HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1038 of 2024**
Date of filing:	**14.08.2024**
First date of hearing:	**04.11.2024**
Date of decision:	**21.04.2026**

Navita Dagar
W/o Sandeep Dabas
R/o 923 Chabbu Pana,
Pooth Khurd, North West Delhi .....COMPLAINANT

Versus

TDI Infracorp Limited,
Vandana Building,
Upper Ground Floor 11, Tolstoy Marg,
Connaught Place, New Delhi- 110001 .....RESPONDENT

Present: - Adv. Mukesh Tomar, Learned Counsel for the Complainant through VC

Adv. Shubhnit Hans, Learned Counsel for the Respondent through VC.

ORDER (DR. GEETA RATHEE SINGH – MEMBER)

1. Present complaint has been filed on 14.08.2024 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for

short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made there under, wherein, it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

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, delay period, if any, have been detailed in the following table:

S.No	Particulars	Details
1.	Name &location of project	"Waterside Floors in TDI Lake Grove City", Kundli, Sonipat
2.	RERA registered/not registered	Registered with registration no. 43 of 2017 dated 11.08.2017
3	Unit no.	WF-138/SF
4.	Super built up area	1400 sq. ft.
5.	Date of Allotment	18.09.2013
6.	Builder buyer agreement	19.12.2013
7.	Due date of possession	19.06.2016 *Clause 28 .....However, if the possession of the apartment is delayed beyond the stipulated period of 30 months from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then thereafter for every month of delay, the buyer shall be entitled to a fixed monthly*

Rathee

		compensation/ damages/ penalty quantified @ Rs.5 per square foot of the total super area of the apartment. The Buyer agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the apartment
8.	Total Sale Consideration of the unit	₹56,56,870/-
9.	Amount paid by complainant	₹67,34,816/- (wrongly calculated as ₹66,98,816/- by complainant)
10.	Occupation Certificate received by the respondent	30.06.2023
11.	Offer of possession	05.07.2023

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. That the complainant came across alluring and attractive advertisements issued by the respondent regarding its residential project namely *"Water Side Floors"* situated at Sector-63, Kundli, Sonipat (Haryana). The officials of the respondent represented and assured that the project would be fully developed and possession of units would be delivered within a period of 2-3 years. Relying upon the said representations, promises and assurances contained in the brochure and promotional material, the complainant applied for booking of a residential floor admeasuring approximately 1400 sq. ft., initially identified as Unit No. TM00105, 2nd (T-Category) in the project Waterside Floors – KWF, NH-1, Kundli, Sonipat.

4. That at the time of booking, the complainant made timely payments towards the allotment of the said unit. The details of the initial payments made by the complainant are as under:

Date	Cheque No.	Amount (₹)	Receipt No.
12.04.2013	416187	5,00,000/-	0001971
22.06.2013	416191	5,51,418/-	REC0045/00733/13-14
28.08.2013	871013	5,30,000/-	REC0045/1250/13-14
19.12.2013	727701	1,95,399/-	REC0045/01839/13-14

Copies of the above receipts are annexed with the complaint as Annexure P-1 (Colly).

5. That after receipt of the aforesaid advance amounts, the respondent issued an allotment letter dated 18.09.2013 bearing No. ALNO./BO00054/00103/13-14, whereby Unit No. WF-138/SF, having built-up area of 1400 sq. ft. on the Second Floor, was allotted to the complainant. Copy of the allotment letter is annexed as Annexure P-2.

6. That thereafter, a tripartite agreement dated 19.12.2013 was executed between the complainant (buyer), the respondent (builder) and HDFC Limited (financer) to safeguard the interests of all parties. Copy of the tripartite agreement is annexed as Annexure P-3.

7. That pursuant to the said tripartite agreement, the complainant availed a housing loan of ₹30,00,000/- from HDFC Limited vide loan agreement dated 06.02.2014. Copy of the loan agreement is annexed as Annexure P-4.

