

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

Complaint no.: 951 of 2025
Complaint filed on: 05.03.2025
Date of first hearing: 17.07.2025
Date of decision: 12.02.2026

Shine Buildcon Private Limited.

Address: - H-334, Ground Floor, New Rajinder Nagar,
New Delhi- 110060.

Complainant

Versus

Ramesh Datt Sharma

R/o: - C-1184, Second Floor, Ansal Ecencia, Sector-
67, Gurugram Haryana- 122001

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE

Shri Akshat Mittal (Advocate)

Complainant

Shri U.K Bhardwaj (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/promoter 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 19(10) of the Act wherein it is inter alia prescribed that the allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said unit. Also, the obligation of allottee to make necessary payments in the manner and within time as





specified in the agreement for sale under section 19(6) and to pay interest, at such rate as may be prescribed, for any delay in payments as per section 19(7) of the Act.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the respondents, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S. No. | Particulars | Details |
|--------|--------------------------------------|---|
| 1. | Name of the project | "70 Grandwalk", Sector 70, Gurugram |
| 2. | Project area | 2.893 acres |
| 3. | Nature of the project | Commercial Complex |
| 4. | DTCP license no. and validity status | 34 of 2012 dated 15.04.2012 Valid upto 14.04.2020 |
| 5. | Name of licensee | Shine Buildcon |
| 6. | RERA Registered/ not registered | 28 of 2017 dated 28.07.2017 valid up to 30.06.2022 |
| 7. | Unit no. | C-218, Second floor (Page no. 62 of complaint) |
| 8. | Unit area admeasuring | 436 sq. ft. (Super Area) (Page no. 62 of complaint) |
| 9. | Allotment Letter | 06.10.2017 (Page no. 47 of complaint) |
| 10. | Date of execution of BBA | 23.02.2018 (Page no. 52 of complaint) |
| 11. | Building plan approval | 03.05.2013 (taken from another complaint CR/5702/2023 of same project disposed of vide order dated 04.07.2024) |
| 12. | Payment Plan | Possession linked plan (Page no. 99 of complaint) |
| 13. | Possession clause | Clause 13. POSSESSION AND HOLDING CHARGES |



| | | |
|-----|--|---|
| | | <p><i>"(ii) subject to Force Majeure, as defined herein and further subject to faithful discharge of obligations by the allottee under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total price/sale Consideration, taxes, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to complete the construction and shall offer the possession of the said unit to the Allottee on or before 30th June 2022 as per schedule of construction of construction approved by the appropriate Authority and read and understood by the allottee.."</i></p> <p>(Page no. 75 of complaint)</p> |
| 14. | Due date of possession | 30.12.2022 (Note: - Due date of possession mention in the possession clause i.e., 30.06.2022 + 6 months grace period of Covid-19) |
| 15. | Basic Sale Price | Rs.42,36,176 /- (As per BBA at page no. 99 of complaint) |
| | Total sale consideration | Rs.47,14,433 /- (As per BBA at page no. 99 of complaint) |
| 16. | Amount paid by the complainant | Rs.12,84,258 /- (As per statement of account at page 122 of the complaint) |
| 17. | Occupation certificate | 10.10.2023 (Page no. 126 of complaint) |
| 18. | Offer of possession | 15.10.2023 (Page no. 119 of complaint) |
| 19. | Reminder letters for clearing the outstanding dues and taking over of possession | 28.05.2024, 20.06.2024, 25.07.2024 (Page no. 123 to 125 of complaint) |

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B. Facts of the complaint

3. The complainant/promoter has made following submissions in the complaint: -
- i. That the complainant/builder is constructing and developing a commercial project over land measuring 2.8 Acres at Sector 70, District Gurugram, Haryana, under the name of '70 Grandwalk'. The project has received license from the DTCP, Haryana vide license no. 34 of 2012 dated 15.04.2012. The project has received building plan sanctions and other approvals from the relevant authorities. The project has duly been completed and has further received the occupation certificate dated 10.10.2023.
 - ii. That the respondent/allottee had expressed interest in the booking of a commercial unit in the said project of the complainant vide allotment letter dated 06.10.2017, the allotment of unit no. C-218 Second Floor admeasuring 436 sq. ft. super area, was confirmed in the name of the respondent/allottee.
 - iii. That the unit in question was offered for a sale consideration of Rs.48,14,261/- along with taxes as applicable. Further, a discount was also given at the time of the booking. The payment scheme opted by the respondent allottee was 30:70 payment scheme, that is to say that 30% of the total sale consideration along with applicable taxes was to be paid by the respondent allottee to the complainant builders initially at the time of booking and of the said unit and within 60 days. The remaining 70% of the total sale consideration, applicable taxes and other charges was to be paid at the time of offer of possession.

