

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

Complaint no. : 2356 of 2021
Date of filing of complaint: 11.06.2021
Date of Order: 27.01.2026

Pranav Syal
R/o: 85-H, Bhai Randhir Singh Nagar, Ludhiana,
Punjab-141012

Complainant

Versus

Emaar MGF Land Ltd.
Regd. Office at: Emaar MGF Business Park,
Mehrauli Gurgaon Road, Sikandarpur Chowk,
Sector-28 Gurugram-122002

Respondent

CORAM:

Shri Arun Kumar

Chairman

Shri Phool Singh Saini

Member

APPEARANCE:

Sh. Sanjeev Kumar Sharma (Advocate)

Complainant

Sh. Dhruv Rohatgi (Advocate)

Respondent

ORDER

1. This 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Emerald Hills Floors", Sector 65, Gurugram, Haryana
2.	Nature of project	Commercial
3.	Unit no.	EPS-FF-080, Emerald Plaza (As per page no. 26 of the complaint)
4.	Unit area	720.83 sq. ft. (Super Area) (As on page no. 26 of the complaint)
5.	Application for booking	26.12.2010 (As per page no. 19 of the complaint)
6.	Provisional Allotment	20.01.2011 (As per page no. 26 of the complaint)
7.	Date of execution of buyer's agreement	Not executed
8.	Possession clause	<i>N.A</i>
9.	Due date of possession	To be ascertained
10.	Basic Sale Consideration	Rs.43,24,980/- (As per payment schedule on page no. 27 of the complaint)
11.	Total sale consideration	Rs.50,99,091/- (As per SOA on page no. 54 of the reply)
12.	Amount paid by the complainant	Rs.15,97,341/- (As per SOA on page no. 54 of the reply)
13.	Reminder letter	03.08.2012 & 20.08.2012 (As per page no. 43 & 44 of the reply)
14.	Payment request letter	28.08.2012, 14.02.2013, 06.03.2013, 03.04.2013, 14.05.2013, 04.06.2013, 05.08.2013, 05.09.2013 & 17.10.2013 (As per page no. 45-53 of the reply)
15.	Final notice	04.09.2012 (As per page no. 56 of the reply)
16.	Cancellation letter	08.01.2014 (As per page no. 28 of the complaint)
17.	Occupation certificate	08.01.2018

		(As per page no. 24 of the reply)
18.	Offer of possession	Not offered
19.	Provisional allotment in the favour of other allottee i.e., Renu Ratewal	11.09.2018 (As per page no. 18 of the reply)
20.	Legal notice for possession	18.03.2019 (As per page no. 30 of the complaint)
21.	Conveyance deed in favour of third party	27.03.2019 (As per page no. 65 of the reply)

B. Facts of the complaint:

3. The complainant has made the following submissions:
 - I. That the respondent i.e., M/s Emaar MGF Land Ltd obtained license no. 10 of 21.05.2009 to construct commercial complex for which the representations were made by the respondent and advertisement done in said behalf, the complainant purchased a commercial unit no. EPS-FF-080, 1st floor, admeasuring 720.83 sq. ft. in the project i.e., "Emerald Hills-Emerald Plaza" located at Sector-65, Urban Estate, Gurgaon, Haryana floated by the respondent and on the inducement that the possession of the unit purchased shall be handed over on time with all amenities as promised.
 - II. That the complainant received a provisional allotment letter dated 20.01.2011 wherein the complainant was demanded an amount of Rs.4,31,269/- despite having been paid an amount of Rs.4,56,000/- as booking amount paid along with application form.
 - III. That as per the payment plan, the total cost of the unit in question was ascertained at Rs.52,10,458/- out of which the complainant had paid an amount of Rs.15,97,341/-.
 - IV. That the unit was booked by the complainant on 26.12.2010 and till date the complainant has not been provided with the builder buyer's agreement despite having been made repeated requests and thereafter,

the complainant shifted to Australia due to which the complainant faced little difficulty in keeping the follow up with the respondent.

