<b>21.05.2025</b>
<b>Date of Decision:</b>		<b>14.11.2025</b>

1. Gulshan Baweja
2. Geetika Baweja

**R/o:** - L-21, DLF Ultima, Sector-81, Gurugram

**Complainants**

**Versus**

M/s DLF Home Developers Ltd.  
**Office at:** 1<sup>st</sup> Floor, DLF Gateway Tower, R Block,  
DLF City Phase – III,  
Gurugram – 122002, Haryana

**Respondent**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Sh. Vinay Kumar Saini  
Sh. Ishaan Dang

Complainants  
Respondent

**ORDER**

1. The present complaint dated 21.05.2025 has been filed by the complainants/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 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:

Sr. No.	Particulars	Details
1.	Name of the project	Regal Gardens DLF Garden City, Sector-90, Gurugram.
2.	Total area of the project	11.10 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	88 of 2009 dated 30.12.2009 valid upto 29.12.2019
5.	Name of licensee	M/s Ofira Builders and Developers Pvt. Ltd.
6.	Registered/not registered	Not Registered
7.	Unit no.	RGC 024, 2 <sup>nd</sup> floor, Tower C [page no. 79 of reply]
8.	Area of the unit	1719 sq. ft. of super area [page no. 79 of reply]
9.	Date of application	03.03.2012 (page no. 60 of reply)
10.	Allotment	23.03.2012 (page no. 59 of reply)
11.	Date of apartment buyer's agreement	17.07.2012 [page no. 74 of reply]

12.	Possession clause	<p><b>11. (a) Schedule for Possession of the Said Apartment</b></p> <p>The Company based on its present plans and estimates and subject to all just exceptions endeavours to complete the construction of the said Building/said Apartment <b>within a period of forty two (42) months from the date of application</b> unless there shall be delay or failure due to Force Majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the Allotment or any failure on the part of the Allottee (s) to abide by all or any of the terms and conditions of this Agreement.</p>
13.	Due date of possession	03.09.2015 (Calculated from the date of application)
14.	Sale consideration	Rs. 81,65,250/- (as per bba at page 79 of reply) Rs. 1,00,43,590/- (as per SOA at page no. 61 of reply)
15.	Total amount paid by the complainants	Rs. 35,55,534/- (as alleged by complainants)
16.	Occupation certificate	07.10.2016 (page no. 22 of reply)
17.	Offer of possession	04.02.2017 (page no. 223 of reply)
18.	Reminders for payment	13.02.2017, 16.03.2017, 30.08.2017, 15.11.2017, 23.01.2018, 27.07.2018, 16.10.2018, 12.11.2018, 25.01.2019, 15.04.2019, 03.06.2019, 15.04.2019, 22.07.2019

**B. Facts of the complaint:**

3. The complainants have made the following submissions: -
- I. That late father of complainant(s) had booked a residential apartment no. RGC 024 on 2nd floor having super area of 1719 sq. ft. in the said project on 03/03/2012 however pending physical delivery of the said apartment father of the complainant(s) passed away on 27.05.2016 leaving behind the following legal heirs as below mentioned.
    - Gulshan Baweja S/o Late Dr. Ramesh Baweja (Son)
    - Geetika Baweja D/o Late Dr. Ramesh Baweja (Daughter)
  - II. That the present complaint is being instituted by the above legal heirs Mr. Gulshan Baweja (Son) and Geetika Baweja (Daughter). The complainant no. 1 son of Late Dr. Ramesh Baweja, co-allottee of the residential apartment no. RGC 024.
  - III. That the respondent is a company registered under the provisions of company act and carrying out its business in the real estate by developing and constructing project in the NCR Region.
  - IV. That in the year 2012, the respondent (s) published and advertised residential project namely "Regal Garden" Sector-90, Gurugram (HR) whereby the buyers were invited to book apartments/units with assurance that physical possession of the booked apartments/units will be handed over within 42 months from the signing of apartment buyer agreement.
  - V. That as per the representation, promise made by the respondent, the complainant's father Late Dr. Ramesh Baweja booked a residential apartment no. RGC 024 on 2nd floor having super area of 1719 sq. ft. for basic sale consideration of Rs. 81,65,250/-. The complainant no. 1 and his late father paid sum of Rs. 7,70,000/- on booking on 03.03.2012

which was duly acknowledged and credited in the account of the respondent.