8. That simultaneously, a buyer's agreement dated 19.12.2013 was executed between the complainant and the respondent. As per Clause 28 of the said agreement, the respondent was obligated to deliver possession of the allotted unit within 30 months from the date of execution of the agreement. It was further provided that in case of delay attributable to the respondent, the complainant would be entitled to delay compensation at the rate of ₹5 per sq. ft. per month of the super area. Copy of the buyer's agreement is annexed as Annexure P-5.

9. That despite the complainant having made payments diligently and in a timely manner, the respondent failed to honour its contractual obligations and did not deliver possession within the stipulated period. The respondent thus committed a clear breach of the buyer's agreement.

10. That surprisingly, the respondent vide letter dated 01.06.2021 issued an intimation of completion and offer of possession to the complainant without obtaining the mandatory occupation certificate from the competent authority (DTCP). The said possession offer was made subject to payment of alleged outstanding dues.

11. That the said possession letter dated 01.06.2021mentioned a revised super area of 1520 sq. ft., whereas the buyer's agreement specified only 1400 sq.

ft., thereby unilaterally increasing the area and financial liability of the complainant. Along with the possession letter, an ambiguous and incorrect final statement of account dated 01.06.2021 was also issued.

12. That the complainant immediately raised objections vide e-mail dated 19.08.2021, specifically questioning how possession could be offered without obtaining the occupation certificate and informing the respondent that the financer bank would not release further payment in the absence of the said certificate. Copies of the possession letter, final account statement and e-mail correspondence are annexed as Annexure P-6 (Colly).

13. That instead of addressing the genuine concerns of the complainant, the respondent continued to issue arbitrary and inflated demand letters. A demand letter dated 19.08.2021 was issued demanding ₹12,14,957/-, followed by a reminder dated 16.11.2021 demanding an even higher amount of ₹16,86,285.87/-, despite the fact that the occupation certificate had still not been obtained.

14. That thereafter, another reminder letter dated 11.05.2022 was issued by the respondent demanding an amount of ₹16,15,956.78/-. The said demand was raised in similar circumstances but reflected a different outstanding amount, which clearly demonstrates that the respondent never complied with the terms of the tripartite agreement and buyer's agreement dated 19.12.2013 and continued to raise vague, inconsistent and arbitrary demands. The repeated issuance of contradictory communications resulted

in complete uncertainty and failure of performance on the part of the respondent.

15. That pursuant to the aforesaid vague and ambiguous communications, the complainant repeatedly reminded the respondent about its lapses; however, the same were completely ignored. The complainant sent an e-mail dated 23.05.2022 to the official e-mail address of the respondent explaining the situation and seeking clarification, but no response was received. Copies of demand letter dated 19.08.2021, reminder letters dated 16.11.2021 & 11.05.2022, and e-mail dated 23.05.2022 are annexed as Annexure P-7 (Colly).

16. That the respondent continued issuing vague communications to exert pressure upon the complainant and to conceal its own lapses. A further reminder letter dated 12.06.2023 was issued demanding ₹18,93,320.90/- despite the fact that it had already been categorically communicated that no further disbursement could be made by the financer bank in the absence of the occupation certificate.

17. That as per the tripartite agreement dated 19.12.2013, the respondent was obligated to timely inform all parties regarding the availability of the occupation certificate. In an effort to resolve the prolonged dispute, the complainant sent a written letter dated 27.06.2023 to the authorised representative of the respondent seeking clarification, particularly regarding the status of the property being changed to "Property on Hold."

However, no response was received. Copies of reminder letter dated 12.06.2023 and letter dated 27.06.2023 are annexed as Annexure P-8 (Colly).

18. That thereafter, a final offer of possession dated 05.07.2023 was issued by the respondent stating that the occupation certificate has been obtained vide memo no. ZP-709/JD(NK)2023/21118 dated 30.06.2023. However, the occupation certificate supplied to the complainant was itself ambiguous, as it mentioned the address of Sector-64, Sonipat, whereas the project is situated at Sector-63, Sonipat, as reflected in the earlier possession letter dated 01.06.2021. This discrepancy was immediately brought to the respondent's notice via e-mail dated 08.08.2023, but no clarification was provided. Copies of the occupation certificate dated 30.06.2023, possession letter dated 05.07.2023 and e-mail dated 08.08.2023 are annexed as Annexure P-9 (Colly).

19. That despite the continuing ambiguity, the respondent kept imposing arbitrary charges and interest upon the complainant. A further demand letter dated 11.10.2023 followed by an ambiguous final statement of account dated 25.10.2023 was issued. The complainant responded vide e-mail dated 19.11.2023 addressed to both the respondent and the financer, yet no response was received. Copies of the demand letter, statement of account and e-mail dated 19.11.2023 are annexed as Annexure P-10 (Colly)

20. That after persistent follow-ups by the complainant, the respondent supplied a customer ledger, detailed statement of account and money receipt dated 14.12.2023. Subsequently, an invitation for execution of the conveyance deed dated 05.01.2024 was issued without obtaining the mandatory NOC from the financer, which again demonstrates the respondent's negligent and casual approach. Copies of said documents are annexed as Annexure P-11 (Colly).

21. That an acknowledgement/NOC dated 02.02.2024 was issued by SBI Trustee permitting fit-out possession. However, the said letter specifically clarified that the permission was not valid for habitation as the occupation certificate was yet to be obtained, thereby further exposing the continuing ambiguity created by the respondent. Copy of the said letter is annexed as Annexure P-12.

22. That the respondent thereafter attempted to coerce the complainant into waiving the compensation by forwarding a deed of settlement dated 06.06.2024. Upon seeking legal advice, the complainant realized that the said document was an attempt to evade liability, and therefore the same was not executed. Copy of the deed of settlement is annexed as Annexure P-13.

23. That in view of the foregoing facts and circumstances, the respondent is liable to compensate the complainant strictly in terms of clause 28 of the buyer's agreement dated 19.12.2013. The respondent is further liable to

pay interest on the compensation amount and on the payments made by the complainant in accordance with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 read with Section 18 of the Real Estate (Regulation and Development) Act, 2016. The complainant has paid a total sum of ₹66,98,816/- till date against the sale consideration of ₹56,56,870/-.

24. That the complainant has also paid the final amount of ₹11,86,595/- on 13.02.2024 via NEFT (UTR No. 44242883125) and is entitled to interest @ 10.50% amounting to ₹59,329/- on the said payment.

25. That the respondent-promoter has grossly failed to abide by the contractual obligations stipulated in the tripartite agreement and buyer's agreement. The cause of action is continuous and recurring as the respondent has failed to deliver lawful and valid possession of the developed residential unit in accordance with law.

C. RELIEF SOUGHT

26. In view of the facts mentioned above, the complainant prays for the following relief:

i. In the event that the registration has been granted to the respondents-promoters for the project namely Water Side Floors in Sonipat, Haryana under RERA read with relevant Rules, it is prayed that the same may be revoked under Section-7 of the RERA for violating the provisions of the RERA for violating the provisions of the RERA.

ii. In exercise of powers under Section 35, direct the respondent-promoter to place on record all statutory approvals and sanctions of the project;

iii. In exercise of powers under Section 35 of RERA and Rule 21 of HRE(R&D) RULES, 2017, to provide complete details of EDC/IDC and statutory dues paid to the competent authority and pending demands if any;

iv. To refund the entire amount paid by the complainant along with interest as prescribed under RERA provisions for the delay in completion of the project from dates of deemed date of possession till its actual realization.

v. To pay compensation of ₹5,00,000/- on account of harassment, mental agony and undue hardship caused to the complainant on account of deficiency in service and unfair trade practice;

vi. The complaint may be allowed with costs and litigation expenses of ₹1,00,000/-;

vii. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

D. REPLY ON BEHALF OF RESPONDENT

27. Notice of the present complaint was issued to the respondent on 20.08.2024, which was duly served and delivered on 22.08.2024. Thereafter, the matter was listed for hearing on 04.11.2024, 03.03.2025

and 21.07.2025, and the respondent was granted sufficient opportunities to file its reply. However, despite repeated opportunities, no reply was filed by the respondent. Consequently, the matter was again listed on 18.11.2025, whereupon this Hon'ble Authority passed a detailed order striking off the defence of the respondent for failure to file its reply. Subsequently, the respondent filed an application dated 09.03.2026 seeking recall of the order dated 18.11.2025. The said application was considered and dismissed by this Hon'ble Authority vide order dated 10.03.2026, whereby the earlier direction was reiterated and the right of defence of the respondent remained struck off. Accordingly, the present complaint is being decided on the basis of the material available on record, in the absence of any reply from the respondent.

E. ORAL SUBMISSIONS BY LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENT

28. Ld. counsel for the complainant reiterated the basic facts of the case and submitted that the complainant has fulfilled all her contractual obligations by making timely payments as per the buyer's agreement. He argued that the respondent failed to deliver lawful and valid possession within the stipulated period and continued to raise arbitrary and inconsistent demands without obtaining the mandatory occupation certificate for a considerable period. He further argued that the offer of possession made on 05.07.2023 was not a valid offer of possession and respondent demanded huge amount

as outstanding dues. Since, complainant was receiving various demand letters from the respondent and late fee was being levied on the complainant, the complainant paid an amount of ₹11,86,595/- as the last instalment which was to be paid at the time of offer of possession. However, issues with regard to receivable and payable amount could not be resolved between the parties and therefore, complainant has filed preent complaint seeking relief of refund along with interest from the Authority.

29. Per contra, Ld. counsel for the respondent submitted that the respondent has already obtained the occupation certificate dated 30.06.2023, and therefore the project stands completed. It was further submitted that an offer of possession has already been issued to the complainant and the respondent remains ready and willing to hand over possession. It was argued that since the project has been completed, granting the relief of refund would adversely affect the financial viability of the project and cause undue hardship to the respondent.

He further argued that after offering possession to the complainant, the parties were about to settle the matter and a sum of ₹11,86,595/- was decided to be paid by the complainant. Said amount was even paid by the complainant on 13.02.2024 as per the settlement deed, which clearly shows her intention to go ahead with the project and take possession of the unit. However, later on certain dispute arose with regard to receivable and payable amounts and hence said deed was not executed. Once a valid offer

of possession has been made to the complainant, she cannot now withdraw from the project and claim refund of the amount deposited, since the entire amount stands vested in the project.

F. ISSUES FOR ADJUDICATION

30. Whether the complainant is entitled for refund of the amount paid by her along with interest in terms of Section 18 of RERA, Act of 2016?

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

31. It is an admitted position on record that the floor in question was booked by the complainant in the year 2013 and vide allotment letter dated 18.09.2013, floor No. WF-138/SF, admeasuring 1400 sq. ft. on the 2nd floor in the project namely *"Waterside Floors in Lake Grove City", Kundli, Sonipat* was allotted to the complainant. Thereafter, a builder buyer agreement dated 19.12.2013 was executed between the parties for total sale consideration of ₹56,56,870/-. It is further evident from the record that against the said total sale consideration, the complainant has paid a total amount of ₹67,34,816/- to the respondent (however, the complainant has wrongly mentioned/calculated the amount as ₹66,98,816/- in Appendix - DD). The last payment of ₹11,86,595/- was made by the complainant on 13.02.2024 through NEFT (UTR No. 44242883125), which establishes that the respondent has received the entire sale consideration from the complainant by the year 2024.

32. The Authority observes that the floor in question was allotted to the complainant pursuant to the execution of the builder buyer agreement dated 19.12.2013, and as per Clause 28 thereof, the respondent was obligated to deliver possession within 30 months, i.e., on or before 19.06.2016. However, the respondent failed to honour its contractual obligation within the stipulated period without any reasonable justification. Although the respondent issued a letter/e-mail dated 01.06.2021 offering possession for fit-out along with a demand of ₹16,40,966/-, the said offer was admittedly made without obtaining the occupation certificate, and therefore cannot be treated as a valid offer of possession in the eyes of law. It was only vide letter dated 05.07.2023, after obtaining the occupation certificate on 30.06.2023, that a legally valid offer of possession was made to the complainant. The complainant challenged said offer of possession stating that occupation certificate attached with the offer is ambiguous as it mentioned the address of the project as 'Sector -64' whereas the project is situated at 'Sector – 63'. Further arbitrary charges and interest was imposed upon the complainant in the final statement of account issued along with the offer of possession. Said discrepancies were brought to the notice of respondent via email dated 08.08.2023 and 19.11.2023 but in vain. Thereafter, an invitation for execution of the conveyance deed was issued by respondent on 05.01.2024 without obtaining mandatory NOC from the financer. Even an acknowledgement/NOC dated 02.02.2024

issued by SBI Trustee permitting fit-out possession specifically clarified that the permission was not valid for habitation as the occupation certificate was yet to be obtained.

However, the fact which cannot be overlooked here is that the complainant had made a payment of ₹11,86,595/- on 13.02.2024 i.e. after the offer of possession issued on 05.07.2023 and acknowledgement/NOC dated 02.02.2024. If the complainant was not satisfied with the offer of possession issued to her and there were circumstances which compelled her to withdraw from the project, then the Authority is unable to understand as to why said payment was made after offer of possession and that too when acknowledgement/NOC dated 02.02.2024 issued by SBI Trustee permitting fit out possession specified that it was not for habitation and OC has not been received. As per the pleadings of the complainant, an amount of ₹18,93,320/- was demanded from her against which she had paid a sum of ₹11,86,595/-. This clearly demonstrates that the complainant had the intention to continue with the project and wanted possession of the floor booked by her. However, since respondent did not settle the grievances of the complainant she decided to withdraw from the project and sought refund of the amount deposited by her.

33. Although valid offer of possession was made to the complainant but same was made after a delay of approximately seven years from the due date of possession and it does not extinguish the statutory right of allottee to seek

refund under Section 18(1) of the RERA Act once delay in handing over the possession beyond the stipulated period is established. The complainant, having made substantial and ultimately full payment towards the booked floor, filed the present complaint seeking refund along with interest on the ground that the respondent failed to make a timely and lawful offer of possession as per the terms of the buyer's agreement. The Authority finds merit in the contention that the complainant invested hard-earned money in the project with a legitimate expectation of timely delivery. However, the possession was offered after an inordinate delay of more than seven years, thereby giving rise to the present claim for refund and consequential reliefs.

34. When an allottee becomes a part of the project it is with hopes that he will be able to enjoy the fruits of his hard earned money in terms of a safety and security of his own home. However, in this case due to peculiar circumstances complainant has not been able to enjoy the fruits of her investment capital as the possession of the floor in question is shroud by a veil of uncertainty. Complainant had invested a huge amount of about ₹67,34,816/- with the respondent to gain possession of a residential floor. However respondent has miserably failed to offer possession of the unit within the timeline as agreed in the agreement.

35. Complainant is at liberty to exercise her rights to withdraw from the project on account of default on the part of respondent to deliver

possession and seek refund of the paid amount. Section 18 (1) (a) of the Act confers unqualified right upon the allottee to withdraw from the project and demand refund along with interest. Even the Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others**" in CIVIL APPEAL NO(S). 6745 - 6749 OF 2021 has observed that in case of delay in granting possession as per agreement for sale, allottee has an unqualified right to seek refund of amount paid to the promoter along with interest. Para 25 of this judgementis reproduced below:

> *"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

However this valuable right to demand refund of amounts paid along with interest has to be exercised within a reasonable period of time by the complainant. Now the question arises is what shall constitute a

reasonable time to exercise their right to seek refund and whether complainant may choose to exercise this right years after the time when the valid offer of possession is made to her. Here, harmonious interpretation of the right to seek refund under section 18(1) and the obligation of allottee to take physical possession under Section 19(10) within a period of two months of the offer of possession after grant of occupation certificate has to be made. When a valid offer of possession is made, then under Section 19(10) an allottee is obligated to accept the physical possession. However in case he does not wish to take the possession he should communicate his intention to withdraw to the respondent and demand refund of paid amount along with interest. In the present case a valid offer of possession was made on 05.07.2023 and the complainant approached the Authority to seek the relief of refund under Section 18(1) in August 2024. Authority observes that the entire amount paid by the complainant has been used towards the completion of the unit and the same is complete and occupation certificate has been issued by the competent Authority on 30.06.2023.

36. Now, it is necessary to examine the conduct of the complainant after the offer of possession issued vide letter dated 05.07.2023. Once an offer of possession is made, the allottee is expected either to accept the possession and continue with the project or to exercise the option of withdrawal and seek refund of the amount deposited along with interest within a

reasonable period. In the present case, complainant has not placed any material on record to demonstrate that after the issuance of the offer of possession she had taken any concrete steps to withdraw from the project or had communicated their intention to seek refund from the respondent within a reasonable time. In fact she had further deposited a sum of ₹11,86,595/- after receipt of offer of possession showing her intention to continue with the project. Complaint itself has been filed after a considerable lapse of time from the date of the offer of possession. In the absence of any correspondence or evidence showing that the complainant had promptly exercised the option of withdrawal, it cannot be presumed that the complainant intended to exit the project within 2 months upon receipt of the offer of possession. Accordingly, complainant would be entitled to refund of the deposited amount subject to forfeiture of the earnest money.

37. So, the Authority finds it to be a fit case for allowing refund in favour of complainant subject to forfeiture of earnest money. Earnest money is defined by Hon'ble Supreme Court in judgment dated 03.02.2025 passed in **Godrej Projects Development Limited vs Anil Karlekar & Ors.** Civil Appeal no. 3334 of 2023.

> "This Court in the case of Satish Batra v. Sudhir Rawal (supra), after considering the earlier judgments of this Court, has observed thus:
> *"15. The law is, therefore, clear that to justify the forfeiture of advance money being part of "earnest money" the terms of the*

contract should be clear and explicit. ***Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the depositor to be forfeited in case of nonperformance by the depositor****. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get double the amount, if it is so stipulated. It is also the law that part-payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards partpayment of consideration and not intended as earnest money then the forfeiture clause will not apply.*

16. When we examine the clauses in the instant case, it is amply clear that the clause extracted hereinabove was included in the contract at the moment at which the contract was entered into. It represents the guarantee that the contract would be fulfilled. In other words, "earnest" is given to bind the contract, which is a part of the purchase price when the transaction is carried out and it will be forfeited when the transaction falls through by reason of the default or failure of the purchaser. There is no other clause that militates against the clauses extracted in the agreement dated 29-11-2011.

We are, therefore, of the view that the seller was justified in forfeiting the amount of Rs 7,00,000 as per the relevant clause, since the earnest money was primarily a security for the due performance of the agreement and, consequently, the seller is entitled to forfeit the entire deposit. The High Court has, therefore, committed an error in reversing the judgment of the trial court."

As such, builder buyer agreement provides for 15% of the basic sale price as earnest money. However, the same is not justified. In support, decision in Appeal no. 292/2019 titled as **Experion Developers Pvt Ltd vs Sanjay Jain & Smt. Kokila Jain** is relied upon, wherein Hon'ble Appellate Tribunal has observed that 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. Relevant part of the order is reproduced below for reference:-

"17. The legal position with regard to the earnest money has been dealt in detail by Hon'ble Supreme Court in citations MaulaBux v. Union of India (1969)(2) SCC 554, and SatishBatra's case (supra) and the same can be condensed as follows:- "Earnest money is part of the purchase price when the transaction goes forward; it is forfeited when the transaction falls through, by reason of the fault of failure of the vendee. Law is, therefore, clear that to justify the forfeiture of advance money being part of earnest money the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the 13 Appeal No.292/2019 & 35/2021 depositor to be forfeited in case of non-performance, by the depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get the double the amount, if it is so stipulated. In other words, earnest money is given to bind the contract, which is a part of the purchase price when the transaction is carried out and it will be forfeited when the transaction falls through by reason of the default or failure of the purchaser."

18. The perusal of Article 1 Clause 1(xiii) of the agreement dated 11.11.2014 shows that it has been specifically stipulated that earnest money would be 15% of the basic sale price which was meant to ensure performance, compliance and fulfillment of obligations and responsibilities of the buyer. Though, the allottees have taken the stand that the earnest money in the present case is Rs.11,00,000/- which was deposited by them at the time of booking of the plot, but the same cannot be attached any credence because the booking is only request for allotment and does not constitute a final allotment or agreement.

19. Now, the question to be determined is that whether the earnest money to the tune of 15% of the basic sale price, as stipulated in the Agreement of 11.11.2014 can be termed as reasonable or not? In citation Pioneer Urban Land and 14 Appeal No.292/2019 & 35/2021 Infrastructure Ltd.'s case (supra), the Hon'ble Supreme Court has laid down that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between the parties, who are not equal in bargaining power. A term of a contract will not be final and binding if it is shows that flat purchaser had no option but to sign on the dotted line, on a contract framed by a builder. Further, incorporation of one-sided clauses in an agreement constitutes an unfair trade practice since it adopts unfair methods or practices for the purpose of selling the flat by the builder.

20. In citation DLF Ltd.'s case (supra), the Hon'ble National Consumer Disputes Redressal Commission, while discussing the cases of MaulaBux's case (supra), SatishBatra's case (supra) and other cases as

mentioned in para No.10 of the said order, has clearly laid down that only a reasonable amount can be forfeited as earnest money in the event of default on the part of the purchaser and it is not permissible in law to forfeit any amount beyond a reasonable amount unless it is shown that the person forfeiting the said amount had actually suffered loss to the extent of the amount forfeited by him. Further, it was held that 20% of the sale 15 Appeal No.292/2019 & 35/2021 price cannot be said to be a reasonable amount which the petitioner company could have forfeited on account of default on the part of the complainants unless it can show it had suffered loss to the extent the amount was forfeited by it. In absence of evidence of actual loss, forfeiture of any amount exceeding 10% of the sale price, cannot be said to be a reasonable amount.

21. In his last desperate attempt, learned counsel for the promoter has submitted that since the allottees had specifically agreed to pay 15% of the sale price as earnest money, the forfeiture to the extent of 15% of the sale price cannot be said to be unreasonable as the same is in consonance with the terms agreed between the parties. He has also submitted that so long as the promoter was acting as per the terms and conditions agreed between the parties, it cannot be said to be deficient in rendering services to the allottees. This aforesaid submission as put forward by the learned counsel for the promoter, was also submitted before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi in DLF's case (supra) and while dealing with the same, it was observed that forfeiture of the amount which cannot be shown to be a reasonable amount, would be contrary to the very concept of forfeiture of the 16 Appeal No.292/2019 & 35/2021 earnest money and if the said contention is accepted, then, an unreasonable person in a given case may insert a clause in Buyer's Agreement whereby say 50% or even 75% of the sale price is to be treated as earnest money and in the event of the default on the part of the buyer, he may seek to forfeit 50% sale price as earnest money. It was further observed and held that an agreement for forfeiting more than 10% of the sale price would be invalid since it would be contrary to the established legal principle that only a reasonable amount can be forfeited in the event of default on the part of the buyer. Here, it is also pertinent to mention that the deduction of 10% of the total sale consideration of the unit, out of the amount deposited by the allottees, is also inconformity with the Regulations 2018, as notified by the Authority, wherein, it has been stipulated that forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the Real Estate apartment/plot/building."

Accordingly, respondent can be allowed to deduct only 10% of basic sale price as earnest money which works out to ₹5,10,000/- (basic sale price is ₹51,00,000/-) and return remaining amount to the complainant

38. In the interest of justice, the respondent is duty bound to refund the amount of ₹67,34,816/- with interest from date of payments till its actual realization subject to forfeiture of the 10% earnest money. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

> *(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
>
> *Explanation.-For the purpose of this clause-*
>
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
>
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

"Rule 15:" *"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub.sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of india highest marginal cost of lending rate +2%:*

Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".."

39. Consequently, as per website of the state Bank of India i.e.https://sbi.co.in, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 21.04.2026 is 8.80.%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.80%.

40. Hence, Authority directs respondent to pay refund amount to the complainant on account of failure in timely delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e., at the rate of SBI highest marginal cost of lending rate (MCLR) + 2% which as on date works out to 10.80% (8.80% + 2.00%) from the date of various payments till actual realization of the amount.

41. Authority has got calculated the interest on the total paid amount from the date of respective payments till the date of this order i.e., 21.04.2026 at the rate of 10.80%. Complainant shall be entitled to further interest on

the paid amount till realization beginning from 21.04.2026 at the rate of 10.80%. The calculations of interest are depicted below in the table:

Sr. No.	Principal Amount (in ₹)	Date of payment (as per customer ledger annexed as Annexure P-11 at Page 98 of complaint)	Interest Accrued till 21.04.2026 (in ₹)
1.	5,00,000/-	26.04.2013	7,01,852/-
2.	5,51,518/-	22.06.2013	7,50,998/-
3.	5,30,000/-	28.08.2013	7,24,517/-
4.	1,95,399/-	19.12.2013	2,60,580/-
5.	5,25,759/-	07.02.2014	6,93,362/-
6.	1,76,000/-	14.04.2014	2,28,669/-
7.	3,49,759/-	15.04.2014	4,54,323/-
8.	5,49,399/-	17.03.2015	6,59,026/-
9.	1,76,000/-	17.03.2015	2,11,119/-
10.	1,35,176/-	31.03.2016	1,46,950/-
11.	3,52,488/-	31.03.2016	3,83,190/-
12.	40,823/-	23.04.2016	44,101/-
13.	9,00,000/-	13.01.2017	9,01,696/-
14.	1,55,000/-	13.01.2017	1,55,292/-

15.	241/-	13.01.2017	241/-
16.	10,659/-	04.04.2017	10,424/-
17.	4,00,000/-	13.12.2023	1,01,905/-
18.	11,86,595/-	13.02.2024	2,80,531/-
Total	**₹67,34,816/-**		**67,22,644/-**
19.	Total amount of refund + interest ₹1,34,57,460/-		
20.	Total amount (₹1,34,57,460/- - earnest money(₹5,10,000/-) **₹1,29,47,460/-**		
21.	Total amount to be refunded by respondent to complainant **₹1,29,47,460/-**		

42. The reliefs claimed by the complainant from (i) to (iii) are neither part of the pleadings nor pressed upon by the complainant during hearing. Hence, no observation is being made in this regard.

43. Complainant is also seeking compensation of ₹5,00,000/- on account of harassment, mental agony and undue hardship caused to the complainant on account of deficiency in service and unfair trade practice and litigation expenses to the tune of ₹1,00,000/-. In this regard it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as **"M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors."** 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 learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaint in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses and compensation.

H. DIRECTIONS OF THE AUTHORITY

44. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

i. Respondents are directed to refund the entire amount of ₹**1,29,47,460/-** to the complainant and pay further interest beginning from 21.04.2026 till actual realization of the amount at the rate of 10.80%.

ii. A period of 90 days is given to the respondents to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.

45. Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.

.....
DR. GEETA RATHEE SINGH
[MEMBER]