

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

Date of decision: 27.01.2026

<b>NAME OF THE BUILDER</b>		M/s SS Group Pvt. Ltd.	
<b>PROJECT NAME</b>		"The Leaf", Sector 85, Gurugram	
<b>Sr. No.</b>	<b>Case No.</b>	<b>Case title</b>	<b>Appearance</b>
1.	CR/4413/2025	Savitri Tiwari Vs. S.S Group Private limited	Sh. Yashpal Kalra Advocate  Sh. Dhruv Dutt Sharma Advocate
2.	CR/4417/2025	Anamika Gera Vs. S.S Group Private limited	Sh. Yashpal Kalra Advocate  Sh. Dhruv Dutt Sharma Advocate
<b>CORAM:</b> Shri Arun Kumar			<b>Chairman</b>
Shri Phool Singh Saini			<b>Member</b>

**ORDER**

- This order shall dispose of both the complaint titled above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "The Leaf" situated at Sector-85, Gurugram being developed by the same respondent/promoter i.e., "M/s S.S. Group Pvt. Ltd." The terms and conditions of the allotment letter, buyer's agreements and the fulcrum of the issue involved in all these cases pertain to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.
3. The details of the complaints, status of reply, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given below:

<b>Project Name and Location</b>	"The Leaf", Sector 85, Gurugram
<b>DTCP License No. and validity</b>	81 of 2011 dated 16.09.2011 Validity up to 15.09.2024 Licensed area 11.9 Acres
<b>RERA Registered or Not Registered</b>	Registered 23 of 2019 dated 01.05.2019.
<b>Possession clause as per the buyer's agreement</b>	<p><b>8. Possession</b></p> <p><b>8.1 Time of handing over the possession</b></p> <p>8.1 (a) subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc. as prescribed by the developer, the developer proposes to handover the possession of the flat within a period of thirty six months from the date of signing of this agreement. The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 180 days, after the expiry of thirty-six months or such extended period, for applying and obtaining occupation certificate in respect of the Group Housing Complex.</p> <p>[Page 32 of complaint]</p>
<b>Occupation certificate</b>	14.06.2019

Sr. No.	Complaint No., Case Title, Date of filing of complaint and reply status	Unit no. and size	Execution of BBA Due date of possession	Total Sale Consideration / Total Amount paid by complainant	Offer of possession (OOP) and cancellation letter										
1.	<b>CR/4413/2025</b>  Savitri Tiwari Vs. S.S. Group Private Limited  <b>DOF: 04.09.2025</b> <b>Reply: 18.11.2025</b>	GF-100, Ground floor [page 19 of complaint]  227 Sq. Ft. (super area) [page 19 of complaint]	24.09.2015 [page 18 of complaint]  24.03.2019 (Calculated from the date of signing of buyer agreement including grace period of 180 days)	<b>BSP-₹31,23,974/-</b> (Page 47 of complaint)  <b>AP-₹9,61,452/-</b> (as alleged by the complainant)	<b>OOP: 31.07.2019</b>  <b>Cancellation letter: 24.02.2021</b>										
2.	<b>CR/4417/2025</b>  Anamika Gera Vs. S.S. Group Private Limited  <b>DOF: 04.09.2025</b> <b>Reply: 18.11.2025</b>	GF-49, Ground floor [page 19 of complaint] 205 Sq. Ft. (super area) [page 19 of complaint]	14.09.2015 [page 18 of complaint]  14.03.2019 (Calculated from the date of signing of buyer agreement including grace period of 180 days)	<b>BSP-₹25,81,360/-</b> (Page 47 of complaint)  <b>AP-₹7,93,560/-</b> (paid till 27.08.2014) (as alleged by the complainant)	<b>OOP: Not Offered</b>  <b>Cancellation letter: 23.02.2021</b>										
<b>The complainant herein is seeking the following reliefs:</b> 1. Refund & Litigation cost .															
<b>Note:</b> In the table referred above certain abbreviations have been used. They are elaborated as follows: <table border="0"> <tr> <td><b>Abbreviation</b></td> <td><b>Full form</b></td> </tr> <tr> <td>DOF</td> <td>Date of filing of complaint</td> </tr> <tr> <td>BSP</td> <td>Basic Sales Price</td> </tr> <tr> <td>AP</td> <td>Amount paid by the allottee/s</td> </tr> <tr> <td>OOP</td> <td>Offer of Possession</td> </tr> </table>						<b>Abbreviation</b>	<b>Full form</b>	DOF	Date of filing of complaint	BSP	Basic Sales Price	AP	Amount paid by the allottee/s	OOP	Offer of Possession
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DOF	Date of filing of complaint														
BSP	Basic Sales Price														
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OOP	Offer of Possession														

4. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/4413/2025 titled as "Savitri Tiwari Vs. M/s S.S. Group Pvt. Ltd."** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

**A. Unit and project related details**

5. 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	"The Leaf", Sector 85, Gurugram
2.	Nature of project	Group Housing Complex
3.	RERA Registered/ Not Registered	Registered 23 of 2019 dated 01.05.2019
4.	<b>DTPC License no.</b>	81 of 2011 dated 16.09.2011 Validity up to 15.09.2024 Licensed area 11.9 Acres
5.	Date of application	21.08.2013 (page 19 of complaint)
5.	Unit no.	GF-100, Ground floor [page 19 of complaint]
6.	Unit measuring	227 Sq. Ft. (super area) [page 19 of complaint]
9.	Date of execution of floor buyer's agreement	24.09.2015 [page 18 of complaint]
10.	Possession clause	<p><b>8. Possession</b></p> <p><b>8.1 Time of handing over the possession</b></p> <p>8.1 (a) subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc. as prescribed by the developer, <b>the developer proposes to handover the possession of the flat within a period of thirty six months from the date of signing of this agreement.</b> The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 180 days, after the expiry of thirty-six months or such extended period, for applying and obtaining</p>

		occupation certificate in respect of the Group Housing Complex. [Page 32 of complaint]
11.	Due date of possession	24.03.2019 (Calculated from the date of signing of buyer agreement including grace period of 180 days)
12.	Total sale consideration	Rs. 31,23,974/- (page 47 of complaint)
13.	Total amount paid by the complainant	Rs. 9,61,452/- (paid till 08.09.2014) (as alleged by the complainant)
14.	Occupation certificate dated	14.06.2019 (page 47 of reply)
15.	Offer of possession	31.07.2019
16.	Demand letter	06.10.2015, 18.03.2016, 03.09.2016, 24.01.2017, 24.04.2017, 17.12.2015, 16.01.2016, 19.01.2017, 05.04.2017.
17.	Notice for termination	02.09.2019 along with postal receipt dated 05.06.2021 (Page no. 45, 45 a & 46 of complaint)
18.	Cancellation letter	24.02.2021 (page 64 of reply)
19.	Handing over of possession in favour of third party	31.01.2024 (page 66 of reply)

**B. Facts of the complaint:**

6. The complainant has made the following submissions: -

1. That in the year 2013, the respondent through its marketing executives and advertisement done through various mediums and means approached the complainants with an offer to sell a unit in the said project. Being induced by the said offer and the representations made by the executive of the respondent to be true and correct, the complainants agreed to purchase a unit in the said project. The respondent assured the customers that they have secured all necessary sanctions and approvals from appropriate authorities for construction and completion of the real estate project.