- VI. That subsequently there to an allotment letter dated 23rd March 2012 was issued by the respondent giving particular of the booked apartment.
- VII. That post allotment of the apartment, the respondent signed an apartment buyer agreement dated 17th July 2012 with the complainants.
- VIII. That in terms of stipulation mentioned in the apartment buyer agreement the respondent was obliged to complete the said project and physical possession of said apartment was to be handed over in 42 months, more particularly given in clause no. 11(a) of the agreement but the dead line for completion of the project was expired on 17/01/2016.
- IX. That father of the complainants had paid sale consideration to the tune of Rs. 35,55,534/- to the respondent on various dates as and when demanded till January 2016 anticipating completion of the project and handing over the possession of the booked apartment by 17/01/2016, however the respondent failed to meet the said deadline.
- X. That awaiting delivery of the possession of the apartment, the father of the complainants Dr. Ramesh Baweja expired on 27/05/2016, but the project remained incomplete.
- XI. That the complainant(s) being the son of the applicant (Dr. Ramesh Baweja) had formally intimated in the office of the respondent about death of his father (Dr. Ramesh Baweja) and expressed their unwillingness to retain the booked apartment and inability to make the balance payment on account of sudden financial crunch and death of the

father therefore requested to cancel the allotment of the apartment and refund the sale consideration but the respondent neither cancelled nor refunded the sale consideration of Rs. 35,55,534/-.

- XII. That the complainants even meet sales representative of the respondent several time for cancelation and refund of sale consideration but of no consequence. Despite specific genuine request made by the complainants, the respondent ignored the same and kept sending demand notice for the balance consideration amount without completion of the project.
- XIII. That the respondent instead of cancellation of the allotment only to evade refund and to hide the act of the non - performance of delayed completion casted pressure to make the balance payment. The allotment of the apartment has not been cancelled till date despite filling the complaint.
- XIV. That the respondent had admittedly obtained completion certificate only on 08.11.2019, therefore, the offer of possession 4th February 2017 by the respondent was illegal.
- XV. That the respondent had neglected to obtain RERA registration under section 3 of RERA Act on the false pretext that the said project is not an ongoing project within the definition of 2 (n) of the RERA Rules. The RERA act read with RERA rules contemplate all the projects which has not been issued completion certificate on the date of commencement of the RERA Act are covered by the definition of the ongoing project. The operative part of the section 2(n) is reproduced herein below for your kind perusal.
- XVI. That the complainant's father had paid part consideration sum of Rs.35,55,534/- to the respondent as per schedule of payments of the

apartment buyer agreement dated 17/07/2012 and never defaulted in respect of his obligation under the terms and condition of the said apartment buyer agreement but the respondent had failed to complete construction and hand over possession within the stipulated time frame work on before 17/1/2016.

- XVII. That the complainants on account of death of his father is no more interested in retaining the possession of the said apartment /flat therefore seeks refund of the entire sale consideration along with interest.
- XVIII. That despite regular follow up, the respondent had refused to refund sale consideration on one pretext or the other pretext, therefore the complainants are left with no other efficacious remedy available except to file the present complaint before this Hon`ble Authority seeking refund of money invested along with penalty an Apartment Buyer Agreement by the respondent.
- XIX. That the respondent by its acts and omission had violated the provision of Section 18 of the RERA Act for failure of the promoter to complete or unable to give possession in terms of apartment buyer agreement dated 17/07/2012 "within stipulated time therefore the respondent is liable to compensate the complainants by refund of sale consideration with interest and compensation as provided in section 18 the RERA Act.

