

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

Complaint no. 3850 of 2024
Date of filing 12.08.2024
Date of decision 20.01.2026

Rohit Goel and Manisha Rani

Regd. Address: C-905 Adani Oyester Grande,
Dwarka Expressway, Sector 102, Dhankot (49),
Gurgaon, Haryana -122505

Complainants

Versus

1. M/s Identity Buildtech Private Limited
Regd. office: 110, Indraprakash 21,
Barakhambha Road, New Delhi -110001

2. M/s Ansal Housing & Construction Ltd.
Regd. office: 15 UGF, Indraprakash, 21,
Barakhambha Road, new Delhi -110001

Respondents

CORAM:

Shri Arun Kumar
Shri P S Saini

**Chairman
Member**

APPEARANCE:

Sh. Gaurav Rawat (Advocate)
Sh. Karan (Advocate)
Sh. Amandeep Kadian (Advocate)

**Counsel for Complainant
Counsel for Respondent no. 1
Counsel for Respondent no. 2**

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 provisions of the Act or the Rules and regulations made there under 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:

S. No.	Particulars	Details
1.	Name of the project	Ansals Highland Park
2.	Project location	Sector 103, Gurugram, Haryana
3.	Project type	Residential Group Housing Project
4.	DTCP License	32 of 2012 dated valid up to 11.04.2025
5.	RERA Registration	16 of 2019 dated 01.04.2019 valid up to 30.05.2024
6.	Date of apartment buyer's agreement	11.08.2017 (As per page no. 33 of the complaint)
7.	Date of commencement of construction	N.A.
8.	Unit no.	Kinrs-0201 (As per page no. 36 of the complaint)
9.	Unit area admeasuring	1762 sq. ft. (As per page no. 36 of the complaint)
10.	Possession clause	30. Offer of possession <i>The Developer shall offer possession of the Unit any time, within a period of 48 months from the date of execution of Agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to the timely payment</i>

		<i>of all the dues by Buyer and subject to force majeure conditions as described in clause 31. Further there shall be a grace period of 6 months allowed to the Developer over and above the period of 48 months as above in offering of unit.</i> (As per page no. 42 of the complaint)
11.	Due date of possession	11.02.2022
12.	Total sale consideration	Rs.80,66,436/- (As per payment plan on page no. 50 of the complaint)
13.	Amount paid by the complainant	Rs.3,00,000/- (As per statement of account at page no. 51 of the complaint) *Same amount confirmed by the respondent as recorded in order dated 24.10.2024
14.	Payment plan	Time link plan Rs.27,96,870/- was to be paid within 4 month(s) from the date of booking (27.07.2017) i.e. on or before 27.11.2017 as per payment plan annexed at page 50 of complaint
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not Offered
17.	Cancellation letter	22.05.2023 (As per page no. 54 of the complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- a. That the complainant the complainant is the allottee within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016. The respondent company is a limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.
- b. In 2012, the issued an advertisement announcing a Group respondent company Housing Project "Ansals Highland Park Sector- 103, Gurugram was launched by respondent, under the

license no. 32 of 2012, issued by DTCP, Haryana, Chandigarh, situated at Sector - 103, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of unit in the project. The respondent confirmed that the projects had got Building Plan Approval from the Authority.

- c. That relying on various representations and assurances given by the respondent company and on belief of such assurances, allottee, booked a unit in the project by paying an amount of Rs.3,00,000/- via NEFT to respondent no. 1 in three transactions dated 26.07.2017, 28.07.2017 and 31.07.2017, towards the booking of the unit bearing no. Kinross 0201, in Sector 103, having super area measuring 1762 sq. ft. to the respondent dated 26.07.2017 and the same was acknowledged by the respondent
- d. That respondent confirmed the booking of the unit dated 26.07.2017, allotted a unit no. Kinross 0201, in Sector 103, having super area 1762 sq. ft. in the project of the developer for a total sale consideration of the unit i.e. Rs. 80,66,436/-, which includes basic price Plus EDC and IDC, ETC and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
- e. That after repeated request and reminders, agreement was executed between the complainant and respondent on 11.08.2017. As per the buyer's agreement the sale price of the apartment shall be Rs. 80,66,436/-. That would include the basic sale price, EDC, IDC, preferential location charges. The agreement between the parties has been executed after coming into force of the RERA Act,2016, the agreement executed between the parties

is even not in the prescribed format provide under the RERA Act, 2016 and HARERA Rules, 2016. Hence, the penal proceeding to be initiated against the respondents.