- V. That as per clause 16 (a) of the provisional allotment letter, the possession was to be handed over after 36 months from signing of the agreement and 120 days thereafter for applying and obtaining the occupation certificate but till date since no agreement has been executed by the respondent, the date of possession shall be deemed from the allotment letter, i.e., from 20.01.2011 and the possession was to be handed over by 20.01.2014.
- VI. That instead of complying with the formalities of executing the buyer's agreement, the respondent cancelled the unit of the complainant vide letter dated 08.01.2014. It is further submitted that the complainant had no knowledge of the same and was waiting to receive the offer of possession. It came up as huge shock to the complainant when the complainant got the knowledge of the cancellation letter upon which the complainant tried to settle the matter with the respondent in order to take back the cancellation letter, but all the efforts of the complainant went in vain. The complainant was residing in Australia and was trying to get into negotiations with the respondent from there itself but the same resulted into nothing.
- VII. The complainant through its counsel also sent a legal notice dated 18.03.2019 to the respondent to settle the matter and handover the possession of the unit in question along with the delay possession charges but the same was unanswered by the respondent.
- VIII. That the respondent being in the dominant position, the complainant was left with no recourse but to file the complaint before the Hon'ble Authority therefore, the complainant filed complaint bearing no. 1684

of 2019 before the Hon'ble Authority and the same was disposed of by the Hon'ble Authority observing the following:

"Arguments heard. The counsel for the respondent has stated at bar that the unit of the complainant has already been cancelled vide letter dated 08.01.2014. The complainant is directed to come before the authority against cancellation of the unit and shall file a separate complaint for the said relief. Presently, no case is made out for grant of delayed possession charges. The complaint stands disposed of. File be consigned to the registry."

- IX. That therefore, the complainant is filing the present complaint for possession along with delay possession charges and interest on the amount of Rs.15,97,341/- which the complainant had paid from January, 2011 till the time the unit is not handed over to the complainant.
- X. That in addition to the above the respondent has committed various other discrepancies and defaults under various sections of the Act, 2016 and the respondent be refrained and directed to stop doing such unlawful acts which are against the duties and obligations of the promoter under chapter III of the real estate regulatory act.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to restore the unit of the complainant.
 - Direct the respondent to handover the possession of the unit.
 - Direct the respondent to pay interest for delayed possession charges.
 - Interest @ 24% on the amount Rs.15,97,341/- which the complainant had paid from January, 2011 till the time the unit is not handed over to the complainant.
 - Direct the respondent to pay for harassment caused to the complainant as damages along with cost of litigation to the tune of Rs. 1,00,000/-.

D. Reply by the respondent:

5. The respondent has contested the complaint on the following grounds:

- a. That the present complaint is not maintainable before the Hon'ble Authority. The complainant has filed the complaint seeking interest for alleged delay in delivering possession of the unit booked by the complainant. It is submitted that the complaint pertaining to penalty, compensation and interest are to be decided by the Adjudicating Officer under Section 71 of the Act, 2016 read with Rule 29 of the Rules, 2017 and not by this Hon'ble Authority. Moreover, it is respectfully submitted that the Adjudicating Officer derives his jurisdiction from the central act which cannot be negated by the rules made thereunder.
- b. That the present complaint is not maintainable in law or on facts. The provisions of the Act, 2016 are not applicable to the project in question. The application for issuance of occupation certificate in respect of the project in question was made on 22.05.2017, i.e., well before the notification of Rules, 2017. The occupation certificate has been thereafter issued on 08.01.2018. It is also pertinent to mention that the respondent has applied for part completion certificate for the project where services were completed on 28.07.2017 and hence the project does not fall in the definition of "ongoing project". Thus, the project in question is not an 'ongoing project' under Rule 2(1)(o) of the Rules. The project has not been registered under the provisions of the Act. This Hon'ble Authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.
- c. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
- d. That the instant complaint is barred by provisions of Order 2 Rule 2 of the Code of Civil Procedure, 1908. The complainant had preferred an identical complaint bearing no. 1684 of 2019 seeking interest for the