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

4. The complainants have sought following relief(s):
- i. Direct the respondent to refund the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate.

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-builder by way of written reply submitted the following submissions:
- I. That the complainant no. 1 and his father had made detailed and elaborate enquiries with regard to all aspects of the residential group housing project known as "Regal Gardens, DLF Garden City, Sector 90, Gurugram" conceptualised and promoted by the respondent. After completely satisfying themselves with regard to the specifications of the apartments, competence and capability of the respondent to successfully undertake the construction, development and implementation of the said project complainant no. 1 and his father had proceeded to book for purchase a residential apartment in the said project. Application for allotment by sale had been submitted by complainant no. 1 and his father with the respondent on 1st of March 2012 and a sum of Rs. 7,70,000/- had been paid to the respondent for the purpose of making booking referred to above.
- II. That allotment letter dated 23rd of March 2012 had been issued by the respondent in favour of complainant no 1 and his father whereby it had been communicated to them that residential apartment bearing no.RGC-024 along with car parking slot bearing no.PC-1011 in DLF Garden City, Sector-90, Gurugram had been allotted in favour of complainant no 1 and his father by the respondent. Along with the said letter, receipt dated 3rd of March 2012 for Rs. 7,70,000/- had been

- issued by the respondent. Complainant no 1 and his father had opted for a construction linked payment plan but the first three instalment after the submission of application for booking were time linked ones.
- III. That the timely payment of instalments was the essence of the contract. Complainant no 1 and his father had undertaken to make payment of instalments of sale consideration in a punctual and timely manner. As highlighted earlier the first three instalment after submission of application for allotment were time bound ones. The respondent was under no obligation to remind complainant no 1 and his father of their financial obligations, yet as a gesture of good will demand cum intimation notice dated 27th of March 2012 and 14th of May 2012 were sent by the respondent to the father of the complainants as his name was indicated to be the first allottee.
- IV. That letter dated 24th of May 2012 was sent by the respondent to the father of the complainants and along with the same apartment buyers agreement was also sent for execution to the allottees. The material terms and conditions of the apartment buyers agreement had also been transparently highlighted by the respondent in the aforesaid letter. In the meantime reminder 1 dated 5th of June 2012 was sent by the respondent to the father of the complainants calling upon him to make payment of the outstanding amount.
- V. That apartment buyer agreement dated 17th of July 2012 had been executed between the parties in respect of the aforesaid apartment. Complainant no 1 and his father turned out to be chronic defaulters in payment of instalments of sale consideration. Letter dated 3rd of October 2012 and letter dated 7th of January 2013 indicating acceptance of payments subject to charge of delayed interest had been

sent by the respondent to the father of the complainants. Letter dated 29th of April 2013 had been sent by the respondent to the father of the complainants apprising him of the fact that service tax would be payable on preferential location charges. Reminder for payment dated 30th of December 2013 had been sent by the respondent to complainant no 1 and his father calling upon them to make payment of the outstanding amount.

- VI. That letter dated 6th of January 2014 had been sent by the respondent to the father of the complainants informing the him that DLF New Gurgaon Homes Developers Private Limited stood amalgamated with DLF Home Developers Ltd.
- VII. That thereafter reminder- II letter dated 13th of January 2014 followed by Final Notice dated 3rd of February 2014 had been sent by the respondent to the father of the complainants calling upon him as well as complainant no 1 to make payment of the outstanding amounts. Letter dated 17th of January 2014 and 11th April 2014 indicating acceptance of payments subject to charge of delayed interest had been sent by the respondent to the father of the complainants. Even thereafter respondent sent reminder I letter dated 23rd of April 2014, Reminder II Notice dated 8th of May 2014, Reminder I Letter dated 17th of July 2014 had been sent by the respondent to the father of the complainants demanding outstanding payments. Letter dated 7th of July 2014 indicating acceptance of payments subject to charge of delayed interest had been sent by the respondent to the father of the complainants. Reminder II Notice dated 1st of August 2014, Final Notice dated 20th of August 2014, Reminder I Letter dated 5th of September 2014 and Reminder- II Notice dated 22nd of September 2014 had been

issued by the respondent to the father of the complainants. Letter dated 13th of October 2014 indicating acceptance of payments subject to charge of delayed interest had been sent by the respondent to the father of the complainants. Final Notice dated 9th of October 2014, Reminder I Letter dated 28th of October 2014, Reminder II Notice dated 7th of November 2014, Final Notice dated 26th of November 2014, Reminder I Letter dated 28th of November 2014, Reminder II Notice dated 15th of December 2014, Reminder I Letter dated 29th of December 2014, Final Notice dated 2nd of January 2015, Reminder II Notice dated 13th of January 2015, Final Notice dated 2nd of February 2015, Reminder I Letter dated 26th of March 2015, Reminder II Notice dated 10th of April 2015, Final Notice dated 29th of April 2015 had been sent by the Respondent to the father of the complainants demanding outstanding payments.

- VIII. That thereafter Reminder I Letter dated 16th of March 2016 and Reminder II Notice dated 31st of March 2016 had been sent by the Respondent to the father of the complainants demanding outstanding payments. Letter dated 14th of April 2016 indicating acceptance of payments subject to charge of delayed interest. Final Notice dated 19th of April 2016 had been sent by the respondent to the father of the complainants demanding outstanding payments.
- IX. That letter dated 10th of November 2016 had been sent by the Respondent to the father of the complainants intimating the complainants that occupation certificate in respect of "Regal Gardens" project had been duly received. By virtue of the said letter father of complainant no 1 had been called upon to view the customer profile, schedule of payments, statement of accounts and receipt/credit details

on the web portal for the project. The said letter was duly received by the father of complainants.

- X. Thereafter, letter dated 4th of February 2017 had been sent by the respondent to the father of the complainants calling upon the him as well as complainant no 1 to remit the outstanding amount of Rs.1,08,39,036.07 and to take possession of the apartment after completion of requisite formalities. Inadvertently it was intimated in the aforesaid letter that interest bearing maintenance security was liable to be paid by complainant no 1 and his father to the Respondent at the rate of Rs.150/- per sq. feet per month. However, subsequently, letter dated 13th of February 2017 had been addressed by the respondent to the father of the complainants whereby father of the complainants as well as complainant no 1 were intimated that interest bearing maintenance security was liable to be paid by the complainants to the respondent at the rate of Rs.125/- per sq. feet per month.
- XI. That letters dated 16th of March 2017, 30th of August 2017, 15th of November 2017, 23rd of January 2018, 27th of July 2018 and 16th of October 2018 was also subsequently sent to the father of the complainants by the respondent calling upon him as well as complainant no 1 to obtain physical possession of said apart after payment of the outstanding amount. Despite receipt of aforesaid letters complainant no 1 and his father did not come forward to obtain physical possession of the said apartment.
- XII. That letter dated 12th of November 2018 had been sent by the Respondent to the father of the complainants whereby it was intimated to him as well as complainant no 1 that in terms of buyers agreement it was incumbent upon them to obtain physical possession of the

apartment when the same was offered to them by the respondent. The attention of the father of the complainants as well as complainant no 1 had been drawn by the respondent to the contents of the apartment buyers agreement and the consequences that would ensue owing to non-obtaining of physical possession of the apartment by complainant no 1 and his father.

- XIII. That letter dated 25th of January 2019 had been sent by the respondent to the father of the complainants intimating him as well as the complainant no. 1 that in the event of their failure to obtain physical possession of the aforesaid apartment holding charges at the rate of Rs. 15/- per square feet per month would be liable to be paid by them to the Respondent in terms of apartment buyers agreement.
- XIV. That even though the respondent was under no obligation to persistently remind complainant no 1 /his father of their contractual duty to obtain physical possession of the aforesaid apartment, yet to avoid unwarranted controversy, the respondent had dispatched letter dated 15th of April 2019, letter dated 3rd of June 2019 and letter dated 15th of April 2019 were sent by the respondent to the father of the complainants as well as complainant no 1 whereby they were called upon to obtain physical possession of the aforesaid apartment.
- XV. That thereafter, letter dated 22nd of July 2019 had been sent by the respondent to the father of the complainants once again intimating to complainant no 1 and his father that their failure to obtain physical possession would expose them to various financial liabilities, including but not confined to payment of holding charges at the rate of Rs. 15/- per square feet per month.

- XVI. That thus, from the chronology of events narrated above it is comprehensively established that complainant no 1 and his father had miserably defaulted in payment of consideration in respect of aforesaid apartment. No lapse in the entire sequence of events can be attributed by the complainants to the respondent. In fact, the respondent has duly fulfilled its obligations towards its allottees by completing construction and offering possession with the agreed time lines as set out in the buyer's agreement. The respondent is in receipt of the completion certificate from the competent authority on 08.11.2019.
- XVII. That the allegations levelled by the complainants qua the respondent are totally baseless and do not merit any consideration by this Hon'ble Authority. The institution and prosecution of present complaint constitutes gross misuse of process of law. The complaint under reply is bereft of logic and devoid of merit. No relief whatsoever deserves to be granted to the complainants against the respondent. The present application is nothing but an abuse of the process of law. Thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.
7. 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 written submissions made by the parties and the same have been perused.
- E. Jurisdiction of the authority**
8. The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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**

9. 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**

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.**

12. **Relief sought by the complainants:** The complainants have sought the following relief(s):
- i. Direct the respondent to refund the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate.
13. The complainant no. 1 and his Father Late Dr. Ramesh Baweja booked a unit in the project developed by the respondent company, namely "Regal Garden, DLF Garden City" located at Sector-90, Gurugram vide application dated 03.03.2012. The complainant no. 1 and his Father Late Dr. Ramesh Baweja was allotted a unit bearing no. RGC 024 on 2<sup>nd</sup> Floor in Tower C admeasuring 1719 sq. ft. of super area vide allotment letter dated 23.03.2012. The apartment buyer's agreement was executed between the parties on 17.07.2012. As per the stipulations contained in the apartment buyer agreement, the possession of the unit was to be handed over within a period of 42 months from the date of application. The date of application is 03.03.2012 therefore, the due date of possession comes out to be 03.09.2015. That the total sale consideration of the unit was Rs. 81,65,250/- out of which the complainant no. 1 and his Father Late Dr. Ramesh Baweja has paid an amount of Rs. 35,55,534/-. The occupation certificate for the project was received on 07.10.2016 and subsequently unit was offered for possession on 04.02.2017. That the father of the complainant no. 1 i.e., Late Dr. Ramesh Baweja (co allottee) expired on 27.05.2016. In view of the same the present complaint is filed by the legal heirs of the Late Dr. Ramesh Baweja i.e., Gulshan Baweja and Geetika Baweja.
14. The complainants in the present complaint has stated that they want refund of the amount paid by them. Further stated that the respondent

was unable to handover the possession by the due date therefore, they are liable to refund the full amount with interest.

15. The plea of the respondent/builder is otherwise and has stated that the unit was allotted to the complainant no. 1 and his Late father Dr. Ramesh Baweja vide allotment letter dated 23.03.2012 and thereafter the agreement was executed on 17.07.2012. As per possession clause the due date of possession is 03.09.2015. The respondent has completed the project and has received the occupation certificate on 07.10.2016 and subsequently offered the possession of the unit on 04.02.2017. Moreover, the respondent has raised the demand for outstanding payments, which were as per the buyer's agreement dated 17.07.2012. Due to non-payment of such demands, the respondent send various reminders to the complainants on 13.02.2017, 16.03.2017, 30.08.2017, 15.11.2017, 23.01.2018, 27.07.2018, 16.10.2018, 12.11.2018, 25.01.2019, 15.04.2019, 03.06.2019, 15.04.2019, 22.07.2019. However, the complainants failed to honour its obligation to pay the amount on time. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit despite issuance of reminders, the complainants have failed to clear the outstanding dues.
16. The question of refund is now to be determined on the basis of the facts and circumstances of the present case. The Authority notes that, as per clause 11 (a) of the apartment buyer's agreement dated 17.07.2012, possession of the allotted unit was to be delivered within a period of 42 months from the date of application. The date of application is 03.03.2012 therefore, the due date of possession comes out to be

03.09.2015. The total sale consideration for the unit was Rs. 81,65,250/- (as per payment plan) out of which the complainants have paid a sum of Rs. 35,55,534/-. The occupation certificate for the project was received on 07.10.2016 and subsequently unit was offered for possession on 04.02.2017.

- XX. Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. The due date of possession as per buyer's agreement was 03.09.2015 and the allottees in this case have filed this complaint on 21.05.2025 after possession of the unit was offered to them on 04.02.2017 after obtaining occupation certificate on 07.10.2016 by the promoter.
- XXI. The right under section 18(1)/19(4) accrues to the allottees on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If allottees have not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made to them, it impliedly means that the allottees tacitly wished to continue with the project. The promoter has already invested in the project to complete it and offered possession of the allotted unit. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in force as the promoter has to pay interest at the prescribed rate of every month of delay till the handing over of possession and allottees interest for the money they have paid to the promoter is protected accordingly and the

same was upheld by in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022; that: -

25. *The unqualified right of the allottees to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottees, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottees/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottees does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*
17. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale. This judgement of the Supreme Court of India recognized unqualified right of the allottees and liability of the promoter in case of failure to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. But the complainants/allottees failed to exercise the right although it is unqualified one. The complainants have to demand and make their intention clear that they wish to withdraw from the project. Rather, tacitly wished to continue with the project and thus made themselves entitled to receive interest for every month of

delay till handing over of possession. It is observed by the authority that the allottees invest in the project for obtaining the allotted unit and on delay in completion of the project and when the unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the section 18 which protects the right of the allottees in case of failure of promoter to give possession by due date either by way of refund if opted by the allottees or by way of delay possession charges at prescribed rate of interest for every month of delay.

18. This view is supported by the judgement of Hon'ble Supreme Court of India in case of **Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. (Civil appeal no. 5785 of 2019)** wherein the Hon'ble Apex court took a view that those allottees are obligated to take the possession of the apartments since the construction was completed and possession was offered after issuance of occupation certificate and also in consonance with the judgement of Hon'ble Supreme Court of India in case of **M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors (Supra)**.
19. Keeping in view of the aforesaid circumstances that the respondent-builder has already offered the possession of the allotted unit after obtaining occupation certificate from the competent authority, it is concluded that if the complainants/allottees still want to withdraw from the project, the paid-up amount shall be refunded after deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018.

20. The Hon'ble Apex court of the land in cases of **Maula Bux Vs. Union of India (1973) 1 SCR 928** and **Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136**, and followed by the National Consumer Dispute Redressal Commission, New Delhi in consumer case no. 2766/2017 titled as **Jayant Singhal and Anr. Vs. M/s M3M India Ltd.** decided on 26.07.2022, took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted 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. So, it was held that 10% of the basic sale price is reasonable amount to be deducted in the name of earnest money. Keeping in view, the principles laid down by the Hon'ble Apex court in the above mentioned two cases, rules with regard to forfeiture of earnest money were framed and known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides 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. 35,55,534/- after deducting 10% of the sale consideration along with an interest @10.85% (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 filing of the complaint i.e., 21.05.2025 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

**G. Directions of the Authority**

- i. The respondent builder is directed to refund the paid-up amount of Rs. 35,55,534/- to the complainants after deducting 10% of the sale consideration along with an interest @10.85% from the date of filing of the complaint i.e., 21.05.2025 till the actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.
  - ii. 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.
22. Complaint stands disposed of.
23. File be consigned to registry.

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.11.2025