

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

Complaint no. : 5847 of 2024
Date of complaint : 11.12.2024
Date of order : 13.01.2026

Vishal Kumar,
R/o: H. No. 153 A Road No.8, Paltiputa
Colony, Village Bajghera, Sector-112/113,
Gurugram.

Complainant

Versus

M/s Sector-113, Gatevida Developers Private Limited
Regd. Office at: Sector-113, Gatevida Developers
Private Limited, Intellion Edge, Tower A,
First Floor, Sector 72, Gurugram, Haryana-122101.

Respondent

CORAM:

Arun Kumar

Chairman

APPEARANCE:

Shri Sharique (Proxy Counsel)
Shri Harshit Batra (Advocate)

Complainant
Respondent

ORDER

1. The present 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 provisions 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 unit details, sale consideration, the amount paid by the complainant, 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 | La Vida, Sector- 112& 113 Gurugram |
| 2. | Total area of the project | 21.04375 acres |
| 3. | Nature of the project | Group housing project |
| 4. | DTCP license no. | 105 of 2011 dated 11.12.2011 valid upto 10.12.2021 85 of 2012 dated 29.08.2012 valid upto 28.08.2018 86 of 2012 dated 29.08.2012 valid upto 28.08.2025 |
| 5. | Name of licensee | 1. ABAG Hi-Tech Education Pvt Ltd 2. CSN Estates Pvt Ltd 3. Om Parkash 4. Naveen S/o S.P. Gupta 5. A.N. Buildwell Pvt. Ltd. 6. Bhay Ram S/o Lakhmi Chand |
| 6. | Registered/not registered | Registration no. 148 of 2017 dated 28.08.2017 valid upto 31.12.2022 |
| 7. | Date of allotment | 27.08.2016 (As on page no. 37 of reply) |

| | | |
|-----|--|--|
| 8. | Unit no. | 1101, Floor-11 th , Building/Block no-B3 (As on page no. 48-49 of reply) |
| 9. | Area of the unit | 1089 sq.ft. [Carpet Area] (As on page no. 48 of reply) |
| 10. | Date of execution of buyer's agreement | 26.04.2017 (As on page no. 44 of reply) |
| 11. | Possession clause | <p>5.2 Possession, Time and Compensation</p> <p><i>(a) The promoter shall endeavour to give possession of the said Apartment to the PURCHASER(S) on or before April 2021 and subject to provisions of sub-clauses (b), (c), (d) and (e) of this Article and also Force Majeure circumstances and reasons beyond the control of PROMOTER ("Date of Possession").</i></p> <p><i>(b) In the event, possession of the said Apartment is delayed beyond the date as agreed hereinabove inter alia for any reason, the PROMOTER shall be entitled to extension of 6 [Six] months ("Extended Duration") for giving possession of the said Apartment.</i></p> |
| 12. | Due date of possession | 31.10.2021 [Grace period of 6 months is allowed] |
| 13. | Basic sale consideration | Rs.1,52,19,438/- (As on page no. 49 of reply) |
| 14. | Total amount paid by the complainant | Rs. 47,49,808/- (As on page no. 173 of reply) |

| | | | |
|-----|---|---|-----------------------------------|
| 15. | Occupation certificate | 28.10.2021 (As on page no. 151 of the reply) | |
| 16. | Offer of possession | 31.10.2021 (As on page no. 155 of reply) | |
| 17. | Possession Reminders | 1 st reminder | 24.12.2021 (Page 164 of reply) |
| | | 2 nd reminder | 02.02.2022 (Page 166 of reply) |
| 18. | Pre cancellation letter | 21.04.2017 (As on page no. 147 of reply) | |
| 19. | Cancellation dated | 18.05.2022 (As on page no. 171 of reply) | |
| 21. | Refund letter against cancellation of allotment | 28.02.2023 (As on page no. 174 of reply) | |
| 22. | Agreement in favour of third party | 26.08.2022 (As on page no. 178 of reply) | |