alleged delay in delivery of possession of the unit in question. The said complaint was dismissed by this Hon'ble Authority vide its order dated 03.03.2021. The complainant has preferred an identical complaint seeking delayed possession charges against the respondent despite the same having been dismissed by this Hon'ble Authority. The complainant has miserably failed to challenge the validity/legality of the cancellation letter dated 08.01.2014 despite there being express directions in the order passed by this Hon'ble Authority in this regard. Therefore, the complaint preferred by the complainant is barred by provisions of Order 2 Rule 2. Moreover, the complainant has miserably failed to provide a cogent or plausible explanation as to why the cancellation of the allotment of the unit in question shall not operate against him. The instant complaint is liable to be dismissed at the threshold with punitive costs.

- e. That the complainant has no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the application form dated 26.12.2010 as shall be evident from the submissions made in the following paragraphs of the present reply.
- f. That the complainant had booked the unit in question, bearing number EPS-FF-080, situated in the project developed by the respondent, known as "Emerald Plaza", Sector 65, Gurugram, Haryana. application form dated 26.12.2010 and allotment letter dated 20.01.2011. The complainant expressly undertook to remit all the instalments in respect of the unit in question to the respondent on time.
- g. That at the time of booking of the unit in question, attention of the complainant was specifically brought to the covenants incorporated in

the application form and more particularly to clauses 13, 14, 20 and 21. The complainant was intimated that 10% of the sale price shall be treated as earnest money. The respondent had expressly stated to the complainant that time was the essence with respect to his obligations to remit the amount towards sale price of the unit in question in accordance with the payment plan. The complainant was further notified that in case of there being a delay of 60 days in making payment by him then the respondent shall be entitled to terminate the allotment of the unit in question and forfeit the earnest money along with interest on delayed payments. The complainant had undertaken to abide by the said terms and conditions enumerated in the application form.

- h. That however, right from the beginning, the complainant was extremely irregular in payment of instalment. The respondent was constrained to issue payment request letters, reminders etc. to the complainant requesting him to make payment of outstanding amounts payable by him under the payment plan/instalment plan. Demand notices, letters, reminders etc. had been got sent to the complainant by the respondent clearly mentioning the amount that was outstanding and the due date for remittance of the respective amounts as per the schedule of payments, requesting him to timely discharge his outstanding financial liability but to no avail. Statement of accounts dated 11.04.2013 correctly maintained by the respondent in due course of its business reflecting the delay in remittance of various instalments on the part of the complainant.
- i. That the complainant had failed to remit any payment towards the unit in question after December, 2011. The complainant never had the mean or capacity to purchase the unit in question or abide by the terms and

conditions governing the transaction. The complainant had booked the unit in question with an intent to re-sell the same with escalated prices. However, the complainant had failed to locate a beneficial buyer and consequently had reneged from his commitments and contractual obligations. The conduct of the complainant is culpable and deserves to be penalized. The complainant has embroiled the respondent in an unwarranted and frivolous controversy in order to make it succumb to his illegal demands. The same is contemptible and tantamount to gross misuse of process of law.

- j. That the complainant maliciously and consciously chose to ignore the legitimate and valid requests/reminders/letters of the respondent and wilfully and wantonly defaulted in timely remittance of the instalments as per the schedule of payment and in due observance of the terms and conditions of the buyer's agreement. In fact, the respondent was constrained to issue final notice dated 04.09.2012 to the complainant. The respondent had categorically notified the complainant that he has defaulted in remittance of the amount due and payable by him. It was further conveyed by the respondent that in the event of failure of the complainant to remit the amounts mentioned in the respective notices, the respondent would be constrained to cancel the provisional allotment of the unit in question. However, the complainant did not budge and continued defaulting in remittance of the instalments to the respondent.
- k. That in light of the continuous and persistent defaults of the complainant, the respondent was constrained to terminate the provisional allotment made in favour of the complainant vide cancellation letter dated 08.01.2014. The complainant was informed that an amount of Rs.10,20,736/- stood forfeited in accordance with

the terms and conditions of the application form executed by the complainant and the balance amount of Rs.5,76,604/- would be refunded back to him after the sale of the unit.