- iv. That till date, the respondent has made a payment of Rs.12,84,258/- only to the complainant. Thereafter a buyer's agreement was executed between the complainant and the respondent dated 23.02.2018. That after completing all construction and development work the possession of the unit was offered on 15.10.2023 and the written communication was duly sent to the respondent with the subject "offer of possession". That the respondent did not adhere to the above said offer for possession and did not make the payment of the remaining 70% dues pertaining to the unit. The respondent is yet to pay an amount of Rs.35,30,003.04/-, apart from interest on delayed payment and holding charges etc.
- v. That repeated payment reminders were sent by the complainant to the respondent allottee with a request to the latter for making the payment of the aforesaid due instalment along with other charges, but the same has not been complied with by the respondent/allottee.
- vi. That it would not be wrong to mention that the complainant is a reputed builder, who has ensured completion of the project at hand, and has duly completed the project since end of 2022. The occupation certificate had duly been applied for on 07.02.2023, and has since duly been received on 10.10.2023. The site is well developed and completely functional.
- vii. That therefore, the respondent allottee is yet to pay the massive balance amount towards total cost of the unit along with interest. The major portion of amount have thus been incurred by the complainant builders on the completion of the unit allotted to the



respondent at its own resources/bank finances and the respondent is avoiding the payment of the remaining due amount. That it is apparent that the respondent had got this unit allotted only for the purposes of investment for profiteering purposes from the real estate. Now owing to an overall recession in the real estate market, the respondent wishes to avoid the payment of the balance dues and interest.

- viii. That the complainant/builder who has been regularly incurring all the costs towards the development and construction of the floor in question, has been regularly contacting the respondent allottee for the payment of pending dues qua the unit in question, but all in vain.
- ix. That it is an undisputed proposition of law that the agreement mutually and voluntarily entered inter-se the parties attains sacrosanct character and ordinarily the parties are bound by the terms and conditions of the contract voluntarily agreed by them.
- x. That being highly aggrieved and frustrated by the entire circumstances and faced by the malafide and miserable attitude on part of the respondent allottee, the bonafide builder complainant is left with no other option but to approach before this Authority praying for adequate relief, payment of remaining dues and compensation.
- xi. That in view of the above, the respondent has committed breach of the provisions incorporated under section 19(6), section 19(7) & section 19(10) of the Act read with Rule 15 of Rules 2017, for which the complainant is entitled to receive the remaining dues from the respondent allottee qua the unit in question, along with

compensation and interest w.e.f. the date of default till the actual realization of the same.

C. Relief sought by the complainant/promoter

4. The complainant has filed the present complaint for seeking following reliefs: -
- i. Direct the respondent/allottee to pay the balance amount of Rs.35,30,003.04/- which is due against the unit in question so booked by the respondent allottee along with interest as prescribed, on the amounts from the due dates till its actual realization in accordance with rights of the complainant/builder under Sections 19(6), 19(7)&19(10) of the Act 2016 to claim payment of remaining dues from the allottee qua the unit in question, along with interest and compensation, read with Rule 15 & 16 of the Rules 2017.
 - ii. To direct observe the entitlement of the complainant to cancel the allotment in terms of the agreement for sale, in case the respondent allottee is willfully avoiding the payment of the remaining dues for the unit.
 - iii. To direct the respondents to pay a sum of Rs.5,00,000/- on account of grievance and frustration caused to the complainant builder by the miserable attitude of the respondent allottee for causing mental agony to the complainant or its directors/officers along with interest from the date of filing the present complaint till the realization of the same;
 - iv. The complaint may be allowed with costs and litigation expenses of Rs.1,50,000/-;.
5. On the date of hearing, the authority explained to the respondent /allottee about the contravention as alleged to have been committed in





relation to section 19(6), (7) & (10) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent/allottee