B. Facts of the complaint:

3. The complainant has made the following submissions: -

1. The complainant was induced by various advertisements issued by the respondent for their residential group housing project namely "LA-VIDA" situated at Village: Bajghera, teshsil and District Gurgaon, Haryana (hereinafter referred as "***the said project***"). It is stated that while advertising for the said project, the respondent had represented that the said project is being developed by well-known Lemon Tree land and Development Private Limited, which provides various facilities like lift, 24/7 water supply, clubhouse, firefighting system, GYM, jogging facility, kids play area, power backup, swimming pool,

surveillance and hospitality. It was also represented that the said project is far from the noisy life of city and is surrounded by natural atmosphere to provide calm and fresh living and healthy life style. Since, the respondent had represented that the said project is comprising of ultra-modern and luxurious flats, the cost of the said flat was higher than the market rate. It is stated that the total sale consideration of the said flat is Rs. 1,52,19,438/-, which includes for (1) reserved car parking space, Interest Free Maintenance Security (IFMS), Power Back-up charges and other charges.

- II. That based on the representation done through brochures and various other advertisements, the complainant approached the respondent to purchase a flat in the said project. Accordingly the respondent made arrangements of execution of the apartments buyers agreement for the allotment of the said flat in question.
- III. That the 'apartments buyers agreement' was executed on 23/11/2017 in pursuant to the application date 27/07/2016, prior to which the complainant had paid Rs. 30,16,935/- being part payment of the Sale consideration payable. after the execution of the agreement to sell and submission of all the documents in the office of the respondent, a nomination confirmation was issued by the respondent for the said allotment of residential flat bearing no. 1101 (101.17 Sq. Mtr. Approx.) alongwith 1(one) reserved car parking (hereinafter referred as "the Flat") in favour of the complainant.
- IV. That subsequently, the complainant were induced to carry forward the pre-printed buyer's agreement which was signed between the original allottee and the respondent on 23/11/2017, providing details terms and conditions for purchase of the said flat. The complainant had paid Rs. 47,49,808/- to the respondent as a part of consideration

amount and rest of the amount was to be paid at the time when the OC will be obtained by the respondent.

- V. That inter alia, the agreement contained the following clauses for payment of remaining charges :-
- All statutory taxes, Cess, Charges etc. including Service Tax, HVAT, GST, TDS, Stamp duty, Registration charges etc. as applicable under law shall be payable by you. The same will reflect in the Demand Letter/Intimation Letter.
 - Other outgoings and charges (e.g. IBMS, Electricity charges, Water charges, Legal Charges, Maintenance Charges, other deposits etc.) will be charges separately.
 - All delayed payments attract interest as per the terms of the Application Form.
 - The cost of construction material and labor is Rs. 4,205/- per sq. ft. of the Carpet Area.
- VI. That vide a second letter possession reminder letter dated 2nd feb 2022 the respondent sent a 2nd reminder letter to the complainant thereby stating that the complainant had not cleared outstanding dues of Rs. 1,21,12,046/- or completed the possession formalities which would enable the respondent in handing over the physical possession of the unit to the complainant.
- VII. That since, the complainants had already paid total amount of Rs. 47,49,808/- of the total sale consideration of the said flat and had also

paid home loan, availed from the Bank, the remaining amount had to be paid after the issuance of OC as per the agreement's payment schedule mentioned above, the complainant did not make the remaining payment as he did not receive OC from the promoter.

