

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

Complaint no.: 1278 of 2024
Date of filing of complaint: 24.04.2024
Date of decision: 07.04.2026

Pushkin Agarwal
Praggya Agarwal
Both RR/o:- D3/209 Shaheed Path Sushant Golf City
Ansal API Behind Japuria School,
Lucknow, Uttar Pradesh

Complainants

Versus

M/s Metro Education & Welfare Private Limited
Regd. Office at:- 6th floor, M3M Tee Point North Block
, Sector -65, Gurugram

ICICI Bank Limited

Respondents

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Pramod Gupta and Mayank Yadav (Advocates)
Shriya Takkar and Meenal Khanna (Advocates)

Complainants
Respondent no. 1

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

provision 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 complainants, 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 and location of the project | "M3M Crown Phase-1", Sector 111, Gurugram |
| 2. | Nature of the project | Residential |
| 3. | Project area | 11.6025 acres |
| 4. | DTCP license no. | 213 of 2022 dated 27.12.2022 valid up to 26.12.2027 |
| 5. | Name of licensee | Metro Education and Welfare Pvt. Ltd. and 2 others |
| 6. | RERA Registered/ not registered | 31 of 2023 dated 02.02.2023 valid up to 31.01.2028 |
| 7. | Name and location of the project | "M3M Crown Phase-1", Sector 111, Gurugram |
| 8. | Unit no. | CN TW-13-1801, 18 th Floor & Tower-13 (As per page no. 26 of the complaint) |
| 9. | Unit area admeasuring | 1825 sq. ft. (Super area) 1085 sq. ft. (Carpet Area) (As per page no. 26 of the complaint) |
| 10. | Allotment letter | 01.04.2023 (As per page no. 41 of the reply) |
| 11. | Date of agreement for sale | 15.05.2023 (As per page no. 22 of the complaint) |
| 12. | Possession clause | 7. POSSESSION OF THE APARTMENT 7.1 Schedule for possession of the said Apartment: (i) The developer agrees and |

| | | |
|-----|--------------------------------|--|
| | | understands that timely delivery of possession of the apartment along with right to use car parking (if applicable) to the allottee and the common areas to the association of allottee or the competent authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the agreement. (As per page no. 35 of the complaint) |
| 13. | Due date of possession | 31.01.2028 (As per RERA registration) |
| 14. | Total consideration sale | Rs.2,55,37,861/- (As per payment plan on page no. 66 of the complaint) |
| 15. | Amount paid by the complainant | Rs. 25,29,465/- (As stated by the complainants in the complaint) |
| 16. | Occupation Certificate | Not obtained |
| 17. | Offer of possession | Not offered |
| 18. | Demand letter | 01.04.2023, 02.04.2023, 05.05.2023 & 10.05.2023 (As per page no. 53, 55, 59 & 61 of the reply) |
| 19. | Pre-cancellation notice | 25.04.2023 & 07.06.2023 (As per page no. 58 & 71 of the reply) |
| 20. | Cancellation notice | 31.07.2023 (As per page no. 72 of the reply) |

B. Facts of the complaint:

3. The complainants have made the following submissions by filing the present complaint: -

- a) That the complainants who are NRI based in Qatar have entered into an agreement for sale for flat in apartment no. CN TW-13-1801, Tower-13 in

project M3M Crown Phase-1, Village Chauma, Sector-111, Gurugram, Haryana, dated 15.05.2023 which was duly registered with the office of Sub Registrar, Gurugram bearing registration no.1955 Book no.1 Vol no.86 on pages 128 to 175 dated 15.05.2023 and for a consideration of 2,55,37,861/- . It is also ought to mention herein that at the time of booking, the respondent no.1 also induced the complainant that they have tie-up with various banks for providing loan /finance facilities to the buyers including the ICICI bank i.e. the respondent no.2. Thus, on the advice and assurances of the respondents that the complainant shall have nothing to worry about funds problems etc, the complainant instantly went head for the booking of the said flat with the respondent no.1 and also deposited the above stated amount and also availed of the loan facility from the respondent no.2.

