

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

Date of filing of complaint: 09.05.2024

Date of Order: 23.12.2025

1. Aarti Chathly

2. Madhur Chathly

Both R/o: 1176, 2nd Floor, C Block, Ansal
Esencia, Opposite to AIPL Joy Street,
Sector-67, Gurugram, Haryana-122001

Complainants

Versus

M/s Advance India Projects Limited

Regd. Office at: AIPL Business Club, Fifth
Floor, Golf Course Extension Road, Sector-
62, Gurugram, Haryana- 122101

Respondent

CORAM:

Shri Arun Kumar

Shri Phool Singh Saini

Chairman

Member

APPEARANCE:

Shri Shailesh Chandra Jha (Advocate)

Shri Dhruv Rohtagi (Advocate)

Complainants

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the

rules and regulations made there under 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	AIPL Joy Square, Sector 63 A, Gurugram, Haryana
2.	Nature of the project	Commercial Complex
3.	DTCP License No.	119 of 2011 dated 28.12.2011. 71 of 2014 dated 29.07.2014
4.	RERA Registration	259 of 2017 dated 31.12.2022
5.	Allotment letter dated	29.05.2023 (Page no. 30 of complaint)
6.	Unit no.	GF-084, Ground Floor, Tower- Joy Square (Page no. 30 of complaint)
7.	Unit admeasuring	393 sq. ft. (Page no. 31 of reply)
8.	Date of execution of builder buyer agreement	Annexed but not executed
9.	Possession clause	(i). Possession clause <i>The Company shall subject to force majeure conditions proposes to handover possession of the Unit on or before 30th June 2023 notified by the Promoter to the Authority at the time of registration of the Project under Real Estate (Regulation & Development Act), 2016 and Haryana Real Estate (Regulation & Development) Rules, 2017 and regulations made thereunder for completion of the</i>

		<i>Project or as may be further revised/approved by the Authorities.</i> (As per page no. 39 of reply)
10.	Due date of delivery of possession	30.06.2023 (As per possession clause of application form at page 39 of reply)
11.	Sales consideration	Rs. 48,72,414/- (As per page no. 31 of complaint)
12.	Total amount paid by the complainant	Rs. 36,62,992/- (as per page no. 39 of complaint)
13.	Occupation Certificate	09.11.2023 (As per page no. 57 of reply)
14.	Offer of constructive possession	01.12.2023 (As per page no. 60 of reply)
15.	Pre-Termination Letter	24.01.2024 (As per page no. 70 of reply)
16.	Final Termination Letter	19.03.2024 (As per page no. 71 of reply)

B. Facts of the complaint:

3. That the complainants have made following submissions:

- i. In the month of May 2023, complainants were desirous of purchasing a shop/Commercial space in Delhi-NCR region and they were approached by an agent of respondent, who represented to complainants that M/s Advance India Projects Ltd. is developing a commercial space in the name and style of M/s AIPL Joy square and for the said purpose it has been granted all the required approvals from the concerned authorities.
- ii. It was further represented to the complainants that the materials of the best standard would be used in the construction of the unit situated in the said project and the possession of the same shall be given on time. In furtherance of the same, complainants were told to make a payment of Rs. 32,60,316/- out of the total cost of the property Rs. 48,72,414/-

as token money and the rest of the amount would have to be paid at regular intervals as per the schedule to be provided by the respondent. complainants were assured by respondent that the project shall be completed by year end i.e., December 2023.

- iii. Based on the aforesaid representations made by respondent, complainants jointly booked and allotted shop/unit bearing no. GF/084, AIPL JOY SQUARE sector 63A, Gurugram Haryana-122001 in the said project having a area of 393 Sq. Ft by Ms. Aarti Chathly w/o Mr. Madhur Chathly and Mr. Madhur Chathly S/o Sh. Vinod Chathly. That the respondent issued a letter of allotment dated 29.05.2024 confirming the rate and size of the unit booked by the complainants. Pursuant to the booking, complainants paid a total sum of Rs.36,62,992/- to the respondent.
- iv. The complainants received a mail from respondent vide email dated 28.12.2023 about the signing of the agreement to sale and complainants replied for the rectification of clause 6(a) of the agreement to sale and after that several mail was sent to the respondent but they did not revise the agreement to sale. The complainants visited the office of the respondent on the number of occasions and was not given any concrete response about the rectification of clause 6(a).
- v. On 1st of December 2023 respondent sent a Demand letter for payment of Rs. 20,54,86/-towards last and final payment which was supposed to be due at the time of possession of the above said unit. In reply of the above-mentioned demand letter, complainants asked for completion certificate of above said unit but respondent failed to produce the same to complainants. It is well settled law that without the completion certificate demand raised by the respondent shall deemed to be illegal demand.