6. The respondent has filed the reply on 17.07.2025 and contested the complaint on the following grounds: -

- i. That the respondent has been a very hard-working individual all his life and had over the years accumulated hard earned life savings from his meagre salary, and thereafter was trying to seek opportunities to invest this meagre hard-earned savings to build up assets for securing his coming generation's future. The respondent was made to believe by the complainant that their project "**70 Grandwalk**" shall fulfil all such dreams of the respondent.
- ii. That the respondent, at this juncture of old age, where time is the essence and all milestones of life had to be **time critical**, got entrapped by aggressive marketing skills of complainant and tall promises of timely delivery of possession. As a result, the respondent decided to invest in the said project. To the surprise of the respondent, the complainant sent across the buyer's agreement to the residence of the respondent for his signatures, the copy of which never returned to him after signatures of the complainant and endorsement of the sub registrar thereon, to be called as buyer's copy. The respondent/allottee has seen and signed the buyer's agreement copy for the first time now after its execution in 2018, with endorsement of signatures of the complainant and seal of the Sub Registrar's office.

- iii. Further, all the dreams of the respondent got shattered due to an inordinate delay of 16 months despite the grace period catered for, in completion of the said project by the complainant since the need of the unit was TIME CRITICAL for the respondent. The respondent could not keep his hopes alive for long time, while the complainant kept on procrastinating the handing over of possession. The respondent had not been keeping well for a long time besides his children being away from him out of station. The respondent had various health issues to tackle and kept on calling the complainant to terminate his booking and refund all money because he could not cope with his health and delay by the complainant both at the same time, since he was fearful that his hard-earned money would get stuck with the complainant who was not responding positively to each call. The numerous attempts of calling the complainant to cancel his allotment were to no avail because all his pleas were answered inconclusively by the complainant and no concrete decision was being taken by the complainant. It was the respondent who kept on calling regularly and pleading to the complainant desperately to cancel his unit much before issuing of OC. It is most unfortunate that the stress, panic and extreme anxiety due to Complainant breathing down the neck of respondent by offering possession and repeated reminders resulted in sudden Heart attack.
- iv. That the complainants having procrastinated their obligations towards the respondent allottee, beyond critical time limit for respondent in specific, has suddenly rose to aggressively pursue levying penalties, interest and cancellations using the legal route.



The complainant is not justified to do so after having committed the wrong of not respecting the essence of time and obligations towards the allottees which is the cornerstone of the agreement between the complainant and respondent. Hence, the respondent could not be compelled to take possession of the apartment after such a long delay which the complainant offered after an inordinate delay of 16 months over and above the grace period.

v. That the buyer's agreement, in the hind side appears standing on a biased premise against which the respondent had no control or knowledge to contest. Following is submitted: -

- a. The complainant lured the septuagenarian respondent amongst the other allottees with false promises of high quality, high returns, and timely handing over of possession and once the booking amount were secured by the complainant, the "Agreement to Sale" document was executed as "buyer's agreement" as if it is the buyer itself who has sought such agreement and the provided clauses are only for the buyer to agree. It is apparent now that the agreement so called "Buyer's Agreement" truly vindicates the stand that the complainant wanted to take, wherein the obligations of complainant vis-à-vis the respondents are weighed extremely minimal and biased. The burden of obligations has been loaded unfortunately and unjustly more on the allottee. It is in fact an unfair and unreasonable contract, prepared with unfair and unreasonable clauses, executed between parties who are not equal in bargaining power at all, because of the great disparity in the economic strength of the contracting parties herein. The complainant having stronger bargaining power created a situation wherein the respondent had no choice, or rather no meaningful choice, but to give their assent to the contract@ buyer's agreement and signed on the dotted line in a prescribed or standard form, blindly accepting to a set of rules as part of the contract, however unfair, unreasonable, and unconscionable a clause in that contract or form or rules may be, the buyer's agreement dated 23.02.2018 reveals stark incongruities



between the remedies available to both the parties viz. the complainant and the respondents herein. moreover, to the surprise of the respondent, the complainant sent across the buyer's agreement to the residence of the respondent for his signatures, the copy of which never returned to him after signatures of the complainant and endorsement of the sub registrar on it to be called as buyer's copy. It is pertinent to mention that the respondent has seen the buyer's agreement for the first time now after its execution in 2018, with endorsement of signatures of the complainant and seal of the Sub Registrar's office.