- b) That the complainants initially deposited a sum of Rs. 12,10,548/-towards booking amount and after duly entering into agreement of sale and respondent no.2 sanctioned a loan amount of Rs. 1,91,53,300/- to be paid in 300 months by the complainants and in pursuance to the agreement to sell a tripartite agreement was entered into between the complainants and both the respondent dated 15.02.2023 and the original copy of registered builder's buyer agreement was handed over to respondent no.2 and is still in their custody. The respondent no.2 was introduced to the complainants by the respondent no.1 and the respondent no.1 insisted that the complainants shall avail the loan only from respondent no.2 and upon the insistence of respondent no.1, complainants entered into the tripartite agreement with respondent no.2.

- c) That initially the bank vide email dated 07.06.2023 agreed to disburse the amount of 75,88,395/- to respondent no.1 and for the same a go ahead was given by the complainant on 09.06.2023. The complainant was shocked and surprised when they received a letter from the respondent no.1 i.e a letter dated 31.07.2023 bearing Ref No.: M1FLAP/00678/22-23 by post in which the respondent no.1 stated that they have cancelled the allotment. The said letter was sent by post despite the fact that respondents have the email id of the complainants and the complainants were unaware of the developments till they came back to country. It is pertinent to mention that primary mode of communication was email id. The complainant immediately contacted the respondents for the reasons of the cancellation, but for the best reasons known to them, the respondents deliberately avoided to explain it on one pretext and other and kept on delaying the matter. Finally, in the month of November, 2023 vide email 16.11.2023 from the respondent no.2 where it was stated that the respondent no.2 is not funding the M3M and on the same date also, the respondent no.2 intimated the complainant vide email that "Due to issue between builder and government authorities, same was put on hold." Due to aforesaid stated acts and conduct of the respondents, the complainant suffered lots of harassment and mental agony & pain. But this was not an end of suffering for the complainant.
- d) That the complainants were again shocked and surprised when they received another email from the respondent no.1 i.e email dated 19.12.2023 respondent no.1 proceeded to refund the acknowledged amount received by them to the tune. of 25,29,465 and standard Admin Deduction of 4,00,000/- and for refund an amount of 21,29,465/-.

- e) That the arbitrary cancellation of the allotment as well as standard admin deduction of 4 lakhs is not only illegal, unlawful, and unauthorized as there has been no fault on the part of the complainants. It is pertinent to mention here that respondent no.1 is not entitled to such deduction as per the builders' buyer agreement rather the complainant ought to be compensated for the alleged high handedness on the part of the respondents.
- f) That the respondent no.1 arbitrarily cancelled the allotment, despite the fact that they were bound by the terms of the above-mentioned builder buyer agreements which (are still) in full force and the tripartite agreement duly entered into between the parties thus, the respondent no.1 is duty-bound to transfer the flat to the complainant. The respondents have acted illegally as it is settled law that all the parties are bound by the tri partite agreement and because of which the proposed flat was mortgaged to the respondent no.2 and the respondent no.2 cannot eschew its responsibility more so when the complainants are duly fulfilling its part of the liability. The builder buyer agreement is still in custody of respondent no.2 and the respondent no.2 has maintained absolute silence upon the same.
- g) That the complainant & his wife has been under tremendous mental stress and agony due to the conduct of the respondents. None of the commitments of the respondents have come true. In these facts and circumstances, the complainant/s are now left with no option but to file the present complaint before this Hon'ble Authority, seeking justice and relief inter-alia in terms of the time-bound transfer, possession and compensation as this Hon'ble Authority may deem fit and deserving in the

present case and its circumstances and also seeking justice, which, the complainant so urgently and ardently deserved.

- h) That the compulsory registration of builder buyers' agreement shows that the proprietary right and interest in the flat is being transferred as section 54 of transfer of property act which defines sale states "sale is a transfer of ownership in exchange of price paid or promised or part paid and part promise...." In the present case the price of the Flat has not only been promised but also part paid therefore the sale has taken place which cannot be unilaterally cancelled.
- i) That it is stated that respondent no.2 has already created a charge upon the property and the agreement cannot be unilaterally cancelled without taking prior consent of the applicant as well as respondentno.1.

C. Relief sought by the complainants:

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

- I. Direct the respondent no. 1 to withdraw the cancellation and to restore the BBA and to transfer the flat to the complainant.
- II. Direct the respondent no. 2 to produce the tri-partite agreement entered between the parties.
- III. Direct the respondent no. 1 to not create the third-party rights.

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. 1

6. The respondent no. 1 has contested the complaint on the following grounds by way of reply dated 19.09.2024: -

- a) That after making independent enquiries and conducting market research and only after being satisfied with the projects of the respondent

- no.1, the complainants through their broker vide application form expressed their interest in booking a residential unit in project "M3M Crown Phase 1", Sector 111, Village Chauma, Gurgaon Manesar Urban Complex, Gurgaon, a mixed- land use project being developed by the Respondent No.1 herein under a brand license agreement with M/s. M3M India Pvt. Ltd. The complainants had signed the said application form after properly reading and understanding the clauses contained therein and on their own free will and volition.
- b) That in due consideration of the amount paid by the complainants and their commitments to comply with the terms of the booking/allotment and make timely payments of the demands, the respondent no.1 allotted apartment no. CN TW-13-1801 in the project 'M3M Crown Phase 1, vide allotment letter dated 01.04.2023. The complainants on their own free will and understanding of the legal import and effect had opted for construction linked PEMI plan. The cost of the apartment for carpet area admeasuring 1085 sq. ft. was Rs. 2,55,37,861/- plus other applicable charges.
- c) That in terms of the payment plan opted by the complainants, the respondent no.1 raised a demand vide demand letter dated 01.04.2023 due within 5 days of booking for an amount of Rs. 10,00,000/- payable on or before 06.04.2023. The respondent no.1 as per the payment plan opted by the complainants raised the demand vide letter dated 02.04.2023 which was due within 15 days of booking for an amount of Rs. 25,53,787/- which was inclusive of the previous outstanding dues of Rs. 10,00,000/- wherein an amount of Rs. 10,00,000/- was payable immediately and Rs. 15,53,787/- was payable on or before 16.04.2023.

- d) Thereafter the respondent no 1 had sent three copies of buyer's agreement along with the letter dated 03.04.2023 for due execution at their end. Further, the respondent no.1 vide email 06.04.2023 requested the complainants to share the signed copy of the buyers agreement and also requested the complainants to come forward for the registration process. Since the complainants failed to clear the dues raised vide the afore-mentioned demand letter, the respondent no.1 was constrained to issue pre-cancellation letter dated 25.04.2023 reminding the complainants to remit the outstanding dues within 7 days from the issuance of this notice, failing which the respondent no.1 company shall be constrained to cancel the booking.
- e) Thereafter as per the payment plan opted by the complainants, the respondent no.1 raised the demand vide letter dated 05.05.2023 due within 60 days of booking for an amount of Rs. 76,61,360/- which was inclusive of the previous outstanding dues of Rs. 25,53,787/- wherein an amount of Rs. 25,53,787/- was payable immediately and Rs. 51,07,573/- was payable on or before 31.05.2023. The respondent no.1 adhering to the payment plan opted by the complainants again raised a demand vide letter dated 10.05.2023 which was due on commencement of PCC for an amount of Rs. 1,02,15,146/- which was inclusive of the previous demands of Rs. 76,61,360/- wherein an amount of Rs. 76,61,360/- was payable immediately and Rs. 25,53,786/- was payable on or before 29.05.2023.
- f) That the complainants had earlier expressed their interest to book a ready to move in unit in an OC received project of the Associate Company M/s. M3M India Pvt. Ltd. On the request of the Complainants and post discussion with them, the amount paid towards the booking of the unit in

the OC received project of the Associate Company M/s. M3M India Pvt. Ltd. was transferred to the unit in question without any deductions. Accordingly, Rs. 6,95,559/- was transferred towards the unit in question without any deductions on 12.05.2023.

- g) That after constant follow ups with the complainants, the buyer's agreement was executed between the parties on 15.05.2023 and the same was duly registered in the office of the sub registrar. The buyer's agreement sets out the rights and liabilities of both the parties. The possession of the apartment was to be delivered on or before 31.01.2028.
- h) That post the execution of the buyer's agreement, the complainants belatedly only made a part payment of rs. 13,33,906/- on 16.05.2023 which has been duly acknowledged by the respondent no.1 vide receipt dated 16.05.2023. Thereafter the complainants vide email dated 24.05.2023 approached the respondent no.1 and requested that the funds to the tune of Rs. 5,00,000/- paid against their unit in the project "M3M Jewels" being developed by Associate Company M/s. M3M India Pvt. Ltd. be transferred towards the unit in question. The respondent no.1 being a customer-oriented company in response to the aforesaid vide email dated 25.05.2023 acceded to the said request of the complainants. Accordingly, Rs. 5,00,000/- was transferred towards the unit in question on 25.05.2023 without any deductions and the same was intimated to the complainants vide email dated 26.05.2023.
- i) That subsequently the complainants wanted to avail a loan facility from respondent no.2 against the purchase of said apartment and a Tripartite Agreement dated 07.06.2023 was executed between the complainants, respondent no.2 and the respondent no.1 company and accordingly a