- l. That the aforesaid cancellation letter was duly received by the complainant. However, the complainant did not object in any manner with regard to the cancellation of the provisional allotment. After a span of more than 5 years, the complainant had proceeded to institute a complaint bearing no. 1684 of 2019 seeking interest for the alleged delay in delivery of possession of the unit in question. The respondent had brought all the aforesaid facts to the knowledge of this Hon'ble Authority. After perusing the facts of the case, the said complaint was dismissed by this Hon'ble Authority vide its order dated 03.03.2021. The complainant has preferred an identical complaint seeking delayed possession charges against the respondent despite the same having been dismissed by this Hon'ble authority. The complainant has miserably failed to challenge the validity/legality of the cancellation letter dated 08.01.2014 despite there being express directions in the order passed by this Hon'ble Authority in this regard. The instant complaint is nothing but a gross misuse of process of law in order to needlessly blackmail and harass the respondent.
- m. That it is respectfully submitted that a false and fabricated story has been put forward by the complainant which is riddled with inconsistencies and contradictions and the same is devoid of any logic whatsoever. The complainant admittedly stopped making any payment towards the unit in question from 2011. It is beyond belief that the complainant did not bother to communicate with the respondent and took no action for a span of more than 5 years. The complainant has failed to place on record even a single communication addressed by the

complainant to the respondent during this period. Instead, the complainant has manufactured an implausible and ridiculous excuse of finding it difficult to communicate with the respondent on account of his alleged migration to Australia. It is absolutely inconceivable to imagine that the complainant would not even address a single e-mail to the respondent regarding the status of his unit. Assuming, without in any manner admitting any truth in the false and fabricated allegations made by the complainant, it is respectfully submitted that contentions advanced by the complainant are of such a nature that cannot be heard or decided in summary proceedings before this Hon'ble Authority.

- n. That after cancellation of the allotment of the unit in question, the same has been allotted to one Ms. Renu Ratewal vide a provisional allotment letter dated 11.09.2018. Moreover, Ms. Renu Ratewal has further executed a conveyance deed dated 27.03.2019 in respect of the unit in question. The complaint preferred by the complainant is absolutely misconceived and misguided. The complainant has failed to challenge the legality/validity of the aforesaid allotment and sale of the unit in question despite being fully aware of the aforesaid facts. The instant complaint is therefore not legally maintainable. No relief whatsoever deserves to be granted to the complainant in light of the aforesaid facts. The complainant is trying to take undue advantage of his own illegal acts and seeking to obtain wrongful gain at the expense of the respondent. The complaint preferred by the complainant deserves to be dismissed at the threshold.
- o. That the possession of the units in the project in question has been offered to the respective allottees after receipt of occupation certificate

- in due time. Therefore, no fault and lapse can be attributed to the respondent in the facts and circumstances of the case.
- p. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the application form. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the application form.
- q. That the interest for the alleged delay demanded by the complainant is beyond the scope of the application form. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the application form.
- r. That the complainant consciously and maliciously chose to ignore the payment request letters and reminders issued by the respondent and defaulted in making timely payments of the instalments which was an essential, crucial and an indispensable requirement. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondent. The complainant chose to ignore all these aspects and wilfully defaulted in

making timely payments. It is submitted that the respondent despite defaults of several allottees earnestly fulfilled its obligations under the application form/ buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainant.

6. 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 submission made by the parties.

E. Jurisdiction of the authority:

7. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

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

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.

8. 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 objections raised by the respondent:

F.I Objection w.r.t. application of occupation certificate of the project was made prior to notification of the Rules.