- vi. The complainants were shocked and surprised by the above-mentioned demand letter since they had already paid Rs.36,62,992/- out of total sale consideration of Rs. 48,72,414/-. Respondent demanded Rs. 20,54,862/- which was more than 8 lakh rupees actually payable at the time of possession by the complainants.
- vii. Thereafter on January 24th, 2024 complainants received pre-termination letter which stated that "this pre-termination Letter of your unit to remit the above-mentioned amount within 7 days of issuing this letter, failing which we shall be constrained to terminate/cancel your application allotment of the above referred unit and further we shall forfeit the earnest money along with other non-refundable amounts in terms of the application/unit buyers' agreement. That after termination/cancellation of the unit, you shall be left with no right, title, interest and lien on the unit/project." It is well settled law by the Hon'ble Courts in India, that the courts shall restrain the builder from canceling any unit on account of non-payment of the installments due as per the original payment plan. It is also pertinent to mention that respondent shall not allot same unit to other allottee without the consent of actual allottee.
- viii. Aggrieved from the act of respondent, complainants issued legal notice cum reply of pre-termination letter to the respondent vide legal notice dated 23.02.2024. The respondent issued an intimation of termination notice dated 19.03.2024 to the complainants. The complainants sent a mail dated 20.03.2024 to the respondent and again raised the pending issue of change of clause 6 (a).
- ix. The complainants, therefore, did not execute the builder buyer's agreement sent by the respondent, as the respondent did not mention the correct clause as discussed by respondent from the complainants. Complainants paid approx. 75% amount out of total sale consideration

without execution of builder buyer agreement which is contrary to the section 13 of the Act. The respondent sent a mail dated 30.04.2024 to the complainants for releasing the unit for the fresh sale.

- x. The complainants visited the office of the respondent on several occasion and represented that the clause 6(a) of BBA shall be rectify and sent it to the complainants. That amended demand letter was issued as per the original allotment letter. However, all these requests of the complainants fell in the deaf ears of the respondent. The respondent did not send a corrected Builder Buyer's Agreement to the complainants.
- xi. The copy of the builder buyer's agreement sent by the respondent is contrary to the draft agreement for sale, as per the Haryana RERA Rules. The respondent expected the complainants to sign on the BBA that mention they will not receive the physical possession of the above said unit. To the great astonishment and surprise of the complainants, all the terms of the said agreement were one sided and the other terms and conditions were heavy loaded in favour of the builder and against the complainants.
- xii. The builder buyer's agreement also does not even mention the actual carpet area of the shop booked by the complainants, which is in violation to the RERA. In addition, the respondent had also charged an additional charge from the complainants.
- xiii. The respondent has indulged in unfair trade practices, which amounts to the violation of section 12 of RERA. The respondent has illegally and unlawfully retained substantial sums of monies of the complainants, by cancelling the allotment. The complainants is thus seeking possession of above said unit at the cost mentioned in allotment dated 29.05.2023 and rectify the clause 6(a) of BBA. They are thus constrained to approach this Hon'ble Authority seeking possession of the above said

unit at the cost mentioned in allotment dated 29.05.2023 and rectify the clause 6(a) of BBA.

- xiv. Since the respondent has failed to possession of the above said unit at the cost mentioned in allotment dated 29.05.2023 and also failed to rectify the clause 6(a) of BBA. Respondent unilaterally terminate the unit booked by the complainants after getting more than 75% amount. Therefore, they are left with no alternative except to approach this Hon'ble Authority.
- xv. The Hon'ble authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act and duties of allottee as per section 19(6), (7) and (10).
- xvi. Hence, the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to immediately deliver the physical possession of the unit bearing no. GF/084, AIPL JOY SQUARE sector 63A, Gurugram Haryana-122001 at the cost mentioned in allotment dated 29.05.2023 along with 18% per annum interest compounded quarterly for the delayed period of handing over the possession calculated from the date of delivery of possession mentioned in BBA.
 - Direct the respondent to rectify the clause 6(a) of BBA as allottee shall take over the physical possession of the unit bearing no. GF/084, AIPL Joy Square sector 63A, Gurugram Haryana-122001.

D. Reply by the respondent:

5. The respondent contested the complaint on the following grounds:
- The the present complaint is liable to be dismissed for the reason that the reliefs sought by the complainants in the present complaint are

infructuous. It is the admitted position of the complainants that the allotment of the unit in question in favour of the complainants already stands terminated by the respondent, vide intimation of termination letter dated 19.03.2024, for non-payment of the outstanding dues. The complainants, by way of the present complaint are seeking the relief of physical possession as well as for rectification of the clause of the unexecuted buyer's agreement. The complainants have not sought any relief seeking declaration against the intimation of termination letter dated 19.03.2024, despite having full knowledge of the same. Additionally, the respondent had also duly intimated the complainants of its intention to create third party rights on the unit, after termination of the allotment of the complainants. Thus, the relief so sought by the complainant, in view of the present facts and circumstances are infructuous and cannot be granted.

- ii. The complainants had approached the respondent and expressed an interest in booking a unit in the commercial colony developed by the respondent and booked the unit in question, bearing number GF/084, ground floor admeasuring 393 sq. ft. (tentative area) situated in the project developed by the respondent, known as "AIPL Joy Square" at Sector 63A, Gurugram, Haryana- 122001. The complainants vide application form applied to the respondent for provisional allotment of a unit bearing number GF/084 in the project. That the complainants prior to approaching the respondent had conducted extensive and independent enquiries regarding the project that the unit is not for the purpose of self-occupation and use by the allottees and is solely for the purpose of leasing the same to the third parties along with combined units as larger area. It was only after the complainants were fully satisfied with regard to all aspects of the project he himself took an independent and informed decision to purchase the unit.

- iii. The booking was categorically, willingly and voluntarily made by the complainants with an understanding of the same being for leasing purposes and not self-use, as can be noted in clause j and clause k of the of the application form.
- iv. As per clause k of the application form, the complainants had given unfettered right to the respondent to lease the unit and had agreed to not object to the decision of leasing at any point in time. However, despite having booked the unit on these very terms, the complainants have *malafidely* filed the present complaint with the motive to seek wrongful gains over the respondent by seeking physical possession of the unit, which was never the term agreed upon. Therefore, it is wrong and *malafide* on the part of the complainants to now contend that the clause 6 of the unexecuted buyer's agreement was contrary to the representations or that they were never informed or made aware that they shall not be entitled to seek physical possession of the unit in question.
- v. At this instance, it needs to be noted that relationship between the parties is commercial in nature and sacrosanct to the agreed terms. That in the present case, the complainants purchased the unit only on the categorical understanding that the unit shall not be for self-occupation, but for the purpose of leasing to third parties.
- vi. The complainants at the time of submission of the application form were also handed over a copy of the agreement for sale, which is also acknowledged and accepted by the complainants, from the recitals of the application form:

"I/ We acknowledge and agree that the Company has informed me of the following key indicative terms and conditions which are merely indicative and conveyed herein for the purpose of acquainting me/ us with a broad outline of the essential terms and conditions for the allotment of the Unit. I/ We further understand and agree that the detailed terms and conditions

relating to the Unit shall be contained in the Agreement for Sale the copy of which has also been provided to me/ us".

- vii. Thus, the complainants were always aware of the arrangement between the parties and were also aware of the terms and conditions contained in the buyer's agreement/ agreement for sale from the very inception of the booking. The complainants were supposed to sign and return the copies of the agreement for sale back to the company, which it failed to do so.
- viii. The arrangement between the parties was to handover the constructive possession of the unit and the same was categorically agreed between the parties in the application form and no protest in this regard had ever been raised by the complainants and the same was willingly and voluntarily accepted by the complainants. That it was the complainants who signed and submitted the application after reading and understanding the same. The entire story as narrated by the complainants in the present complaint is nothing but a concocted and after thought story to extract undue advantage from the respondent. It is submitted that the Complaint choose to remain silent from the date of submitting the application form until after the last payment reminder. That the entire arrangement between the parties to offer only the constructive possession of the unit in question was two folds, which was one of the main attractions for the complainants to make the booking by submitting the application form. Firstly, the allottee was being given the convenience of leasing out its unit, without putting any efforts and the complications of finding a suitable tenant for his premises. Secondly, the goodwill and network of the respondent enabled the presence of marquee brands in the project, thereby increasing its footfall and the value of the project, consequently, resulting into higher rentals for the benefit of the allottees themselves.