- II. That the complainant booked unit no. GF-100 in the commercial complex at sector - 86, Gurgaon, Haryana. The type of premises was a retail shop located on the ground floor bearing the no. as mentioned above including the super area of 227 sq. ft. involving a total consideration of 30,89,924/-.
- III. That the complainant paid an advance amount of Rs. 3.25,000/- bearing cheque no. 486312 on 22.08.2013 and after this payment the respondent issued a provisional registration letter bearing no. SSG/commercial/registration/001 on 27.11.2013.
- IV. That after making the following payments the complainant and the respondent entered into a Buyer's agreement on 24.09.2015. That as per clause 1.2 of the agreement the base sale price of the shop was Rs.27,28,480 exclusive of preferential location charges amounting Rs.1,81,600, external development charges amounting one lakh twelve thousand eight hundred nineteen only), infrastructure development charges amounting Rs. 17,025/-.
- V. That as per clause 8.1 of the buyer's agreement the developer proposes to hand over the possession of the premises within a period of 36 months from the date of signing of the buyer's agreement and that the developer shall be entitled to a grace period of 180 days after the expiry of 36 months for obtaining the occupation certificate in respect of the commercial complex.
- VI. That as per clause 8.3 of the buyer's agreement If the developer is not able to hand over the possession to the allottee, then the allottee shall be liable to receive compensation for delay at the rate of Rs. 7/-per sq. ft. per month of the super area for a period of 12 months or till the handing over of the possession, whichever is earlier.
- VII. That the complainant had contacted the respondents several times

- and requested about the status of the said premises which the respondent has failed to answer till date.
- VIII. that the respondent has been using the hard-earned money of the complainant, a whopping amount of Rs. 9,61,452/- without paying any interest and by making false statements throughout the entire span.
- IX. That the respondent is trying to take advantage and enjoy the hard-earned money of the complainant without any interest. They have resorted to fraud, concealment of facts and illegal demands throughout the period which tantamount to unfair trade practice.
- X. that the said agreement is a one sided, unfair and unreasonable agreement as all the major clauses therein solely protect the interest of the respondent. The wordings have been chosen in a very smart manner so as to provide maximum benefit to the respondent in giving possession of the said unit to the complainant.
- XI. That the conduct of the respondent as narrated above clearly shows that they were only interested in collecting huge sums from the prospective purchasers despite knowing fully well that the project would take years to get completed. The respondents deliberately made fake, wrongful and fraudulent promises to induce the complainant and other prospective buyers and made them victims of their malice filled plans and have enjoyed large sum of money free of interest for years together.
- XII. That the respondent falsely represented regarding the delivery date of possession and have resorted to unfair trade practices while transacting with the complainant. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainants to buy the said unit on the basis its false and frivolous promises, which the respondent never intended to fulfill. The

respondent in its advertisements had represented falsely regarding the area, price, quality and the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainants.

- XIII. That the complainants engaged with a counsel and the counsel sent a notice on behalf of the complainant regarding delayed possession and illegal cancellation of the unit on January 30, 2023. It is further submitted that the respondent, sent a reply on March 31, 2023 to the notice sent by the previous counsel of the complainant citing false and frivolous reasons for the cancellation of the complainant unit. However, no meaningful action or legal recourse was pursued thereafter by the previous counsel, causing significant delay and prejudice to the complainants. The complainants, being laypersons, remained under the belief that necessary steps were being taken by the said counsel. Upon realizing the continued inaction and lack of communication the complainants are now pursuing the present complaint through new representation.
- XIV. That the complainants further declare that the matter regarding which this complaint has been made is not pending before any court of law and any other Authority or any other tribunal on the subject matter.

**C. Relief sought by the complainant:**

7. The complainant has sought following relief(s):

- I. Direct the respondent to handover the said unit to the complainant within a reasonable time period/return the amount of Rs. 9,61,452/- along with @ 18% per annum on the amount taken till date.
- II. Direct the respondent to pay legal expenses of Rs. 1,00,000/- incurred by the complainant.