9. The respondent-promoter has raised the contention that the said project of the respondent is a pre-RERA project as the respondent has already made an application for occupation certificate to the competent authority on 22.05.2017 i.e., before the commencement of the Rules, 2017.
10. The authority is of the view that as per proviso to section 3 of Act of 2016, on-going projects on the date of commencement of this Act i.e., 01.05.2017 and for which occupation/completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall

make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.

11. The legislation is very clear in this aspect that a project shall be regarded as an "on-going project" until receipt of completion certificate. First of all, the occupation certificate of the project was obtained on 08.01.2018 and secondly, the completion certificate is yet to be obtained by the promoter-builder with regards to the concerned project, therefore the plea advanced by it is hereby rejected.

F.II Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

12. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the allotment letter or buyer's agreement executed between the parties as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not



contemplate rewriting of contract between the flat purchaser and the promoter....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

13. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed:

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself.

F.III Objection regarding the complaint is barred by the provisions of Order 2 Rule 2 of the Code of Civil Procedure, 1908

15. Another contention raised by the respondent is that the present complaint is not maintainable as the complainant has filed a complaint bearing no. 1684 of 2019 before the Authority seeking the relief of delayed possession charges and the same has been dismissed by the Authority.
16. The Authority has gone through the said complaint and observed that the complaint bearing no. 1684 of 2019 was disposed of by the Authority with the direction that the complainant can challenge the cancellation of the unit and shall file a separate complaint regarding the same. The relevant portion

of the said order dated 03.03.2021 passed by the Authority is reproduced below:

"Arguments heard. The counsel for the respondent has stated at bar that the unit of the complainant has already been cancelled vide letter dated 08.01.2014. The complainant is directed to come before the authority against cancellation of the unit and shall file a separate complaint for the said relief. Presently, no case is made out for grant of delayed possession charges. The complaint stands disposed of. File be consigned to the registry."

17. The complainant was given a liberty by the Authority to file a separate complaint while disposing of the above-mentioned complaint. Thus, the contention of the respondent stands rejected.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to restore the unit of the complainant.

18. The complainant was allotted a unit in the project of respondent "Emerald Hills Floors" situated in Sector 65, Gurugram vide provisional allotment letter dated 20.01.2011 for a basic sale consideration of Rs.43,24,980/-. Though no buyer's agreement was executed between the parties but the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.15,97,341/.
19. The complainant in the present complaint is seeking restoration of the unit, handover of the physical possession of the unit and to pay the delayed possession charges as the unit of the complainant was cancelled on 08.01.2014. Now, the question arises before the Authority is that the cancellation letter dated 08.01.2014 is valid or not?
20. The Authority has gone through the documents placed on record and observed that the in the provisional allotment letter dated 20.01.2011 it is specifically mentioned that the payment plan agreed between the parties is construction linked payment plan and the same is annexed (page no. 27 of the complaint). As per the opted payment plan, the complainant has to pay 95% of the sale consideration on completion of project and remaining 5% on intimation of possession. The project has been completed and the

- occupation certificate was obtained way back on 08.01.2018 by the respondent, but till date the complainant has paid only Rs.15,97,341/- i.e., 37% of the basic sale consideration of Rs.43,24,980/-. As per the SOA placed on page 54 of the reply, the last payment was made by the complainant on 07.12.2011. Thereafter the respondent has issued reminder letters dated 03.08.2012 and 20.08.2012 for payment of outstanding dues. Further, the respondent has raised demands vide payment request letters dated 28.08.2012, 14.02.2013, 06.03.2013, 03.04.2013, 14.05.2013, 04.06.2013, 05.08.2013, 05.09.2013 and 17.10.2013 as per the agreed payment plan but the complainant has not made any payment. Further, the respondent has issued a final notice dated 04.09.2012 and gave time to the complainant to pay the outstanding dues and finally terminated the unit on 08.01.2014.
21. The respondent has obtained the occupation certificate on 08.01.2018 but the complainant has not made any payment after obtaining of occupation certificate as well. Thereafter, the respondent has issued an allotment letter dated 11.09.2018 in favour one Ms. Renu Ratewal and got the conveyance deed in favour of the third-party i.e., Ms. Renu Ratewal on 27.03.2019.
22. On perusal of documents placed on record and submissions made by the parties, the Authority observed the complainant has failed to pay the outstanding dues. The respondent has obtained the occupation certificate on 08.01.2018 but the complainant has paid only Rs.15,97,341/- which is 37% of the basic sale consideration of Rs.43,24,980/- till date which clearly depicts that the complainant has failed to abide the terms and conditions of the opted payment plan. Thus, the cancellation letter dated 08.01.2014 is valid.
23. Though, the cancellation of the unit is valid but neither the respondent has refunded any amount nor the complainant has approached the respondent for refund of the paid-up amount before filing of this complaint. The