- VIII. That thereafter vide cancellation letter dated 18.05.2022 the respondent cancelled the booking of apartment No. 1101 Tower B-3, at La Vida project.
- IX. That the complainant did not receive the 1st reminder of the remaining payment. The respondent illegally cancelled the allotment of the complainant vide the cancellation letter dated 18.05.2022 without providing the OC and thereafter allowing the complainant to make the remaining payment.
- X. That later in view of the cancellation when the complainant asked for a refund, the respondent assured the complainant to provide a full refund of the money paid. Later on, the respondent failed to refund the amount to the complainant. It is submitted that the respondent not only failed to provide the OC and possession to the complainant, it also illegally terminated the allotment of the complainant due to its own fault and moreover, failed to refund the amount when asked for. This deficiency of service and fraudulent action of the respondent has caused insufferable mental agony and financial loss to the complainant.
- XI. That the complainant had personally visit the office of the respondent and even raise this issue on mail of the respondent but, respondent was not replying to the mail nor gave proper response to the complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- I. Direct the respondent to hand over the possession of Flat No. 1101 Tower B-3 along with all the amenities and facilities as mentioned in the agreement, at LA VIDA project and also OC of the flat so that remaining payment can be made and agreement can be executed.
- II. Direct the respondent to pay compensation @ 10.75% on paid amount of Rs 47,49,808/- for delay in providing OC and possession of the flat.
- III. Direct the Respondent to pay an amount of Rs 25,00,000/- on account of compensation for mental agony.
- IV. Direct the respondent to pay a sum of Rs. 5,00,000/- to the complainants towards the harassment and mental agony caused to the complainants and cost of litigation.

D. Reply by respondent:

5. The respondent vide reply and written submissions dated 09.04.2025 contested the complaint on the following grounds:
 - i. the complainant being a speculative investor and having an interest in the real estate project of the respondent known under the name and style of "La Vida", being developed at Sector 112 and 113, Gurugram, Haryana (hereinafter referred to as the "Project") approached the respondent seeking allotment of a unit in the project. It is important to note that the complainant has also booked a unit in another project (Euraka Park at Noida - Unit No.T1-1505) of the respondent company. it is pertinent to mention that the above-mentioned unit of the complainant was terminated due to his non-payment of balance consideration amount. This shows that the complainant is a habitual defaulter in making the due payments and is led by greed of investments, in which, he consistently falls short. That the complainant had inspected the project site and all the approvals, permissions, etc, and it was only after being completely satisfied, the

complainant applied for the booking of a unit in the said project; such request of the complainant was accepted by the respondent and a provisional allotment letter dated 27.08.2016 was issued in favour of the complainant for the apartment no. 1101 on the 11th floor of Building/ Block No. B3, tentatively admeasuring 1089 sq. ft carpet area sq. ft. (hereinafter referred to as the "**Unit**").

- ii. That subsequently, an Apartment Buyer's Agreement was executed between the parties on 26.07.2017 (hereinafter referred to as the "**Agreement**"). At this stage, it is of essence to note that the terms of the Agreement were willingly and voluntarily agreed between the parties and were never challenged by the complainant till the date of filing of the present complaint. That in such a circumstance, in order to determine the rights and liabilities of the Parties, the said agreement can be completely relied on.
- iii. That the basic sales consideration of the unit of Rs. 1,52,19,438 (exclusive of taxes and other outgoing charges (as per schedule D of the Agreement)), thereby leading to the total consideration / demand of Rs. 1,60,42,815/-. That upon the default of the complainant, the respondent company sent various reminders and notices to the complainant. Despite having received the reminders, the complainant had defaulted in making the due and complete payment. It is a matter of fact and record that the complainant has only made a payment of Rs. 47,49,808/-, (including Service Tax / G.S.T.) i.e., only **29.6%** of the total consideration against the Unit. The complainant had stood in the state of constant default. A list of the demand letters, reminders and notices are as under:

| Milestone | Payment Request letters | Due Date of Payment | Reminders | Payment |
|---------------------|-------------------------|---------------------|---|--------------------------|
| On Booking | 27.01.2017 | 27.01.2017 | | 27.01.2017 |
| Time Linked Payment | 27.01.2017 | 25.02.2017 | | 17.01.2017 27.01.2017 |
| Time Linked Payment | 27.01.2017 | 25.02.2017 | | 17.01.2017 27.02.2018 |
| Time Linked Payment | 27.01.2017 | 25.02.2017 | 04.03.2017 03.04.2017 Pre-Cancellation dated 21.04.2017 | 27.02.2018 28.02.2018 |
| On receipt of OC | 31.10.2021 | 15.12.2021 | | Not Paid |

- iv. That the it is submitted that by not making the due payments, not only has the complainant violated the aforementioned clauses of the agreement but also the Sections 19(6) and 19(7) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "**RERA, 2016**"), under which, the complainant was obligated to make the due payment, along with interest in cases of default; and despite repeated reminders and various opportunities, the complainant has miserably failed to do.

