

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

Complaint no.: 688 of 2026
Date of complaint: 27.02.2026
Date of order: 22.05.2026

Manish Madhukar
R/o: - D 1403 Bestech Parkview,
Grandspa, Sector 81, Gurugram.

Complainant**Versus**

M/s Elan Limited
Regd. Office at: 3rd Floor, Golf View Corporate
Tower, Golf Course Road, Sector 42, Gurugram.

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Sh. Manish Madhukar (In person)
Sh. Ishaan Dang (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details.

2. The particulars of unit details, sale consideration, the amount paid by the complainant, 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	"ELAN Epic" Sector, 70 Gurgaon
2.	Nature of Project	Commercial colony
3.	DTCP License	148 of 2008 dated 02.08.2008
4.	HRERA Registration	Registered Vide no. 30 of 2018 dated 06.12.2018 valid upto 31.12.2023
5.	Unit no.	4F-015 (CAFE) (page 14 of complaint)
6.	Unit admeasuring	513 sq. ft. (super area) (page 14 of complaint)
7.	Provisional allotment cum Demand Letter	08.02.2020 (page 15 of complaint)
8.	Builder Buyer agreement	Not executed
9.	Due date of possession	Cannot be ascertained in absence of agreed possession timeline
10.	Basic sale Price	Rs.55,94,265/- (as per provisional allotment letter page 15 of complaint)
11.	Total sale Consideration	Rs.60,90,785/- (as per provisional allotment letter page 15 of complaint)
12.	Amount Paid	Rs.21,29,045 /- (page 22 of complaint)
13.	Reminder for execution of buyer's agreement	21.12.2020 (page 46 of reply)
14.	Demand letters/Reminder On account of PLC	14.04.2022, 12.05.2022, 02.06.2022, 17.06.2022) (Page 47-51 of reply)
15.	Final reminder	02.07.2022 (page 52 of reply)
16.	Pre cancellation	06.08.2022 (page 54 of reply)
17.	Reminder to Pre cancellation	06.09.2022, 11.10.2022, 03.11.2022, 05.12.2022, 18.01.2023, 09.02.2023,

		06.03.2023, 06.04.2023, 10.05.2023, 06.06.2023 (page 56-65 of reply)
18.	Letter of offer of possession for fit out and payment dues Of Rs.49,89,093/-	01.07.2023 (page 67 of reply)
19.	Reminder I, II and III for payment Rs.50,01,424/-	24.07.2023, 18.08.2023, 07.09.2023 (page 70-72 of reply)
20.	Final reminder	25.09.2023 (page 73 of reply)
21.	Pre cancellation	12.10.2023 (page 74 of reply)
22.	Intimation regarding grant of OC	03.11.2023 (page 78 of reply)
23.	Cancellation Letter	16.11.2023 (page 79 of reply)
24.	Occupation certificate	31.10.2023 (page 75 of reply)
25.	Completion certificate	20.12.2024 (page 82 of reply)

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint: -

- I. That the complainant approached the respondent in good faith after being assured of timely construction and possession of the commercial unit in the project "Elan Epic", Sector 70, Gurugram, Haryana for a total sale consideration of Rs.60,90,785/- and accordingly submitted the booking application on 18.11.2019 along with a booking amount of Rs.6,00,000/- towards the said unit.
- II. That thereafter the respondent issued a Provisional Allotment-cum-Demand Letter dated 08.02.2020 in favor of the complainant for Unit No. 4F-015 (CAFE) situated on the fourth floor, admeasuring approximately 513 sq. ft. (approx.) in the project "Elan Epic", Sector 70, Gurugram,

Haryana. The said allotment letter confirmed the complainant's booking and mentioned the total sale consideration of Rs.60,90,785/- along with the payment schedule and terms of allotment.

- III. That in compliance with the terms mentioned in the said provisional allotment-cum-demand letter, the complainant duly paid the next instalment of Rs.12,79,674/- on 24.03.2020, thereby making a total payment of Rs.21,29,045/- towards the said unit.
- IV. That the respondent also issued a receipt no. 487-1 dated 28.02.2020, acknowledging the payments made by the complainant towards the said unit, namely Rs.1,00,000/- on 18.11.2019, Rs.3,00,000/- on 06.12.2019, Rs.2,00,000/- on 06.02.2020, Rs.10,00,000/- on 19.02.2020, and Rs.4,63,615/- on 28.02.2020, thereby confirming receipt of part consideration from the complainant against the booking.
- V. That the respondent had allotted to the complainant Customer ID: EPIC-000487, which was reflected in all its communications and documents issued to the complainant.
- VI. That after issuance of the provisional allotment-cum-demand letter dated 08.02.2020, the respondent never contacted, assisted or communicated with the complainant for more than three years regarding his booking or payment status.
- VII. That suddenly on 21.08.2023, the respondent contacted the complainant via email demanding Rs.437/- per sq. ft. plus GST as penalty for delayed payment and enclosed a letter of possession dated 01.07.2023, stating that possession was being offered. The complainant was shocked to receive such communication after three years of complete silence from the builder, without any prior intimation or reminder.