- b. **Binding Effect for Execution of Buyer's Agreement:** - The second part of clause 23 states that "If allottee fails to execute and deliver to company, this Agreement within 30 days from the date of its receipt by the allottee and further execute the said agreement and register the said agreement, as per intimation by the company, then the company shall serve a notice to allottee for rectifying the default, which if not rectified within 60 days from date of its receipt by the allottee, application of allottee shall be treated as cancelled and all sums deposited by the allottee in connection therewith including booking amount shall be returned to the allottee without any interest or compensation whatsoever after deduction of earnest money and service tax, cess, VAT, GST, development charges, commission paid to real estate agent including taxes thereupon, along with interest on delay payments at the rate mentioned herein above. That the so-called buyer's copy of buyer's agreement never reached the respondents till date. The respondents saw fully signed copy of agreement only when the complainant forwarded the complaint to this Authority with buyer's agreement annexed thereof.
- c. **Interest:** - It would also be prudent to reiterate the interpretation of the term Interest here as defined under **Section 2(za)** of the Act 2016. It brings out that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee in case of default. The term "**interest**" means the rates of interest payable by the promoter or the allottee, as the case may be.

- d. **Disparity in Obligations:** - There are stark incongruities between the remedies available to both the parties viz. the complainant and the respondents.
- e. **Obligation of promoter vis-à-vis rights of buyer:** - That the sanctity of the buyer's agreement is contingent to the obligations that are required to be fulfilled by the complainant by timely offering of possession as agreed. While the respondents fulfilled the obligations by making payments right from the booking stage as per payment plan. The non forwarding of the fully signed buyer's copy of the buyer's agreement to the respondent and delay by the complainant to complete the project without providing any progress updates to the respondents all through, the complainant breached the trust between the parties. The respondent (a septuagenarian) kept on pursuing cancellation of the unit by calling up the office of the complainant but all efforts were to no avail and responses were inconclusive and evading. Now, while the complainant is looking for exoneration from this breach through an easier way by not discussing the delay compensations/interest and covering it by offering a delayed possession, the respondents are being pursued aggressively to honour the agreement and the complainant has thus filed this complaint to force and coerce the respondents to accept delayed possession.
- f. **Earnest Money vis-à-vis Payment plans:** - The complainant stipulated an earnest money of 10% of the total cost of the unit in the agreement for the respondents. The Haryana Government Gazette dated 05.12.2018, highlighted the concerns of the homebuyers.
- The gazette clearly stipulates that forfeiture amount of earnest money shall not exceed more than 10% of the consideration 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.
- g. **Covid Periods:** - This Authority have clarified on numerous occasions that the delay due to Covid pandemic is catered for by according of grace period of six months, and the promoters

cannot unilaterally deduct one year period or any other period from their total delay while computing delay compensations.

7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the Authority

8. The Authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

10. The Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act and duties of the allottee as per section 19 of the Act leaving aside compensation which is to be decided by the adjudicating officer, if pursued by the parties at a later stage.

F. Finding on the relief sought by the complainant/promoter

- F.I Direct the respondent/allottee to pay the balance amount of Rs.35,30,003.04/- which is due against the unit in question so booked by the respondent allottee along with interest as prescribed, on the amounts from the due dates till its actual realization in accordance with rights of the complainant/builder**





under Sections 19(6), 19(7)&19(10) of the Act 2016 to claim payment of remaining dues from the allottee qua the unit in question, along with interest and compensation, read with Rule 15 & 16 of the Rules 2017.

F. II To direct observe the entitlement of the complainant to cancel the allotment in terms of the agreement for sale, in case the respondent allottee is willfully avoiding the payment of the remaining dues for the unit.