- f. That as per clause 30 of the buyer's agreement, the respondent had to deliver the possession of the unit within period of 4 years from the date of the agreement. Therefore, due date of possession comes out to be 11.08.2021
- g. That on 16.11.2017, complainant No. 1 sent an email and inquired about the status of RERA formalities for flat booking at Ansal Highland Park - Kinross 0201, as the complainants needed the RERA Number to secure a loan from OBC bank. That the complainant no. 1 requested an update on the expected timeline for RERA completion and asked for the waiver of interest charges until then, as the complainants cannot pay the required 30% without the loan.
- h. That on 17.11.2017, Ved Prakash from Ansal Housing sent an email and informed the complainant that they have applied for RERA number to the concerned Authority. The complainant sought clarification from Mr. Ved Prakash regarding the loan approval process and the possibility of waiving interest and penalties for late payment due to the delay in obtaining the RERA number. The complainant offered to connect bank officials directly with Mr. Ved Prakash if necessary. That on 27.12.2017, Shipra Sharma emailed the complainant and others, providing an update that the RERA registration for Highland Park is expected to be completed by the next month.



- i. That on 15.05.2018, complainant emailed the customer connect team, including Shipra Sharma and others, inquiring about the procedure to cancel his booking. He cited the assurance given regarding the project's registration with RERA by September 2017 and the confirmation of a refund for the booking amount in case of inability to secure a loan from OBC bank.
- j. That on 17.05.2018, the customer connect team responded to the complainant's email, stating that cancellation is not possible as 3,00,000/- has been received, and the complete amount will be forfeited upon cancellation. They informed him that RERA registration has been applied for and will be obtained soon. Additionally, they mentioned that a loan can be availed from HDFC bank.
- k. That on 17.05.2018 the complainant replied and attached communication dated 20.06.2017 with Ansal's marketing team stating that his booking amount would be refunded if the loan from OBC was not approved. He requested adherence to their commitments and refund of the booking amount, noting that their loan stands cancelled. The complainant emphasized that the primary motivation for the booking was the availability of a cheaper loan from OBC bank.
- i. That the complainant persistently sought updates from customer connect regarding the RERA registration status for his booking, emphasizing his reliance on securing a bank loan and his willingness to retain the booking if assured of receiving the RERA number without facing penalties for late payment. Despite repeated inquiries spanning from May 2018 to September 2018,

customer connect provided reassurances, stating that all formalities had been completed and the RERA registration was anticipated in November.

- m. That the complainant emailed customer connect and Mr. Vipin Mehta, expressing frustration over the delay in obtaining the RERA number for his booked flat at Ansals Highland Park. He highlighted the assurances given by the sales team regarding the prompt receipt of the RERA number and the refund of the booking amount if the loan from Oriental Bank of Commerce (OBC) was not approved. He mentioned his inability to pay due to the loan not being sanctioned without the RERA number and threatened to file a complaint under RERA if the issue was not resolved satisfactorily. On 22.10.2018, he sent another email seeking a solution, followed by reminders on 09.11.2018 and 23.11.2018. In his emails, the complainant emphasized his continuous efforts to communicate with the customer connect team, shared supporting documents, and requested an interest waiver on his due payment, attributing the payment delay to the RERA responsibility of the organization.
- n. That on 17.02.2019, the Complainant emailed customer connect, expressing dissatisfaction with the prolonged duration of his correspondence with them. He urged them to bring the matter to a resolution and requested guidance on how to proceed with his booking
- o. That on 03.02.2021, an email was sent from the respondent no. 2 to the complainant seeking cooperation to complete the Ansal Highland Park project. They expressed gratitude to AHP RWA

members for submitting their NOCs and urge other HBs to do the same to secure funding for the project's completion. They assure transparency and availability for any clarifications, providing contact details for executive staff and RWA members.