**D. Reply by respondent:**

- i. That in 2013, the complainant applied for allotment of shop bearing unit no. G-100 on ground floor measuring 227 sq. ft super area in the upcoming commercial complex at Sector-86, Gurgaon to be developed by the respondent and made a payment of Rs. 3,25,000/-. Subsequently, a buyer's agreement dated 24.09.2015 was executed between the complainant and respondent.
- ii. That the complainant has failed to make timely payments in accordance with the terms and conditions of the buyer's agreement as well as the payment plan annexed thereto, and therefore, the present complaint is liable to be rejected. Out of the total sale consideration of Rs. 31,23,974/- (including IFMSD of Rs. 34,050/-), the complainant made payment of Rs. 9,61,452/- only, which is approximately 31% of the agreed sale consideration. As per the construction linked payment plan opted by the complainant, an amount of Rs. 24,81,141/- was outstanding and payable by the complainant as on 24.02.2021. Despite having expressly agreed to adhere to the payment plan, the complainant willfully defaulted in making payments towards the sale consideration of the unit, and thereby committed a breach of her contractual obligations.
- iii. That a demand letter dated 06.10.2015 for Rs. 3,39,698/- (including interest) was issued to the complainant towards the milestone due on 'commencement of 1<sup>st</sup> basement roof slab', however, despite receipt of the said demand letter, the complainant failed to make any payment. Thereafter, reminders dated 17.11.2015 and 07.12.2015 were sent by email to the complainant to clear the outstanding dues, yet no payment was made by the complainant. Thereafter, another reminder dated 17.12.2015 was issued to the complainant to make payment of Rs. 3,49,698/- (including interest), yet no payment was made by the

complainant. Thereafter, another reminder dated 16.01.2016 was issued to the complainant to make payment of Rs. 3,54,460/- (including interest), yet again no payment was made by the complainant. Also, reminders dated 13.01.2016 and 23.02.2016 were issued to the complainant informing about the status of the project and requesting her to clear the outstanding dues, yet the complainant failed to make any payment. Thereafter, another demand letter dated 18.03.2016 for Rs. 6,86,737/- (including interest) was issued to the complainant towards the milestone due on 'commencement of ground floor slab', but the complainant again failed to make any payment despite receipt thereof. Thereafter, reminder dated 21.04.2016 was sent by email to the complainant to clear the outstanding dues, yet no payment was made by the complainant. Another demand letter dated 03.09.2016 for Rs. 10,65,457/- (including interest) was issued to the complainant towards the milestone due on 'commencement of 3<sup>rd</sup> floor roof slab', however, despite receipt of the same, no payment was made by the complainant. Thereafter, a reminder dated 19.01.2017 was issued to the complainant to make payment of Rs. 11,27,827/- (including interest), yet no payment was made by the complainant. Another demand letter dated 24.01.2017 for Rs. 14,55,020/- (including interest) was issued to the complainant towards the milestone due on 'commencement of top floor slab', but the complainant failed to make any payment. Thereafter, a reminder dated 05.04.2017 was issued to the complainant to make payment of Rs. 14,98,082/- (including interest), yet no payment was made by the complainant. Thereafter, another demand letter dated 24.04.2017 for Rs. 19,97,416/- (including interest) was issued to the complainant towards the milestone due on 'commencement of brick work' and

- 'commencement of plaster work', but the complainant again failed to make any payment despite receipt thereof.
- iv. That vide Letter dated 06.08.2018, the complainant was called upon by the respondent to undertake fit out works in the unit so that possession of the unit could be proceeded with upon receipt of the Occupation Certificate.
  - v. That after receipt of the Occupation Certificate dated 14.06.2019, the respondent offered the possession of the said unit to the complainant vide offer of possession letter dated 31.07.2019 and further called upon the complainant to make payment of the outstanding dues.
  - vi. That since, the complainant was in continuous and willful default in making payments, despite repeated demands and reminders, the Respondent was constrained to issue a notice for cancellation dated 02.09.2019, thereby granting the complainant a final opportunity to clear all outstanding dues within 30 days, failing which the allotment was to stand cancelled. Despite receipt of the said notice, the complainant once again failed to come forward and make the payment.
  - vii. That upon failure of the complainant to make the payment, the Respondent was therefore constrained to cancel the booking/allotment of the complainant vide cancellation letter dated 24.02.2021 and forfeit the amount paid by the complainant. Consequently, the complainant is left with no right, title, interest etc. in respect of the said unit. Furthermore, as per clause 1.2(h) of the buyer's agreement, the respondent is entitled to forfeit the earnest money along with processing fee, interest due and other amount of non-refundable nature.
  - viii. That subsequent to the cancellation of the booking / allotment of the complainant, the said unit was re-allotted to Mr. Vinod Kumar Sharma

and Mrs. Saroj Kumari Sharma and possession of the unit was handed over to them on 31.01.2024. The conveyance deed in favor of the new allottees is scheduled to be registered in the coming days.

8. 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:**

9. 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**

10. 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**

11. 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.*

12. 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 Direct the respondent to refund the paid-up amount.**

13. The complainant was allotted an apartment bearing no. GF-100, on the ground floor, admeasuring 227 sq. ft., in the project of the respondent named "The Leaf" at Sector-85, Gurugram, vide buyer's agreement dated 24.09.2015, for a total sale consideration of Rs.31,23,974/-. The complainant has submitted that, as per clause 8.1 of the agreement, the promoter assured to hand over possession of the apartment within a period of 36 months from the date of signing of the agreement. The allottee also agreed and understood that the promoter would be entitled to a grace period of 180 days after the expiry of the said period of 36 months, or such extended period, for applying for and obtaining the Occupation Certificate in respect of the group housing complex. Accordingly, the due date for handing over possession comes out to be 24.03.2019. The complainant has paid an amount of Rs.9,61,452/- against the total sale consideration of Rs.31,23,974/-. The complainant has now filed the present complaint seeking the relief of refund of the amount paid by her.
14. The counsel for the respondent submits that the complainant has paid approximately 31% of the agreed sale consideration. As per the construction-linked payment plan opted by the complainant, an amount of Rs.24,81,141/- remained outstanding. Despite having expressly agreed to adhere to the payment plan, the complainant wilfully

defaulted in making payments towards the sale consideration of the unit and thereby committed a breach of her contractual obligations. The respondent issued various reminder/demand letters dated 06.10.2015, 17.12.2015, 16.01.2016, 18.03.2016, 03.09.2016, 19.01.2017, 24.01.2017, 05.04.2017, and 24.04.2017 for payment of the outstanding dues. On account of non-payment, the respondent issued a final notice for termination letter dated 02.09.2019, along with a postal receipt dated 05.06.2021, leading to cancellation of unit vide letter dated 24.02.2021. Third-party right has also been created by the respondent on 31.01.2024. Now, the question before the Authority is whether the said cancellation is valid in the eyes of law?

15. Upon perusal of the documents placed on record, it is observed that the complainant has paid only Rs.9,61,452/- up to 08.09.2014, as alleged by the complainant. Thereafter, the respondent issued reminder/demand letters dated 06.10.2015, 17.12.2015, 16.01.2016, 18.03.2016, 03.09.2016, 19.01.2017, 24.01.2017, 05.04.2017, and 24.04.2017 for payment of the outstanding dues. A final notice for cancellation dated 02.09.2019 was sent to the complainant, giving an opportunity to make the outstanding payment within a period of 30 days, failing which the agreement would stand cancelled. However, the complainant did not pay any heed to the said notices. Thereafter, a final cancellation letter dated 24.02.2021 was issued in respect of the subject unit, and the entire amount paid by the complainant was forfeited.
16. The Authority has gone through the payment plan (page 47 of the complaint) of the buyer's agreement executed between the parties. Further, upon considering the documents available on record as well as the submissions made by both the parties, it is ascertained that the complainant has paid only an amount of Rs.9,61,452/- against the

subject unit. The respondent issued demand/reminder letters dated 06.10.2015, 17.12.2015, 16.01.2016, 18.03.2016, 03.09.2016, 19.01.2017, 24.01.2017, 05.04.2017, and 24.04.2017 for payment of the outstanding amount. The Authority is of the considered view that the respondent was justified in raising the demands as per the payment plan agreed upon between the parties. However, the complainants continued to remain in default and failed to make the payment even after the notice for cancellation dated 02.09.2019, which ultimately led to the cancellation of the unit vide letter dated 24.02.2021.

17. As per clause 1.2(f) read with clause 6 of the buyer's agreement executed between the parties, the respondent has a right to cancel the unit and forfeit the earnest money where an allotment of the unit is cancelled due to default of complainant to make timely payments as per the agreed payment plan. Clause 1.2(f) and Clause 6 of the buyer's agreement are reproduced under for ready reference:

***"f) Earnest Money***

*The Flat Buyer(s) has entered into this Agreement on the condition that out of the amount(s) paid/payable by him/her/them towards the SALE PRICE, the Developer shall treat 10% of the SALE PRICE as earnest money (hereinafter referred to as the "Earnest Money") to ensure fulfilment, by the Flat Buyer(s) of the terms and conditions as contained in the application and this Agreement.*

*The Flat Buyer(s) hereby authorize the Developer to forfeit out of the amounts paid/payable by him/her, the EARNEST MONEY as aforementioned together with the processing fee, any interest paid, due or payable, any other amount of a non-refundable nature in the event of the failure of the Flat Buyer(s) to perform his/her/their obligations or fulfil all/any of the terms and conditions set out in this Agreement executed by the Flat Buyer(s) or in the event of failure of the Flat Buyer(s) to sign and return this Agreement in its original form to the Developer within thirty (30) days from the date of its dispatch by the Developer.*

*The Flat Buyer(s) agrees that the conditions for forfeiture of EARNEST MONEY shall remain valid and effective till the execution and registration of the conveyance deed for the said FLAT and that the Flat Buyer(s) hereby*

*authorizes the Developer to effect such forfeiture without any notice to the Flat Buyer(s) and the Flat Buyer(s) has / have agreed to this condition to indicate his/her/their commitment to faithfully fulfil all the terms and conditions contained in his/her/their application and this Agreement.”*

**“6. TIME IS THE ESSENCE**

*.....In case of delay of 60 days in making payment by the Flat Buyer(s) to the Developer as per the Schedule of Payments as stated in Annexure I, the **Developer shall have the right to terminate the Agreement and forfeit the EARNEST MONEY** as detailed herein above. The Developer shall also be entitled to charge interest @18% p.a. from the due date of Instalment, as per the Schedule of payments, till the date of payment.....*

18. Further, Section 19(6) and Section 19(7) of the Act of 2016 cast an obligation on the allottees to make necessary payments in a timely manner. The respondent provided sufficient opportunities to the complainants and ultimately cancelled the allotted unit of the complainant vide letter dated 24.02.2021. Hence, the cancellation of the unit, in view of the terms and conditions of the buyer’s agreement dated 24.09.2015, is held to be valid.
19. Now, the second issue for consideration arises as to whether after cancellation the balance amount after deduction of earnest money of the sale consideration of the unit has been sent to the claimants 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."*

20. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of Regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent can't retain more than 10% of sale consideration as earnest money on cancellation. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the basis sale consideration and return the remaining amount along with interest at the rate of 10.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of termination/cancellation i.e., 24.02.2021 till the actual date of refund of

the amount within the timelines provided in Rule 16 of the Haryana Rules 2017 *ibid*.

**F.II Litigation cost.**

21. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

**G. Directions of the Authority:**

22. 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. Cancellation is valid. The respondent is directed to refund the paid-up amount of Rs.9,61,452/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration along with interest at the prescribed rate, i.e., 10.80% per annum from the date of cancellation, i.e., 24.02.2021 till the actual date of refund of the amount within the timelines provided in Rule 16 of the Rules, 2017, *ibid*. The amount already paid by the respondent to the

- complainants, if any may be adjusted from the refundable amount and shall return the balance amount to the complainants.
- 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.
23. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
24. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
25. Files be consigned to the registry.



**(Phool Singh Saini)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**27.01.2026**



**Arun Kumar)**  
Chairman