- ix. Pursuant to the execution of the application form, the allotment letter dated 29.05.2023 was also issued to the complainants. The respondent approached the complainants and requested the complainants to complete the formalities for registration of the buyer's agreement, however, the complainants failed to execute the same. The respondent from time to time issued emails and telephonic reminders to the complainants in this regard. The copy of the emails dated 28.12.2023 asking the complainants to return the signed buyer's agreement/agreement for sale is filed by the complainants themselves. That the complainants have, till date, not signed the buyer's agreement/agreement to sell on bogus and flimsy reasons and therefore, the respondent cannot be held responsible for either the non-execution of the agreement for sale/ buyer's agreement, nor for the payments made by the complainants, without executing the agreement for sale/ buyer's agreement. The payments were made by the complainants voluntarily and willingly without there being any default on the part of the respondent, who had at the time of submission of the application form itself, provided the copy of the agreement for sale/ buyer's agreement to the complainants for execution.
- x. In terms of the payment plan opted by the complainants, the respondent issued demand on the complainants vide demand letter dated 31.05.2023. However, the complainants ignored such requests, due to which the respondent had to issue several reminders/calls to the complainants, requesting them to remit the outstanding payments.
- xi. Even all this while, the complainants did not raise any objection qua the terms of the allotment that the unit was not for physical possession of the allottees, but only constructive possession was to be given to the complainants. The complainants, despite being aware of the said arrangement, went ahead and continued with their allotment and

made the payments of these dues vide cheque bearing no. 000089 dated 27.06.2023. The complainants are therefore, at this stage, estopped from raising an objection to the term of the allotment, whereby they had agreed to the constructive possession of the unit in question.

- xii. Despite the defaults of the complainants, the respondent has completed the development of the said project and applied for the occupation certificate on 26.06.2023 and obtained the occupation certificate of the project on 09.11.2023.
- xiii. Pursuant to completion of the unit in question and on receipt of the occupation certificate thereof, the respondent issued the notice of offer of possession dated 01.12.2023 to the complainants. That along with notice of offer of possession, the complainants, in terms of the payment plan opted by them were also required to pay their next instalment to the respondent. However, despite receipt of the said demand, the complainants failed to honor their commitment and defaulted in the payments. the respondent was therefore constrained to issue several reminders/calls to the complainants requesting them to remit the outstanding payments.
- xiv. To avoid the legitimate demands of the respondent, the complainants started raising frivolous objections on a completely non-existent issue of handover of constructive possession instead of the physical possession of the unit. The respondent kept on clarifying the position to the complainants that the physical possession cannot be handed over to the complainants and that the same was made clear at the time of the booking itself, which is evident from the recitals of the application form itself. The email replies of the respondent, filed by the complainants, are a testament of the bonafide conduct of the respondent. However, the complainants in order to wriggle out of their

liabilities continued to make an unnecessary hue and cry and started levelling false allegations on the respondent.

- xv. The respondent, running out of options, due to continuous defaults of the complainants in remitting the payments, was constrained to issue a pre-termination letter dated 24.01.2024 to the complainants. That due to the questionable conduct of the complainants as highlighted in the preceding paragraphs, the respondent had no option but to finally issue an intimation of termination vide letter dated 19.03.2024.
 - xvi. The respondent has acted strictly in accordance with the terms and conditions of the application form. There is no default or lapse on the part of the respondent. On the contrary, it is the complainants who are in the clear wrong by not only not remitting the outstanding amount of the said unit in question within the stipulated time despite numerous reminders, but also by failing to execute the buyer's agreement/agreement for sale, despite being called upon to do so. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
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

8. 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

9. 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.

10. 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 relief sought by the complainant:

- F.I Direct the respondent to immediately deliver the physical possession of the unit bearing no. GF/084, AIPL JOY SQUARE sector 63A, Gurugram Haryana-122001 at the cost mentioned in allotment dated 29.05.2023 along with 18% per annum interest compounded quarterly for the delayed period of handing over the possession calculated from the date of delivery of possession mentioned in BBA.**
- F.II Direct the respondent to rectify the clause 6(a) of BBA as allottee shall take over the physical possession of the unit bearing no. GF/084, AIPL Joy Square sector 63A, Gurugram Haryana-122001.**

11. The above-mentioned relief(s) sought by the complainant are taken together being inter-connected.
 12. The complainant was allotted a unit vide allotment letter dated 29.05.2023 in the project of respondent namely "AIPL Joy Square" in Sector-63A, Gurugram for a total sale consideration of Rs.48,72,414/-, and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.36,62,992/-.
 13. The complainant contended that the respondent has violated section 13 of the Act of 2016 as the respondent kept raising illegal demands prior to execution of the buyer's agreement and prior to obtaining occupation certificate or competition certificate. The complainant also contended that the unit in question has been arbitrarily cancelled by the respondent. Also, contended that the complainant has univocal right to claim the physical possession of the unit as there is nowhere mention/reference of "constructive possession" in the Act, 2016.
 14. The respondent mentioned that the unit was cancelled by the respondent on 19.03.2024 on account of non-payment after issuance of multiple reminders. The occupation certificate of the unit of the complainant was obtained on 09.11.2023 and the complainant has paid Rs.36,62,992/- against the sale consideration of Rs.48,72,414/-.
- Now, the question arises whether the cancellation is valid or not?
15. The complainant has opted for special down payment plan. As per the opted payment plan, the complainant has to pay any amount out of the total sale consideration on booking, 71.140% from 30days from date of booking and 28.860% on offer of possession. Though the respondent has raised a demand letter dated 01.12.2023 on offer of possession for payment of outstanding dues. Upon non-compliance on part of the

complainant, the respondent finally terminated the unit of the complainant vide termination letter dated 19.03.2024.

16. As per Section 19 (6) & 19 (7) of the Act, 2016, the complainant-allottee was under an obligation to make timely payment as per the agreed payment plan towards consideration of the allotted unit. In the present complaint, despite being granted several opportunities to comply with his obligations, the complainant failed to discharge his obligation for making timely payment of the outstanding dues and the respondent has obtained the occupation certificate on 09.11.2023 and offered possession on 01.12.2023. In view of the afore-mentioned facts, the cancellation of the unit dated 19.03.2024 stands valid.
17. Now, another question arises before the authority that whether the authority can direct the respondent to refund the balance amount as per the provisions laid down under the Act of 2016, when the complainant has sought the relief of the delayed possession charges while filing of the instant complaint or during proceeding. It is pertinent to note here that there is nothing on record to show that the amount has been refunded back to the complainant. The Authority observed that rule 28(2) of the rules provides that the Authority shall follow summary procedure for the purpose of deciding any complaint. However, while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the Authority can always work out its own modality depending upon peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the parties to protract litigation. The Authority will not go into these technicalities as the Authority follows the summary procedure and principal of natural justice as provided under section 38 of the Act of 2016, therefore the rules of evidence are not followed in letter

and spirit. Further, it would be appropriate to consider the objects and reasons of the Act which have been enumerated in the preamble of the Act and the same is reproduced as under:

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto"

18. Furthermore, 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"*

19. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent/builder can't retain more than 10% of sale consideration as earnest money on surrender by the complainant-allottee or cancellation by the builder but that was not done. So, the respondent is directed to refund the amount received from the complainant i.e., Rs. 36,62,992/- after deducting 10% of the basic sale consideration i.e., Rs. 48,72,414/- 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%) 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., 19.03.2024 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. Directions of the Authority:

20. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i) The respondent/promoter is directed to refund the amount i.e., Rs. 36,62,992/- to the complainant after deduction of 10% of basic sale

consideration of Rs. 48,72,414/- 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., 19.03.2024 till the actual date of 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.

21. Complaint stands disposed of.

22. File be consigned to the registry.


(Phool Singh Saini)
Member
(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.12.2025

HARERA
GURUGRAM