- p. That on 14.05.2022, the complainant emailed customer connect, requesting further steps regarding nullifying penalties and clearing dues for unit Kinross-0201, following previous calls received from their side. Despite his request, he hadn't received any response. That on 04.03.2023, an email was sent from respondent no. 2 to the complainant, informing him that Tower 'KINROSS' in the Ansals Highland Park project is ready for fit-outs. They plan to send an offer of possession for fit-out to all unit allottees soon.
- q. That on 22.05.2023, respondent no. 1 i.e. Identity Buildtech Private Building sent a letter to the complainant regarding cancellation stating that since the complainant has failed to make payments, they have cancelled the booking.
- r. That on 28.03.2024, the complainant, addressed to customer connect at Ansals, highlights a longstanding issue concerning his property purchase at Ansals Highland Park. The complainant outlines that despite paying the booking amount in July 2017 with the intention of securing a home loan from Punjab National Bank, the loan application was rejected due to the project's lack of a RERA registration number. Despite attempts to resolve the matter amicably and numerous emails sent over the years, no satisfactory response has been received. They insist on a resolution without further delay, requesting either the waiver of outstanding dues or

the immediate refund of the booking amount with interest. This email serves as a final attempt to resolve the matter before considering legal action and expresses openness to amicable resolution

- s. That the mental anguish endured by the complainant in this case is profound, resulting from the deliberate and malicious actions of the respondent, aimed at both harassing the complainant and unlawfully securing financial gains
- t. That the complainant was explicitly assured via email on 20.06.2017 that their booking amount would be refunded if their loan application was not approved. That the complainants paid the initial booking amount of Rs.3,00,000/- in a timely manner via NEFT on 26.07.2017, 28.07.2017, and 31.07.2017, demonstrating their commitment and intent to proceed with the purchase.
- u. That the primary reason for the delay in further payments was the respondent's failure to secure the RERA registration number promptly. The complainants needed the RERA number to secure a home loan, which was a prerequisite for paying the remaining amount. The delay in obtaining the RERA number, which was not under the complainants' control, caused the payment delays. The complainants attempted to secure financing from multiple banks (OBC and SBI), but were unsuccessful due to the absence of the RERA registration number. Despite this, they continued to engage with the respondent, showing their intent to abide by the terms of the agreement if the conditions were met.
- v. That cancelling the booking would unfairly penalize the complainants who acted in good faith and were delayed due to the

respondent's failure to obtain necessary regulatory approvals on time. The cancellation would result in a significant financial loss for the complainants, who have already invested time and money into this process.

- w. During the period the complainant went to the office of respondent several times and requested them to resolve the issue and accept the amount and allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainant visited the site but was not allowed to enter the site and even there was no proper approached road. The complainant even after paying amounts still received nothing in return but only loss of the time and money invested by them. The complainant contacted the respondent on several occasions and were regularly in touch with the respondent with regard to levying interest at rate of 12%. The respondent was never able to give any satisfactory response to the complainant regarding the status of the construction and were never definite about the delivery of the possession.
- x. That the respondent instead of complying as per the provisions of the RERA Act, and obtaining the RERA Registration and OC, sent termination dated 22.05.2023 issued by respondent no. 1 to the complainant forfeiting an amount, without providing any justification to same and against the spirit of the RERA Act, 2016. Thereafter, not responding nor providing any justification with respect to the query raised by the complainant. The complainant after the issuance of cancellation letter representative of the respondent company refused to accept the said cheque and

further refused to re-instate the allotted unit. Even till date complainant is ready and willing to make the payment.