11. In the present case, the complainant/promoter has allotted the unit bearing no. C-218, Second floor, for an area admeasuring 436 sq. ft. to the respondents/allottees in the project of the complainant/promoter namely, "70 Grandwalk", Sector-70, Gurugram Haryana vide provisional allotment letter dated 06.10.2017. Thereafter, the buyer's agreement was executed inter se parties on 23.02.2018. As per clause 13(ii) of the buyer's agreement, the possession was proposed to be handed over on or before 30.12.2022. The respondents/allottees have paid an amount of Rs.12,84,258/- against the basic sale consideration of Rs.42,36,176/-.
12. **Due date of possession and admissibility of grace period:** Clause 13(i) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"Clause 13. POSSESSION AND HOLDING CHARGES

"(i) subject to Force Majeure, as defined herein and further subject to faithful discharge of obligations by the allottee under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total price/sale Consideration, taxes, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to complete the construction and shall offer the possession of the said unit to the Allottee on or before 30th June 2022 as per schedule of construction of construction approved by the appropriate Authority and read and understood by the allottee."

(Emphasis supplied)"

13. In the present complaint, the due date for handing over of possession comes out to be 31.12.2022 (including a grace period of 6 months in lieu of Covid-19) as computed above. On perusal of documents on record, it is observed that the occupation certificate of the said project was granted by the competent authority on 10.10.2023 and the complainant has offered possession of the subject unit to the respondents-allottees on 15.10.2023. However, the respondents-allottees have failed to abide by the terms and conditions of the buyer's agreement by not making the payments in timely manner as per the payment plan opted by them and by not taking the possession of the unit in question as per the terms and conditions of the buyer's agreement. Further, despite repeated follow-ups by the promoter and having performed its contractual obligations, the respondents-allottees withheld to perform their contractual obligation. The respondents-allottees have failed make the requisite payment as per the provision of section 19(6) of the Act and as per section 19(7) of the Act to pay the interest at such rate as may be prescribed for any delay in payments towards any amount or charges to be paid under sub-section (6). Section 19(6) and 19(7) reads as under:

"Section 19: - Right and duties of allottees. -

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- (6) *every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.*
- (7) *the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).*





14. As per clause 3 (ii) and (iii) of the buyer's agreement, the respondents-allottees are also contractually liable to pay the instalment as per payment plan opted by them. Clause 3(ii) and (iii) are reproduced as under:

"(3) CONSIDERATION AND CONDITION

i.

ii. *The Total Price shall constitute and be hereinafter referred to as the "Sale Consideration" and shall be payable by the Allottee for the said Unit in the manner set out in the Payment Plan/Schedule selected and agreed by the Allottee and annexed herewith as ANNEXURE- III. The Total Price is escalation-free, save and except increases which the Allottee hereby agrees to pay, due to increase on account of development charges payable to the competent authority and/ or any other increase in charges which may be levied or imposed by the competent authority from time to time. The Company undertakes and agrees that while raising a demand on the Allottee for increase in development charges, cost/ charges/ fees/ levies etc. imposed by the competent authorities, the company shall make available the said notification/ order/rule/regulation in its office for perusal of the Allottee.*

iii. *The Allottee has paid a sum of Rs.12,84,258/- (Rupees Twelve Lac Eighty Four Thousand Two Hundred Fifty Eight only) inclusive of applicable taxes being part payment towards the Total Price with applicable taxes of said unit for commercial usage; the receipt of which the company hereby acknowledges and **the Allottee hereby agrees to pay the remaining amount of Total Price with applicable taxes for said unit as prescribed herein above and in the Payment Plan/Schedule (Annexure-III) as and when demanded by the company within the time and in the manner specified therein...**"*

15. The Authority observes that the possession of the unit was offered to the respondents-allottees on 15.10.2023 and despite repeated reminders to the respondents-allottees, they are not coming forward to clear the outstanding dues and to execute conveyance deed. Section 19(6) & 19(7) of the Act provides that every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments from the allottee and to take physical possession of the apartment as per section 19(10) of the

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Act. The due date of possession as per the buyer's agreement as computed above is 31.12.2022. The complainant/promoter obtained the occupation certificate for the said project on 10.10.2023 and offered possession of the subject unit to the respondent's allottees on 15.10.2023. Despite being offered possession of the subject unit, the respondents allottees have failed to take possession of the subject unit after remitting the outstanding amounts.