- v. That without prejudice to the contentions and rights of the respondent, it is most humbly submitted that the respondent has ensured its utmost *bonafide* and lawful conduct since the very beginning. There is no delay in the development of the project, which was duly, timely, efficiently and effectively completed as per the agreed timelines. That as per clause 5.2 of the agreement, the respondent proposed to offer the possession of the unit on or before April 2021 subject to circumstances beyond control of the respondent and force majeure circumstances.
- vi. That the respondent was faced with certain force majeure events including but not limited to non-availability of raw material 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. The time taken by the respondent to develop the project is the usual time taken to develop a project of such a large scale and despite all the *force majeure* circumstances, the Respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainant and demanding the prices only as and when the construction was being done.
- vii. That the development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession. They have been delineated hereinbelow:

| S. no. | Date of Order | Directions | Period of Restriction | Days affected | Comments |
|--------|---------------------------|---|---|---------------|--|
| 1. | 7 th Nov, 2017 | Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7 th Nov 2017 till further notice. | Till date the order has not been vacated | 90 days | The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The promoter eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the |

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| | | | | | alleged delay attributed to the promoter by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 st Dec, 19 and 30 th Jan, 20. |
| 2. | 9 th Nov 2017 and 17 th Nov, 2017 | National Green Tribunal has passed the said order dated 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior | | 9 days | On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period. |

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| | | finishing/interior work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17. | | | |
| 3. | Notification HSPC B/MS/2018/2939-52 dated 29.10.2018 | Haryana State Pollution Control Board | 01.11.2018 to 10.11.2018 | 11 days | All construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material is used) to remain closed in Delhi and other NCR Districts |
| 4. | Notification DPCC/PA to MS/2018/7919-7954 dated 24-12-2018 | DELHI POLLUTION CONTROL COMMITTEE | 24-12-2018 to 26-12-2018 | 3 days | Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad and Noida to remain closed till December 26 2018 |
| 5. | Direction dated 01.11.2019 | Environment Pollution (Prevention and | 01.11.2019 to 05.11.2019 | 6 days | Construction activities in Delhi, Faridabad, |

| | | | | | |
|----|------------------------------------|--|-----------------------------|--------|---|
| | bearing no. EPCAR/20 19/L—53 | Control) Authority for National Capital Region | | | Gurugram, Ghaziabad, Noida and Greater Noida to remain closed till morning of November 5, 2019 (current ban on construction was only 6 PM to 6 AM and this is new extended to be complete banned till Monday, November 5, 2019, morning) |
| 6. | 01.11.2019 | Environmental Pollution (Prevention and Control) Authority, NCR vide its notification bearing no. R/2019/L-53 dated 01.11.2019 converted the partial ban of 12 hours to a complete ban | 01.11.2019 to 05.11.2019 | 4 days | This was in addition to the partial ban on construction by the EPCA vide its notification bearing no. EPCA- R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 |

| | | | | | |
|----|------------|--|--------------------------|----------|---|
| | | | | | which was later on converted to by |
| 7. | 04.11.2019 | The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. | 04.11.2019 - 14.02.2020 | 103 days | These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court |
| 8. | 11.10.2019 | Commissioner of Municipal Corporation Gurugram issued direction to issue Challan for Construction Activities and lodging of FIR from 11 th October to 31 st | 11.10.2019 to 31.12.2019 | 81 days | |

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|--|--|---|--|--|--|
| | | December, 2019 as per the direction issued by the chairman of EPCA vide letter EPCA-R/2019/L-42 dated October 09, 2019. | | | |
|--|--|---|--|--|--|