- VIII. That to the utter shock and dismay of the complainant, the opposite party thereafter issued a cancellation letter dated 16.11.2023, unilaterally cancelling the allotment of the said unit and forfeiting Rs.19,62,119/- out of the total Rs.21,29,045/- paid by the complainant, showing only a balance of Rs.1,66,926/- refundable. The said forfeiture is arbitrary, excessive, and without any legal or contractual justification.
- IX. That the cause of action first arose on 18.11.2019, when the complainant booked the commercial unit in the project "Elan Epic" by paying the booking amount of Rs.6,00,000/- to the opposite party. The cause of action further arose on 08.02.2020, when the opposite party issued the Provisional Allotment-cum-Demand Letter confirming allotment of Unit no. 4F-015 (CAFE) in favor of the complainant. It further arose on 24.03.2020, when the complainant made payment of Rs.12,79,674/- towards the said unit as per the payment plan. The cause of action further arose when despite such circumstances, the opposite party remained completely silent for more than three years and suddenly, on 21.08.2023, contacted the complainant through email demanding Rs.437/- per sq. ft. plus GST as penalty for delay and enclosing a possession letter dated 01.07.2023. It further arose on 16.11.2023, when the opposite party illegally and arbitrarily issued a cancellation letter forfeiting Rs.19,62,119/- out of the total payment of Rs.21,29,045/- made by the complainant. The cause of action is still continuing as the opposite party has failed and neglected to refund the complainant's hard-earned money despite repeated requests and reminders, thereby giving rise to the present complaint before this Forum.
- X. That the cause of action arose on 16.11.2023 when the cancellation letter was issued and continues as the amount has not been refunded. The complaint is within limitation.

XI. That the complainant has been put to severe financial and mental hardship on account of the said illegal acts of the respondent. The arbitrary forfeiture of Rs.19,62,119/- has caused not only monetary loss but also extreme mental agony and harassment to the complainant, who had invested his life savings in the hope of owning a commercial property.

C. Relief sought by the complainant.

4. The complainants have sought following relief(s).

- I. Direct the respondent to refund the entire amount of Rs.21,29,045/- along with interest.
- II. Direct the respondent to pay Rs.3,00,000/-. For mental agony.
- III. Direct the respondent to pay Rs.80,000/- for litigation cost.

5. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to Section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds: -

- I. That the present complaint is not maintainable in law or on facts. The complainant has approached this Authority after an unexplained and inordinate delay of many years. It is evident from the averments made in the complaint that the complainant had knowingly and consciously abandoned the transaction in the year 2020 itself whereafter the complainant did not communicate with the respondent except in the year 2024 in respect of the transaction. Significantly, no dispute has been raised by the complainant in this regard at any time during the entire period. Rather, the complainant now intends to revive an abandoned transaction after sleeping over his alleged rights for many years. None of the communications as addressed to the complainant were ever reverted by the complainant and he kept on avoiding his contractual obligations

and more particularly the payment obligations. Thus, the instant complaint is a gross abuse of process of law.

- II. That the complainant has no locus standi or cause of action to file the present complaint. The Complainant has misinterpreted the provisions of the Real Estate (Regulation and Development) Act, 2016, hereinafter referred to as "RERA" and the Rules and Regulations made thereunder.
- III. That the complainant is estopped from filing the present complaint by his own acts, conduct, acquiescence, laches and delay.
- IV. That the complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.
- V. That the complainant has nowhere stated and admitted that he has duly complied with his part of the contractual obligations and there is no breach and default on his part. Even the inordinate delay by the complainant has not been justified.
- VI. That the complainant had approached the respondent for booking of Unit bearing no. 4F-015 (Café) situated on fourth floor having 513 sq. ft. super area (tentative) in the Project, 'Elan Epic', Sector-70, Gurugram, Haryana and the "Said Unit". The complainant had approached the respondent after conducting extensive and independent investigations with regard to all aspects of the project and proceeded to book the unit after being fully satisfied with all aspects of the project including but not limited to the capability of the respondent to undertake development of the project. The complainant having satisfied himself with all the features, attributes,

specifications etc. of the project and having duly understood his obligations as well as the terms and conditions of the Application Form took an independent view and proceeded further thereby seeking an allotment of the unit. The complainant, inter alia, agreed and undertook to execute the buyer's agreement in the standard format of the respondent as and when called upon to do so. The complainant further agreed and acknowledged that the provisional allotment of the unit in his favour shall take effect only upon execution of the Buyer's Agreement.