- y. That complainant requested to the respondent many times and challenging the demand letters sent by the respondent. Furthermore, complainant repeatedly request the respondent to provide justification and to withdraw the demand letters and issue fresh demand letter after execution of the agreement and without illegal demands and interest charged @ 12% but respondent failed to do so till date. The Respondent have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, allotment letter and the different advertisements released from time to time. Further, such acts of the Respondent is also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.
- z. That the Buyer's Agreement issued to the complainant by the respondent stipulates payment of compensation on account of delay in handing over possession of the flat in the project. The so called compensation payable as per the said agreement is Rs. 5/- per sq. ft. per month. No compensation was provided to the complainant till date.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- a. Direct the respondents to hand over the possession of the unit with the amenities and specifications as promised in all completeness without delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.

- b. Direct the respondents to pay the delay possession charges from due date of possession till handing over of physical possession of the said unit.
 - c. Direct the respondents to set aside cancellation letter dated 22.05.2023 issued by respondent no. 2 may be set aside and the respondents may be directed to accept the remaining payment for the unit without any additional charges or interest due to the delays caused by the respondents.
 - d. Direct the respondents to restrain from creating third party right.
 - e. Direct the respondents, not to cancel the allotment of the Unit.
 - f. Direct the respondents to accept the further amount due from the complainants.
 - g. Direct the respondents not charge any penalty/ interest from the Complainants & to cooperate by providing the required documents.
 - h. Direct the respondents to handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit.
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 no. 2.

6. The respondent no. 2 has contested the complaint on the following grounds
 - a. That the present complaint is not maintainable qua the answering respondent as the complaint is totally false, frivolous and devoid of

- any merits against the respondent. The complaint under reply is based on pure conjecture.
- b. That the present complaint is not maintainable as the complaint under reply failed to disclose any cause of action against the Respondent. Thus, the present complaint is liable to be dismissed on this ground alone.
 - c. That the complainants had approached the answering respondent for booking a unit no. Kinross-0201 in an upcoming project Ansal Highland Park, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 11.08.2017 was signed between the parties.
 - d. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. The complainant cannot be allowed to take advantage of his own wrong.
 - e. The complainant has admittedly filed the complaint in the year 2024 and the cause of action accrue in 2021 as per the complaint itself. Therefore, the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.
 - f. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2017 without coercion or any duress cannot be called in question today. The builder buyer agreement provides for a penalty in the event of a delay in giving possession. The clause 37 of the agreement provides for Rs. 5/ sq. ft. per month on super area for any delay in offering possession of the unit as mentioned in Clause 31 of the agreement. Therefore, the complainant will be entitled to invoke the said clause and is barred

from approaching the Authority in order to alter the penalty clause by virtue of this complaint more than 3 years after it was agreed upon by both parties.

- g. That the complaint itself discloses that the said project does not have a RERA approval and is not registered. If the said averment in the complaint is taken to be true, the Authority does not have the jurisdiction to decide the complaint.
- h. That the respondent had in due course of time obtained all necessary approvals from the concerned Authorities. The permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainant.
- i. That the respondent has adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the respondent. The builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the respondent specifies force majeure, demonetization and the orders

of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.

- j. That the complainant admittedly has entered into a builder buyer agreement which provides for the event of delayed possession. That the clause 32 of the builder buyer agreement is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession.
 - k. That the respondent has clearly provided in clause 35 the consequences that follow from delayed possession. The complainant cannot alter the terms of the contract by preferring a complaint before the Hon'ble HARERA Gurugram.
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 has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

F.I. Direct the respondent to hand over the possession of the unit with the amenities and specifications as promised in all completeness without delay and not to hold delivery of the

possession for certain unwanted reasons much outside the scope of BBA.

F.II. Direct the respondents to pay the delay possession charges from due date of possession till handing over of physical possession of the said unit.

F.III. Direct the respondents to set aside cancellation letter dated 22.05.2023 issued by respondent no. 2 may be set aside and the respondents may be directed to accept the remaining payment for the unit without any additional charges or interest due to the delays caused by the respondents.

F.IV. Direct the respondents to restrain from creating third party right.

F.V. Direct the respondents not to cancel the allotment of the unit.

F.VI. Direct the respondents to accept the further amount due from the complainants.

F.VII. Direct the respondents not charge any penalty/ interest from the Complainants & to cooperate by providing the required documents.

F.VIII. Direct the respondents to handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit.

12. The above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other reliefs. Thus, the same being interconnected.

13. In the present matter the complainants were allotted unit no. KINRS-0201, admeasuring 1762 sq. ft. (super area) in the project "Ansal

Highland Park" Sector 103 by the respondent-builder for a sale consideration of R.80,66,436/- and the complainants have paid a sum of Rs.3,00,000/-. That the Builder buyer agreement was executed on 11.08.2017 by the respondent no. 2 in favor of allottee.

14. As per clause 30 of the BBA, respondent no. 2 was obligated to complete the construction of the project and hand over the possession of the subject unit within 48 months from the date of execution of agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The period of 42 months is calculated from the date of execution of buyer agreement. Further, the Authority allows 6 months grace period being unqualified. Accordingly, the due date of possession comes out to be 11.02.2022. The Occupation Certificate for the project has not yet been obtained from the competent Authority.
15. In the present complaint, the unit of the complainants was terminated by the respondent no. 1 vide letter dated 22.05.2023, due to non-payment as per payment plan. As per the documents available on record, till date complainant had made a payment of Rs.3,00,000/- out of total sale consideration of Rs.80,66,436/- even at the time of cancellation.
16. Further, the complainant raised contention that the primary reason for delay in making further payments was the respondent's failure to

secure the RERA registration number. The complainants further states that they need RERA number to secure a home loan, which was a prerequisite for paying the remaining amount.

17. That in the regard of cancellation, reference needs to be made to the payment plan, as mentioned in the **Annexure-A** (Payment Plan) of the agreement dated 11.08.2017. The payment plan is given below in tabular form for ready reference:-

	Stage (Duc Date)		Installments
1.	On 27-Jul-2017	89285.71 of BASIC	89,285.70
2.	4 Month(s) from the date of booking	2130834.29 of BASIC + 100.00% of EDC/IDC+ 100.00% of LCC	27,96,870.29
3.	On Applying of OC	70.00% of BASIC	51,80,280.0
	Total		80,66,436.00

18. That the booking of the subject unit was made by the complainant on 27.07.2017 and an amount of Rs.3,00,000/- paid by the complainant in lieu of the booking amount. As per the agreed payment plan, an amount of Rs.27,96,870.29/- was to be paid by the complainant on or before 27.11.2017 under the head of "**4 month(s) from the date of booking** (i.e. 27.07.2017)". However, the complainant failed to make the balance payments in terms of the above payment plan as discussed in para 17 above.

19. The respondent states that they are asking the allottee to make balance payment of the amount, unfortunately, the complainant failed to make payment as per agreed payment plan but having no positive results, the respondent cancelled the unit vide letter dated 22.05.2023. In view of the above, the Authority is of considered that the cancellation done by respondent is valid in the eyes of law.
20. That as per clause 22 of the BBA dated 11.08.2017, the respondent shall treat an amount equivalent to 20(twenty)% of the basic sale price as earnest money to ensure fulfilment by the allottee of the terms and conditions as contained in the application and agreement.
21. 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 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."

22. 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, and the respondent/builder cannot retain more than 10% of sale consideration as earnest money on cancellation.
23. As per document available on record, the complainant paid less than 10% of the sale consideration and no amount has remained due from the respondents. Further third party right also created by the respondent company on the subject unit.

24. Furthermore, the counsel for the respondent in proceedings dated 20.01.2026 states that the respondent is ready to pay paid up amount to the complainant in a good gesture.
25. The Authority is of view that the complaint is dismissed being not maintainable.
26. Complaint stands disposed of.
27. File be consigned to registry.



(P S Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.01.2026