- viii. That the respondent has always acted in utter *bonafide* and kept the complainant informed of all such circumstances having direct effect over the project and the construction activities, for instance, reference can be given to an email dated 20.12.2019 in this regard.
- ix. That despite there being a number of defaulters in the project including the complainant, the respondent had to infuse funds into the Project and has diligently developed the Project in question. That it must be noted by the Authority that despite the default caused, the respondent applied for occupation certificate in respect of the said unit on 29.05.2021 and the same was thereafter issued vide memo bearing no. ZP-4766/SD(DK)/2021/27780 dated 28.10.2021. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, respondent ceases to have any control over the same. The grant of sanction of the Occupation Certificate is the prerogative of the concerned statutory authority over which the Respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation

certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project. It is submitted that the respondent after the receipt of the occupation certificate sent intimation letter dated 28.10.2021 to the complainant.

- x. That even after the defaults of the complainant, the respondent completed the construction of the unit and offered the possession of the unit to the complainant on 31.10.2021 and earnestly requested the complainant to take possession of the unit. The said offer of possession was also sent via email dated 02.11.2021. It is categorically submitted that despite there being any default of the respondent qua the development of the project, the respondent had also credited the compensation amounting to **Rs. 1,31,841/-** along with the offer of possession, despite which, the complainant failed to take the possession of the unit.
- xi. That the complainant failed to make timely payment of the instalments and take possession of the unit. The complainant was served possession reminders dated 21.12.2021, 24.12.2021 and 02.02.2022. That the complainant was duly communicated that the failure to abide by the pre-cancellation letter within 7 days of receiving the notice, the respondent shall reserve the right to take appropriate steps as per the terms of the buyer's agreement.
- xii. That however, the complainant failed to abide by the reminder letters sent to him hence, the respondent was constrained to issue a legal notice to the complainant on 25.03.2022 whereby the respondent

called upon the complainant to make payment of the outstanding amounts along with interest towards the total sales consideration of the unit along with IBMS charges, Maintenance Charges, Stamp duty and registration charges and to take the possession of the unit. The legal notice categorically noted that the failure of the complainant to abide by the legal notice within 15 days from the date of the legal notice, the respondent shall be *"constrained to take the appropriate legal action including but not limited to filing a Complaint under the provisions of the RERA Act or any other applicable laws / regulations before the Competent Court / Commission / Authority at your cost as to the risks and consequences thereof"*.

- xiii. That as noted above, the complainants failed to make payment of the balance sale consideration and take possession of the unit. the respondent had issued numerous reminders, following with the legal notice was sent to the complainant on 25.03.2022, however, the complainant miserably failed in making the due payments, leading to **the cancellation of the unit on 18.05.2022**. It is pertinent to note that the complainant by his email dated 09.04.2022 requested the respondent company to extend time for making final payment for possession of the subject flat/unit but even thereafter, the complainant failed to pay the balance consideration amount, etc.
- xiv. That it is pertinent to mention that the respondent being a customer-oriented company after such forfeiture as per clause 3.4(d) of the agreement, the refund of a sum of **Rs. 24,31,193/-** vide demand drafts dated 16.02.2023 to the complainant as full and final payment.
- xv. That at this stage it is submitted that the respondent after cancelation of the allotment of the complainant had already created a third-party (Mrs. Rita Misra and Prashant Misra) against the unit hence, the

complaint seeking possession is infructuous and should be dismissed. That furthermore, it is of essence to note that the said third party is also residing in the unit.

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

E. Jurisdiction of the authority:

8. The authority 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 allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings,

as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee 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.

F. Findings on the objections raised by the respondent.

F.I Objection regarding force majeure conditions.

12. The respondent also took a plea that the construction at the project site was delayed due to Covid-19 outbreak. In the instant complaint, the due date of handing over of possession comes out to be 31.10.2021 and grace period of 6 months has already been granted and thus, no period over and above grace period of 6 months can be given to the respondent-builder.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to hand over possession of the unit and also Occupation Certificate in respect of the unit.

G.II Direct the Respondent to pay compensation @ 10.75% on paid amount of Rs 47,49,808 for delay in providing OC and possession of the flat.