permission to mortgage dated 07.06.2023 was issued. Since the complainants did not come forward to clear the outstanding dues raised vide demand letters, the respondent no.1 issued a pre-cancellation letter dated 07.06.2023 to the complainants finally calling upon the complainants to make payment of pending dues along with interest within 07 days of receipt of the said letter, failing which the allotment/booking shall be cancelled/terminated.

- j) That even after the issuance of the abovementioned pre-cancellation letters dated 25.04.2023 and 07.06.2023, the complainants failed to take advantage of this opportunity and failed to make the payment of the outstanding dues and continued to breach the terms of the buyer's agreement. As a consequence of the same the respondent no.1 was constrained to terminate the allotment of the complainants vide cancellation letter dated 31.07.2023 which was duly dispatched. The cancellation letter is as per the terms of the buyer's agreement duly executed between the parties. The complainants were again informed about the cancellation vide email dated 31.10.2023. Post cancellation, the complainants approached the respondent no.1 vide email dated 01.11.2023 and requested to reinstate the unit. The respondent no.1 being a customer-oriented company acceded to the request of the complainants subject to the receipt of the outstanding dues. It is a matter of fact that respondent no.2 had stopped providing loans for the reasons best known to the complainant. further, it is relevant to mention here that the respondent no.1 had given options of different banks from where the complainants can avail the loan as the said fact is admitted from the email dated 01.11.2023 annexed with the complaint. Despite the leverage as

well as options for different banks given to the complainants, the complainants failed to make the payment of the outstanding dues against the unit in question. The respondent no.1 vide email dated 08.11.2023 intimated to the complainants that the unit stands cancelled.

k) That the respondent no.1 was constrained to cancel/terminate the unit as per the buyer's agreement on account of non-payment of outstanding amounts. The complainants had paid an amount of Rs. 25,29,465/- (being less than 10% of sales consideration) against the sales consideration of Rs. 2,55,37,861/- plus other charges. The respondent no.1 is incurring losses/damages on account of the breach of the terms of the buyer's agreement, which the complainants are liable to pay to the respondent no.1 company as per the terms of the buyer's agreement. The losses suffered by the respondent no.1 are as follows:

1. Earnest Money - Rs. 25,53,786.10/- It is submitted that the complainants herein had agreed to the forfeiture of the earnest money, in the event of failure to comply with the terms of the buyer's agreement and perform its obligations.
2. Interest - Sum of Rs.3,77,372/- was the interest payable by the complainants for the delayed payments.

l) Thus, the total loss calculated comes to Rs. 29,31,158.1/- (approx.) which includes earnest money deduction @10% to the tune of Rs. 25,53,786.10/- and further sum of Rs.3,77,372/- was the interest payable by the complainants for the delayed payments. The complainants are raising these frivolous issues as an afterthought in order to unjustly enrich themselves. It is submitted that the respondent no.1 has complied with all

its contractual obligations. The respondent no.1 had also given a gift to the tune of Rs. 3,00,000/-, which is a loss suffered by the respondent no.1 .

- m) Thereafter the respondent no.1 vide email dated 19.12.2023 acknowledged the refund of the amount and requested the complainants to provide the necessary documentation for initiating the fund transfer, however to no avail.
- n) That without prejudice to its rights, being a customer-oriented company, to bring closure to the matter the respondent no.1 refunded the entire amount paid by the complainants without any deductions (Earnest Money, Statutory Dues, etc.) i.e. Rs.25,29,465/- as settlement of all the dues of the complainants in two installments to the tune of Rs. 12,64,733/- into the account of complainant No.1 vide RTGS and Rs. 12,64,732/- into the account of complainant No.2 vide NEFT on 29.04.2024. Though the respondent no.1 as per the terms of buyer's agreement was liable to forfeit the entire amount deposited by the complainants being less than 10% of sales consideration.
- o) That the complainants with a mala fide intent, transferred back the entire refund amount of Rs. 25,29,465/- to the respondent no.1, which is evident vide email dated 06.05.2024. Accordingly, as per the terms of the buyer's agreement the entire amount of Rs.25,29,465/- has been forfeited by the respondent no.1. thus, the complainants are not entitled to any relief whatsoever.

7. That there is no reply filed by the respondent no. 2 i.e ICICI Bank Limited.

Therefore, the defence of the respondent no. 2 is hereby struck off.

8. All other averments made in the complaint were denied in toto.

9. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

10. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

11. 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

12. 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.

13. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on relief sought by the complainants.

F.I Direct the respondent no. 1 to withdraw the cancellation and to restore the BBA and to transfer the flat to the complainant.

F.II Direct the respondent no. 2 to produce the tri-partite agreement entered between the parties.

F.III Direct the respondent no. 1 to not create the third-party rights.

14. In the present case, the complainants booked a unit in the project of the respondent namely "M3M Crown Phase-1" situated at Sector- 111, Gurugram and a provisional allotment letter dated 01.04.2023 was issued in their favour. Subsequently, a builder buyer agreement was executed between the parties on 15.05.2023, wherein unit no. CN TW-13-1801, 18th Floor & Tower-13, admeasuring 1085 sq. ft. carpet area and 1825 sq. ft. super area was allotted to the complainants.

15. Further, the Authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit by 31.01.2028. Therefore, the due date of handing over possession comes out to be 31.01.2028. The complainant has paid an amount of Rs. 25,29,465/- against the sale consideration of Rs. 2,55,37,861/-.

16. The respondent raised a plea that the unit allotted to the complainant had already been cancelled by the respondent vide notice of termination dated 31.07.2023 on account failure of the complainants to make payment of the outstanding dues. To corroborate further, the respondent placed on record demand letters dated 01.04.2023, 02.04.2023, 05.05.2023 & 10.05.2023, pre-cancellation letter dated 25.04.2023 and 07.06.2023 followed by notice of

termination dated 31.07.2023 being sent by the respondent to the complainants to make payment of the outstanding dues. Now, the question before the authority is whether the cancellation letter dated 31.07.2023 is valid or not, in the eyes of law?

17. The respondent has issued a pre-cancellation notice dated 25.04.2023 and 07.06.2023 was sent to the complainants giving an opportunity to make outstanding payments amounting to Rs.25,63,942/- and Rs. 77,16,465/- with interest within 7 days failing which the agreement and allotment will stand cancelled.
18. The Authority has gone through the payment plan of the buyer's agreement executed between the parties. Further, on considering the documents available on record as well as submissions made by both the parties, it can be ascertained that the complainants have paid an amount of Rs.25,29,465/- (which is less than 10% of the sale consideration). The respondent has sent pre-cancellation letter dated 25.04.2023 and 07.06.2023 to make payment of the outstanding amount. The Authority is of considered view that the respondent is right in raising demands as per payment plan agreed between the parties. However, the complainants continued with their default and again failed to make payment even after pre-cancellation letter dated 25.04.2023 and 07.06.2023 leading to cancellation of unit vide letter dated 31.07.2023.
19. Further, Section 19(6) and Section 19(7) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. The respondent has given sufficient opportunities to the complainants and finally cancelled the allotted unit of the complainant vide letter dated 31.07.2023. Hence, cancellation of the unit in view of the terms and conditions of the buyer's agreement dated 15.05.2023 is held to be valid.

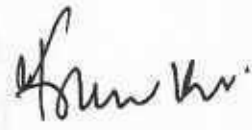
20. Now, the second issue for consideration arises as to whether after cancellation the balance amount after deduction of earnest money of the basic sale consideration of the unit has been sent to the claimant or not. The issue with regard to deduction of earnest money on cancellation of a contract arose 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."

21. It is important to note that the amount paid by the complainant i.e., Rs. 25,29,465/- constitutes to only 9.90% of the sale consideration of Rs. 2,55,37,861/-
- 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, the respondent can forfeit the entire amount paid by the complainants i.e., Rs.25,29,465/- against the allotted unit as it is less than the earnest money as well as 10% of the consideration amount. Accordingly, upon cancellation, the said amount was forfeited by the respondent as earnest money, and no refund was found to be due.
23. In view of the above, the Authority is of the considered view that the complainant is not entitled to any refund, as the amount paid was less than 10% of the sale consideration, and the unit was cancelled in 2025. Thus, the complaint is hereby dismissed.
24. Complaint stands disposed of.
25. File be consigned to the registry.



Arun Kumar
(Chairman)

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 07.04.2026