16. The Authority observes that as per section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession, the allottee wishes to withdraw from the project and demand return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.
17. The right under section 18(1) and section 19(4) of the Act accrues to the allottees on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein if the allottees have not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made to him.
18. During the proceedings dated 12.02.2026, the counsel for the respondent-allottee submitted that he is suffering from ill medical conditions and due to financial constraints does not wish to continue with the project.

02



19. As far as contention of the complainant regarding obligation of the respondents-allottee to take possession is concerned, the Authority is of the view that no one can be forced to purchase a house but as the respondents/allottee themselves are at default in making the payment as per the payment schedule and still they intend to withdraw from the project which will amount to the breach of the contract on their part. This has also been observed by the appellate tribunal in appeal no. 255 of 2019 titled as **Ravinder Pal Singh V/s Emaar MGF Land Ltd. & anr.** wherein it is stated as follows:

"32. However, nobody can be forced or compelled to purchase the house, but as the appellant himself is at default in making the payment as per the payment schedule and if he still intends to withdraw from the project out of his own which will amount to the breach of the contract on his part, in that eventuality he will be entitled for refund of the amount paid by him after forfeiting 10% of the basic sale consideration, which will be considered to be the reasonable earnest money amount and after deducting the statutory dues already deposited with the government".

20. The Authority has observed that the respondent-builder has offered possession of the unit after obtaining occupation certificate but the complainant wants to surrender the unit and refund the amount paid. The Hon'ble Apex court of the land in cases of **Maula Bux Vs. Union of India (1973) 1 SCR 928** and **Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136**, and followed by the National Consumer Dispute Redressal Commission, New Delhi in consumer case no. 2766/2017 titled as **Jayant Singhal and Anr. Vs. M/s M3M India Ltd.** decided on 26.07.2022, took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted 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. So, it was held that 10% of the basic sale price is reasonable amount to be forfeited in the name of earnest money. Keeping in view, the principles laid down by the Hon'ble Apex court in the above mentioned two cases, rules with regard to forfeiture of earnest money were framed and known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides 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. Also, Hon'ble Apex Court in **Civil Appeal no.3334 of 2023** titled as **Godrej Projects Development Limited Versus Anil Karlekar** decided on 03.02.2025 has held that 10% of BSP is reasonable amount which is liable to be forfeited as earnest money. Thus, keeping in view the aforesaid factual and legal provisions, the Authority hereby directs the complainant-promoter to return the paid-up amount of Rs.12,84,258/- to the respondents-allottees after deduction of 10% of the basic sale consideration of Rs.42,36,176/-. The complainant-promoter is further directed to pay an interest on the balance amount at the rate of 10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the



Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of filing of surrender application to the present complaint on 05.03.2025 till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017. A period of 90 days is given to the complainant-builder to comply with the directions given in this order and failing which legal consequences would follow.

F. III To direct the respondents to pay a sum of Rs.5,00,000/- on account of grievance and frustration caused to the complainant builder by the miserable attitude of the respondent allottee for causing mental agony to the complainant or its directors/officers along with interest from the date of filing the present complaint till the realization of the same;

F. IV The complaint may be allowed with costs and litigation expenses of Rs.1,50,000/-;

22. The complainant/promoter are seeking above mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in civil appeal no.6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.* (supra) has held that the adjudicating officer has exclusive jurisdiction to deal with the complaint in respect of compensation.

G. Directions of the Authority:

23. 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) of the Act:

i. The complainant-promoter is directed to return the paid-up amount of Rs.12,84,258/- to the respondents-allottees after deduction of 10% as earnest money of the basic sale consideration of Rs.42,36,176/-. The complainant-promoter is further directed to pay an interest on the balance amount at the rate of 10.80% p.a.

- as prescribed under rule 15 of the rules, 2017 from the date of surrender request i.e., 05.03.2025, till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017.
- ii. A period of 90 days is given to the complainant-builder to comply with the directions given in this order and failing which legal consequences would follow.
24. Complaint as well as applications, if any, stand disposed off accordingly.
25. File be consigned to registry.

Dated: 12.02.2026



(Phool Singh Saini)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM