

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

Complaint no. : 912 of 2024
Date of complaint : 07.03.2024
Date of order : 07.04.2026

Pooja Dhanta and Ajay Singh,
R/o: C4-096, Aravali Heights, Sector-24,
Dharuhera, Rewari.

Complainant

Versus

M/s BPTP Limited
Regd. Office at: M-11, Middle Circle, Connaught
circus, New Delhi-110001.

Respondent

CORAM:
Arun Kumar

Chairman

APPEARANCE:
Shri Diwakar Sharma (Advocate)
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:

S.N.	Particulars	Details
1.	Name of the project	"Terra", Sector- 102, Gurugram
2.	Nature of project	Group Housing Towers
3.	RERA registered/not registered	Registered 299 of 2017 dated 13.10.2017
4.	DTPC License no.	83 of 2008 dated 05.04.2008 94 of 2011 dated 24.10.2011
	Validity status	04.04.2025 23.10.2019
	Name of licensee	SUPER BELTS COUNTRYWIDE PVT. LTD and 3 PROMOTERS PVT LTD and 6 others
	Licensed area	23.18 acres 19.74
5	Allotment Letter	27.09.2022 (page 39 of complaint)
6	Unit no.	T-22-1603 (page 39 of complaint)
7	Unit measuring	1832 sq. ft (page 39 of complaint)
8	Date of execution of agreement for sale	16.01.2023 (page 42 of complaint)

8.	Possession clause	<p>11. Possession</p> <p>Schedule for possession of the said Apartment - The Promoter agrees and understands that timely delivery of possession of the Apartment to the Allottee and the Common Areas to the association of allottees or the competent authority, as the case may be, provided under Rule 2(1)(f) of the Rules, is the essence of the Agreement. The Promoter assures to hand over possession of the Apartment as per the timelines mentioned in the table below unless there is delay or failure due to "force majeure", court orders, Government policy/ guidelines, decisions affecting the regular development of the Project. If, the completion of the Project is delayed due to the above mentioned conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment</p> <p>ON or Before 12.04.2024</p>
9.	Due date of possession	12.04.2024 (as per the possession clause)
10.	Total sale consideration	Rs. 1,32,52,686 /- [As per page no. 65 of complaint]
11.	Total amount paid by the complainant	Rs.33,13,172 /- (page 30 of the complaint)
13.	Occupation certificate dated	23.01.2024 [page 75 of reply]

14	Offer of possession	Not offered
15	Termination letter	14.02.2024 (page 93 of reply)
	Reminder Letters	26.10.2022, 01.11.2022, 23.09.2023, 11.10.2023, 14.11.2023, 16.12.2023 and final notice dated 15.01.2024 [Page 78-88 of reply]
16	Third party rights created on	14.01.2025

B. Facts of the complaint:

3. The complainant has made the following submissions: -
- I. That the complainants booked a residential flat Unit No. T22-1603, admeasuring 1832.00. Sq. Ft Area in your project TERRA situated at revenue estate of Village - Basai, Sector 37-D, Gurugram, Haryana.
 - II. That the complainant was allotted with Unit No. T22-1603 in Project 'TEERA' Sector-37D, Gurugram vide allotment letter dated 27.09.2022 vide Customer Code - BE88/168222 and required part payment of Rs 3,313,172/- of total sale consideration was paid to the Company as per payment plan.
 - III. That an agreement for sale was made at Gurgaon, Haryana on 16/01/2023 amongst the complainants and the respondents at Sub/Joint Registrar Office, Kadipur, vide document no. 12621 dated 16/1/2023.
 - IV. That it is pertinent to mentioned here that at the time of booking the respondents made tall representation to the complainants, that this property would appreciate multiple times and if the complainant had

any financial hurdles before possession, respondents would buy back the property on the prevailing market rate at the time of sale. Further the respondents framed the terms and conditions of the said agreement very cleverly by making them one sided, uncertain, ambiguous and complex through which respondents have tried to safeguard them from any legal action in future.

- V. That complainant in '**particulars Performa**' submitted to respondents gave his correspondence address and permanent address clearly, distinctly and separately with the hope that all the correspondence to complainant will be sent on correspondence address so that he can take prompt and timely action on correspondence received from respondents.
- VI. That, despite that, respondents sent all your demands and notices for payment on permanent of complainant for the reasons best known to you.
- VII. That the complainant immediately after having the knowledge of payment requests, informed respondents on 25/09/223 to alter the payment demand as there was a **death in the family** of complainant and complainant was in the process of completing all death rituals.
- VIII. That on 26/09/2023 respondent extended his deepest sympathies to complainant and his family during this incredible challenging and difficult time of death in the family and assured complainant that complainant that well-being and family priorities are of utmost importance to respondent and respondent are there to support complainant during this time.
- IX. That you respondents in the light of above circumstances requested to complainant to share the new timelines that complainant had in mind to enable him to accommodate his requests in the best possible

manner. Respondent further expressed his sincere condolences and assured complainant to assist in any way. Believing the above assurance of new timelines and complainant arranged for bank loan and sent the bank representative to the office of respondent at Gurgaon to complete the document formalities like TPA and other required documents however to the surprise of my client the bank staff was returned back by your official saying that document formalities take time. However, the official of the respondents were **forcing the complainant to make cash payment** for the reasons best known to them. Hence, respondents were delaying the bank loan process intentionally.

- X. That on 09 Feb 2024 complainant informed the respondent that his loan is sanctioned and bank is ready to disburse the funds however, CRM team informed complainant that the you respondent would take 2-3 weeks to get approval on the TPA and informed that they have already payment reminder on 15/01/2024. But as per tracking sheet the notice was delivered on 2nd Feb 2024 on my client permanent address.
- XI. That the complainant requested several times through e-mails and personal visits to respondents to provide TPA and other necessary documents to enable complainant and bank to expedite the payment of the sanctioned loan, but the same was not provided by you with malafide intention and thereafter complainant, kept making calls and visiting to your office, requesting respondent to sign necessary documents for facilitate bank for disbursement of sanctioned loan and requested not to cancel the allotment of said unit, and finally on 10 Feb 2024, e-mailed to Mr. Kabul Chawla, Chairman and Managing Director of the company to provide TPA and other documents

required by bank for disbursement of the loan but the requests of complainant fell on the deaf ears and the respondents did not give any satisfactory reply to the just and genuine request of complainant. and, the official of respondents, flatly refused to entertain him and unabashedly **declared that they would not allow bank to disburse the loan amount for said unit and they would terminate the allotment of said unit, no matter what happens.**

- XII. That the complainant was shocked to know that despite the delivery of legal notice on **13 Feb 2024**, respondents sent termination/cancellation intimation on **14 Feb 2024** in respect of said unit, which shows the predetermined and malafide intention of respondents.
- XIII. That despite numerous reminders from complainants to provide TPA, you the addressees have deliberately and willfully failed to provide necessary documents.
- XIV. That it is pertinent to mention here that throughout the period from notice till date the complainant has shown utmost faith, resolve the issue, despite false assurances, misleading representations, unfair trade practice, fraudulent, unlawfully and arbitrarily act of respondents.
- XV. That the respondents even did not bother to reply of the request by complainants. The respondents are not resolving the issues of complainant and want to grab his money by cancelling the said unit illegally and unlawfully.
- XVI. That respondents intentionally and willfully want usurp the hard-earned money of complainant in an unlawful and illegal manner. Due to respondents above said act and conduct complainant has to suffer a huge economic loss, mental pain, agony. The respondents knowingly,

- intentionally with ulterior motives has not signed the loan documents and terminated the said unit as they want to sell the said unit in huge profit to other client in present market rate.
- XVII. That complainants have already paid **Rs, 33,13,172.00/-** for their unit but respondents are using the same for their personal gain.
- XVIII. That it is pertinent to mention herein that complainants are always **willing and ready to pay** the remaining cost of the said flat but the respondents refused to allow the disbursement of loan from bank as they do not want to deliver the flat to the complainant, intentionally and unlawfully.
- XIX. That when the nothing fruitful came out, the complainants through their counsel/ legal representative, sent a Legal Notice dated 12.02.2024 to the respondents, whereby the respondents were advised to revoke the termination/ cancellation letter, to perform their part by allowing bank and complainants for disbursing the loan and not to create third party interest in respect of said unit within 15 days from the receipt of this notice, but the respondents did not respond the same.
- C. Relief sought by the complainant:**
4. The complainant has sought following relief(s):
 - I. To set aside the cancellation/termination letter dated 14-02-2024.
 - II. To give necessary direction to respondents to provide necessary documents and reasonable time to complainant for disbursement and facilitation of loan for said unit.
 - III. To direct the respondents to handover the actual physical possession of the Flat Bearing Unit No. T22-1603, admeasuring 1832 Sq. Ft. in the project "TERRA" of the respondents situated at Sector-37D, Gurugram, Haryana after receiving the payment through loan.

IV. Direct the respondents for 'not to handover the possession of the above said flat bearing Unit No. T22-1603 to any other person(s) or not to create any third-party interest'.

V. Direct the respondents to pay the litigation charges to the tune of Rs. 1,00,000/-.

D. Reply by respondents:

5. The respondents vide reply and written submissions dated 25.07.2024 contested the complaint on the following grounds:

- i. That, at the outset, it is most humbly submitted before the Ld. Authority that the Respondent No. 1 is the Developer of the Project in question and the Respondent No. 2 is the managing partner of the respondent No. 1 and is not liable to any grievances of the complainants, whatsoever in an individual capacity. That no cause of action is made out as against the respondent no. 2. Moreover, no specific relief has been sought by the complainants from the respondent no. 2. Therefore, it is requested before the Authority to kindly delete the name of respondent no. 2 from the array of parties as he is not a proper and just party to the present dispute.
- ii. That the complainants being interested in the residential project of the respondent no. 1 known under the name and style of "**TERRA**", situated in Sector-37D, Gurugram, Haryana (hereafter referred to as the "**Project**") applied for the allotment of a flat vide Application Form dated 26.09.2022. At this stage, it is pertinent to note that the complainants had made the booking, only after being completely satisfied with the project and its exemplar construction quality.
- iii. That the application of the complainants was accepted by respondent No. 1 and on 27.09.2022 the complainants were tentatively allotted a unit bearing no. T22 - 1603, Tower T22, Floor 16th, tentatively

- admeasuring 1832 sq. ft. super area (hereafter referred to as the "Unit"). 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.
- iv. That consequent to the allotment of the unit, an Agreement to Sale dated 16.01.2023 (hereafter referred to as "ATS") was executed between the complainants and the respondent no. 1. It is pertinent to mention that the ATS was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties, hence, the parties are bound under the contractual relationship.
- v. It is most humbly submitted before the Authority that during the execution of the ATS, the complainants categorically stated and agreed to the fact that all the correspondence/ notices that are served by one party to the another shall be deemed to have been served if the same are sent on the address as laid down in Clause 41.1 of the ATS. It is imperative to note that while executing the Agreement to Sale, the complainants agreed to be served with all the notices and correspondence on their Shimla address, as duly provided by them.

The relevant para of the ATS is reiterated hereunder:

"41. NOTICE

41.1. All notices to be served on either of the Parties by the other shall be deemed to have been duly served if sent to the Allottee or the Promoter by registered post at their respective addressees specified below:

In case of the Allottee:

Name of Allottee: MS. POOJA DHANTA
Address : SHALAR(86), NANDPUR. SHIMLA, 171206, INDIA

In case of the Promoter:

Name of Promoter: BPTP Limited

Address : M-11, Middle Circle, Connaught Circus, New Delhi-110001"

- vi. That the complainants agreed to be served upon their shimla address for any correspondence and cannot allege the same in the present complaint.
- vii. The respondent no. 1 had duly ensured the fulfilment of its obligations qua the unit. That as per Clause 11.1 of the Agreement to Sale, the due date of offer of possession of the unit was on or before **12.04.2024**.
- viii. That the development of the Project was duly completed by the respondent no. 1 and the occupation certificate for the unit was received on 23.01.2024, i.e., before the due date of offer of possession of the unit, hence, there is no violation whatsoever, on part of the respondent no. 1.
- ix. That the complainants delayed in remitting the due instalment on time due to which various demands and reminder letters were also issued in favour of the complainants. That the *bonafide* of the respondent no. 1 is imperative to note that even though the respondent no. 1 was not under an obligation to remind the complainants regarding the due instalment, the respondent no. 1 sent various demands and reminder letters in order to inform the complainants regarding the due instalments. The various demands and reminder letters issued by the respondent no. 1 are:

S. NO	MILESTONE	DEMAND RAISED AND AMOUNT TO BE PAID	DUE DATE	AMOUNT PAID AND REMINDERS
1.	WITHIN 60 DAYS OF BOOKING	Rs. 33,13,173/- dated	25.11.2022	Rs. 8,25,269/- paid on 31.10.2022

		26.10.2022		Reminder Notice I dated 01.11.2022 for outstanding dues of Rs. 24,87,904/- Rs. 4,99,999/- paid on 10.11.2022 Rs. 9,87,904/- paid on 25.11.2022 Rs. 10,00,000/- paid on 30.11.2022
2.	ON RECEIPT OF THE OCCUPATION CERTIFICATE	Rs. 92,76,882.87/- Dated 23.09.2023	09.10.2023	Reminder Notice I dated 11.10.2023 for outstanding dues of Rs. 99,70,732/- Reminder Notice II dated 14.11.2023 for outstanding dues of Rs. 99,70,732/- Reminder Notice III dated 16.12.2023 for outstanding dues of Rs. 99,70,732/- Last and Final Opportunity Letter dated 15.01.2024 for outstanding dues of Rs. 99,70,732/- Termination Letter dated 14.02.2024

- x. That after the issuance of the demand letter dated 23.09.2023 by the respondent no. 1, the complainants vide email dated 25.09.2023 requested the respondent no. 1 to alter the demand to be raised in November 2023 as the complainant was occupied in certain ceremonies due to the heavenly abode of one of the members of the

family. That the *bonafide* of respondent no. 1 is pertinent to be highlighted as respondent no. 1 replied to the complainants vide email dated 26.09.2023 expressing their deepest condolence for the loss incurred to the complainants. Moreover, the respondent no. 1 being a customer-oriented company communicated to the complainant that they shall attempt to accommodate the complainant and hence, asked for updated timelines, for approval. However, it is of essence to note that no such approval for extension of demand was given to the complainant.

- xi. That without prejudice to the rights and submissions of the respondents, it is most humbly submitted that even in November 2023, the complainant failed to clear the dues. That the reminders were raised by the respondent, as per the agreed terms of the Agreement to Sale, and hence, the complainant was at complete liberty to clear the dues in Nov 2023, however, as noted above, she miserably failed in doing the same. Hence, the allegations of the Complainant are baseless and cannot be relied upon.
- xii. That despite various reminder letters duly sent by the respondent no. 1, the complainants failed to remit the outstanding dues on time. That it is imperative to note that the complainants have miserably defaulted in remitting the due instalments in a timely manner and have always tried to delay the matter by remitting only the part payment of the actual demand and being aggrieved by such acts of the complainants, the respondent no. 1 was constrained to issue the last and final opportunity letter dated 15.01.2024 for the balance payment of Rs. 99,70,732/-. It was categorically noted in the letter dated 15.01.2024 that if the complainants failed to make payment of the due instalments,

- the same shall be treated as the termination/cancellation of the allotment of the unit.
- xiii. That after the issuance of Last and Final Opportunity Letter dated 15.01.2024, the complainants approached the respondent no. 1 with another delay tactic by stating that the complainants had applied for a loan from the IDBI bank and the same was sanctioned and is ready to disbursed by the Bank in favour of the respondent no. 1 subject to the execution of the tripartite agreement. That the complainant wrote to the respondent with a malafide intent accusing delay on part of the respondents, however, the actual facts do not support the such accusations, in any manner whatsoever. That vide email dated 14.02.2024, it was clarified to the complainant that the IDBI Bank had only approached the respondent no. 1 with a request to issue TPA / PTM / NOC on 09.02.2024. It was clarified that there had been no delay whatsoever on part of the respondents. That at this stage, the *malafide* conduct of the complainant is of essence to note. That for a demand raised in September 2023, which, as per the complainant's own submission, would have been paid in November 2023, however, was not paid even till February 2024.
- xiv. That due to failure of the complainants in remitting the outstanding dues, the complainants were considered under an event of default as per Clause 6 of the Agreement and Para 3 of the letter dated 15.01.2024, and upon the failure of the complainants to rectify their default, the respondent no. 1 was left with no other option but to terminate the unit of the complainants in accordance with clause 6 and 28.2 of the Agreement, as reiterated above. Hence, the Unit of the complainants was lawfully terminated vide Termination Letter dated 14.02.2024.

- xv. That in such events of cancellation, the respondent no. 1 is entitled to forfeit the amounts for the booking amount, any interest due, pre-equated monthly instalment interest and commission / brokerage, if any, in terms with clause 7.2 of the Agreement.
- xvi. That the right of the respondents to validly cancel / terminate the unit and forfeit the said amounts arise not only from the agreement but also from the Model RERA Agreement which also recognizes the default of the allottee and the forfeiture of the interest on the delayed payments upon cancellation of the unit in case of default of the allottee.
- xvii. That, it is evident from the above-mentioned submissions, the complainants stood in the event of default for not making payment in timely manner, not taking possession of the unit, non- execution of conveyance deed, and non-payment of statutory dues. Accordingly, the respondent no. 1 had the right to terminate the unit as per the agreed terms and conditions under the agreement. That multiple opportunities were given to the complainants to rectify their default through the multiple reminder notices and last and final opportunity letter for payment of the outstanding amount, however, the complainants again willingly and voluntarily chose to not rectify the same, and consequently, the respondent no. 1 was constrained to terminate the allotment of the unit of the complainants.
- xviii. That it is of essence to note that after the lawful and valid termination of the unit, the respondent no. 1 had rightly sold the unit to another party in May 2024. That after the sale of the unit, and creation of third-party rights, no right, lien of the complainant, towards the Unit remains.
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 relief sought by the complainant:

F.I To set aside the cancellation/termination letter dated 14-02-2024.

F.II To give necessary direction to respondents to provide necessary documents and reasonable time to complainant for disbursement and facilitation of loan for said unit.

F.III To direct the respondents to handover the actual physical possession of the Flat Bearing Unit No. T22-1603, admeasuring 1832 Sq. Ft. in the project "TERRA" of the respondents situated at Sector-37D, Gurugram, Haryana after receiving the payment through loan.

F.IV Direct the respondents for 'not to handover the possession of the above said flat bearing Unit No. T22-1603 to any other person(s) or not to create any third-party interest'.

12. The complainant was allotted unit no T-22-1603 admeasuring 1832 sq.ft. in the project "Terra", Sector- 102, Gurugram" by the respondent builder for a consideration of Rs. Rs. 1,32,52,686 /- against which the complainant paid an amount of Rs. 33,13,172 /-. The complainant continued with their default and again failed to make payment even after reminder letters dated 26.10.2022, 01.11.2022, 23.09.2023, 11.10.2023, 14.11.2023, 16.12.2023 and final notice dated 15.01.2024 sent by the respondent. Buyer agreement between the parties was executed on 16.01.2023 and the unit of the complainant has been cancelled by the respondent on 14.02.2024 on the grounds of non-payment.

13. The complainant states that due to a death in the family, the complainant requested revised timelines, which the respondents initially agreed to. The complainant arranged a bank loan, but the respondents deliberately delayed providing necessary documents (like TPA), hindering loan disbursement. Despite repeated requests, visits,

and even escalation to senior management, the respondents refused to cooperate and allegedly pressured for cash payments. The complainant further states that his present address of Haryana as correspondence address, besides that, respondent sent all payment notices on permanent address of Himachal Pradesh which is in remote location. Reminder Notice- III was delivered at Permanent address of the complainant, but the respondent TERMINATED the above said unit on 14-02-2024, even before expiry of one month from date of delivery, with malafide intention.

14. On the contrary, the respondent states that the complainants had agreed, under the Agreement to Sale, to receive all notices at their Shimla address and therefore cannot dispute service of notices. The respondent has obtained the occupation certificate on 23.01.2024, before the possession due date of 12.04.2024, thus there was no delay on its part. However, they repeatedly failed to pay instalments on time despite multiple demand letters, reminders, and opportunities provided by the respondent. Even after requesting an extension citing personal reasons, they did not clear dues within the extended period. Due to continued non-payment, the respondent issued a final notice on 15.01.2024 warning of cancellation. The complainants still failed to pay and later attempted to attribute delay to a loan process. As a result of persistent default, the respondent terminated the allotment on 14.02.2024 in accordance with the agreement. 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 14.02.2024 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. 33,13,172 /- against the sale consideration of Rs. 1,32,52,686 /-. The occupation certificate for the tower in question was obtained by the respondent on 23.01.2024 and thereafter the respondent sent various reminder letters to the complainant to clear the outstanding dues but complainant failed to do so. As per the payment plan agreed between the parties, the complainant was obligated to pay:-

At the time of Booking	10% of TP
Within 60 days of booking	15% of TP
On receipt of occupancy certificate	70% of TP
On offer of possession	5% of TP+ IFMS+1 Year Advance CUC + 1 year advance CAM + PFRC + Stamp Duty & Registration Charges

However, the complainant defaulted in making payment and the respondent was to issue reminder letters and final notice dated 15.01.2024 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 14.02.2024. 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 16.01.2023 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after

deducting the amount of earnest money. 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. 33,13,172 /- after deducting 10% of the sale consideration of Rs. 1,32,52,686 /- 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., 14.02.2024 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.V Direct the respondents to pay the litigation charges to the tune of Rs. 1,00,000/-.

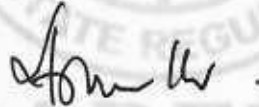
17. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation 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.

G. 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/promoter is directed to refund the paid-up amount of Rs. 33,13,172 /- after deducting 10% of the sale consideration of Rs. 1,32,52,686 /- 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., 14.02.2024 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: 07.04.2026