13. The complainant was allotted unit no 1101, Floor-11th, Building/Block no-B3 in the project "La Vida, Sector- 112& 113 Gurugram" by the respondent builder for a consideration of Rs. 1,52,19,438/- against which the complainant paid an amount of Rs. 47,49,808/-. The complainant continued with their default and again failed to make payment even after receipt of final reminder letter. Buyer agreement between the parties was executed on 26.04.2017 and the unit of the complainant has been cancelled by the respondent on 18.05.2022 on the grounds of non-payment.

14. On the contrary, the respondent states that the complainant has never paid any demand in full and against appropriate stage of construction. The occupation certificate for the tower in question was obtained by the respondent on 28.10.2021 and thereafter possession of the apartment was offered to the complainant vide offer of possession letter dated 31.10.2021, subject to payment of outstanding dues. Thereafter, the respondent sent the possession reminder letters dated 24.12.2021 and 02.02.2022 to take the possession and clear the outstanding dues but complainant failed to do so. The respondent sent pre-cancellation letter dated 21.04.2017 before finally cancelling the allotment of the unit vide cancellation letter dated 18.05.2022. Copies of the same is available on record and are not in dispute. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 18.05.2022 is valid or not.
15. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainant has paid an amount of Rs. 47,49,808/- against the sale consideration of Rs. 1,52,19,438/-. The occupation certificate for the tower in question was obtained by the respondent on 28.10.2021 and thereafter possession of the apartment was offered to the complainant vide offer of possession letter dated 31.10.2021, subject to payment of outstanding dues. As per the payment plan agreed between the parties, the complainant was obligated to pay:-

| S.No. | Payment Milestones | Payment due date | Amount (Rs.) |
|-------|--------------------|------------------|--------------|
| 1 | Booking | 27-Jan-17 | 4,76,334 |

| | | | |
|---|--|---------------------|--------------------|
| 2 | Time Linked Payment | 25-Feb-2017 | 10,45,610 |
| 3 | Time Linked Payment | 25-Feb-2017 | 15,21,944 |
| 4 | Time Linked Payment | 25-Feb-2017 | 15,21,944 |
| 5 | On receipt of OC (excluding IBMS@145 sq.ft. of the carpet area+ other charges as mentioned in annexure D1) | On receipt of OC | 1,06,53,606 |
| | | Total Amount | 1,52,19,438 |

However, the complainant defaulted in making payment and the respondent was to issue reminder letters and pre-cancellation letter dated 21.04.2017 to the complainant to comply with his obligation to make payment of the amount due, but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 18.05.2022. The Authority observes that Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 26.04.2017 is held to be valid. It is important to note that the respondent refunded an amount of Rs. 24,31,193/- after forfeiture as per clause 3.4(d) of the agreement. However, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of **Maula Bux VS. Union of India, (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 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 Limited decided on 26.07.2022**, held that 10% of basic sale price is 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."

16. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs. . 47,49,808/- after deducting 10% of the sale consideration of Rs. 1,52,19,438/- being earnest money along with an interest @10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date

+2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 18.05.2022 till 28.02.2023 when a part of refundable amount had been paid back. Further, after deducting already refunded amount, with interest from 28.02.2023 till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.III Direct the Respondent to pay an amount of Rs 25,00,000/- on account of compensation for mental agony.

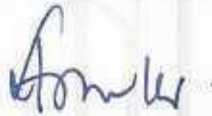
G.IV Direct the Respondent to pay a sum of Rs. 5,00,000/- to the Complainants towards the harassment and mental agony caused to the Complainants and cost of litigation.

17. The complainant is seeking above mentioned relief w.r.t. compensation. 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. (supra)*, 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:

18. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to refund the paid-up amount to each complainant after deducting 10% of the sale consideration being earnest money along with interest at the rate of 10.85% on such balance amount from the date of request for cancellation i.e., 18.05.2022 till 28.02.2023 when a part of refundable amount had been paid back. Thereafter, refund balance amount with interest from 28.02.2023 till its realization.
 - 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.
19. The complaints stand disposed of.
20. Files be consigned to the registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.01.2026