complainant has filed the present complaint on 11.06.2021 after a lapse of more than 7 years from the date of cancellation and the Authority has decided a plethora of complaints stating that a 3 years period is a considerable period to approach the competent forum to seek the relief arising out of continuing cause of action. In the present complaint, the 3 years period from the date of cancellation comes to an end on 08.01.2017 and the complaint is filed much after on 11.06.2021. Thus, the relief sought in the present complaint is not maintainable being barred by limitation. But the same doesn't shed off the liability of the respondent to refund the paid-up amount by the complainant after necessary deductions as per the provisions of the Act of 2016.

24. As per clause 21 read with clause 13 of application of booking form dated 26.12.2010, the respondent-promoter is entitled to deduct the earnest money in case of default by the allottee. The relevant portion of clause 21 along with clause 13 of the application of booking form is reproduced below for the ready reference:

21. In case of delay of sixty (60 days) in making payment by the applicant(s) to the company as per the schedule of payments, the company shall have the right to terminate the allotment/agreement and forfeit the earnest money.

13. The Applicant(s) agrees that out of the amount(s) paid/payable by him/her/them towards the sale price, the company shall treat 10% of the sale price as earnest money ("Earnest Money") to ensure due fulfilment, by the applicant(s) of all the terms and conditions as contained herein and in the buyer's agreement.

25. 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 Indian 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 Private Limited* decided on 26.07.2022, held that 10% of basic sale price is a 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."

26. Keeping in view the aforesaid factual and legal provisions, the respondent can retain the earnest money paid by the complainants against the allotted unit and shall not exceed 10% of the consideration amount. So, the same was liable to be forfeited as per clause 21 of the application of booking form and Haryana Real Estate Regulatory Authority Regulation 11(5). So, the respondent/builder is directed to refund the amount received from the complainants i.e., Rs.15,97,341/- after deducting 10% of the basic sale consideration i.e., Rs.43,24,980/- 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 filing of complaint i.e., 11.06.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.II Direct the respondent to handover the possession of the unit.

G.III Direct the respondent to pay interest for delayed possession charges.

G.IV Interest @ 24% on the amount Rs.15,97,341/- which the complainant had paid from January, 2011 till the time the unit is not handed over to the complainant.

27. As the Authority is allowing refund of the amount to the complainant as per provisions of the Act of 2016 and Rules, 2017 as detailed out in para 26 of this order, all the above-mentioned reliefs become redundant. Thus, no direction to this effect.

G.V Direct the respondent to pay for harassment caused to the complainant as damages along with cost of litigation to the tune of Rs. 1,00,000/-.

28. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. The Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the Authority:


29. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The cancellation letter dated 08.01.2014 is valid. Therefore, the respondent/promoter is directed to refund the amount i.e., **Rs.15,97,341/-** received by him from the complainants after deduction of 10% of basic sale consideration of Rs.43,24,980/- as earnest money along with interest at the rate of 10.80% p.a. on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of filing of complaint i.e., 11.06.2021 till the actual realization.
- ii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
30. The complaint stand disposed of.
31. File be consigned to the registry.


(Phool Singh Saini)
Member


Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 27.01.2026


(Arun Kumar)
Chairman