- VII. That the application form as submitted by the complainant was duly considered by the respondent and Unit bearing no. 4F-015 (Café) situated on Fourth Floor having 513 sq. ft. super area (tentative) in the project was provisionally allotted by the respondent to the complainant vide allotment letter dated 08.02.2020 issued by the respondent to the complainant.
- VIII. That in furtherance of the allotment of the unit having been made on 08.02.2020 and allotment letter dated 08.02.2020 having been issued, the complainant was further called upon by the respondent to execute the buyer's agreement in respect of the unit in question, however the complainant willingly and consciously failed to execute the buyer's agreement with the respondent. In fact, the complainant voluntarily and of his own volition abandoned the transaction without there being any cogent or plausible reason. The respondent was constrained to issue reminder letter dated 21.12.2020 for the execution and registration of the buyer's agreement. Further, as per the payment plan so opted for by the complainant, demand letter dated 14.04.2022, reminder letter dated 12.05.2022, reminder letter – II dated 02.06.2022, reminder letter – III dated 17.06.2022 and final reminder letter dated 02.07.2022 were issued

but for the reasons best known to the complainant, the complainant failed to act further and duly honour his contractual obligations.

IX. That despite there being various follow-ups and reminders through various modes and means the complainant for the reasons best known to him chose to ignore the aforesaid letters and communications and failed to act further and respond. The complainant did not even bother to reply to the said letters and communications. Interestingly, the complainant did not even try to raise any dispute, protest or objection in respect of the letters/communications as referred to hereinabove. On the other hand, it is evident that the respondent has acted bonafidely and transparently throughout. It was only after years of silence and non-payment by the complainant that the respondent dispatched a pre-cancellation letter dated 06.08.2022 expressly stating the non-compliances on the part of the complainant and providing an opportunity to the complainant to cure his defects. But even this letter went unheeded and consequently, the respondent was constrained to issue reminder pre-cancellation letters dated 06.09.2022, 11.10.2022, 03.11.2022, 05.12.2022, 18.01.2023, 09.02.2023, 06.03.2023, 06.04.2023, 10.05.2023 and 06.06.2023 to the complainant.

X. That having completed the construction of the project, as a process on 25.05.2023 the respondent proceeded further and applied to the competent Authority seeking grant and issuance of the occupation certificate. Further, the respondent issued a letter dated 30.05.2023 whereby the complainant was duly intimated by the respondent about the application for occupation certificate having been submitted by the respondent before the competent Authority. As per the agreed arrangement and understanding, the Respondent had also issued a letter

dated 01.07.2023 to the complainant thereby offering the possession of the unit in question for fit outs to the complainant and for the clearance of the dues by the complainant. But even these letters and communications have gone unheeded by the complainant. The respondent in all fairness and transparency further issued reminder – I to the offer of possession dated 24.07.2023, reminder – II to the offer of possession dated 18.08.2023, reminder – III to offer of possession dated 07.09.2023 and final reminder to offer of possession dated 25.09.2023.

- XI. That the aforesaid communications clearly demonstrate that the respondent had been consistently informing the complainant about the status of the unit in question and the development of the project and had made bona fide efforts to facilitate the taking over of possession of the unit by the complainant. Despite being duly intimated through the aforementioned letters and communications, including the offer of possession and subsequent reminders thereto, the complainant failed to act further and respond to any of the communications issued by the Respondent and did not took any steps to complete the formalities required for taking possession of the unit. The continued silence and inaction on the part of the complainant, despite repeated opportunities afforded by the respondent, clearly reflect a lack of concern and cooperation on his part. The complainant therefore cannot now seek to attribute any delay or deficiency to the respondent when his own conduct demonstrates that he chose to ignore the communications and opportunities provided for taking possession of the unit and failed to honour his contractual obligations and remain bound by the agreed terms and conditions of the contract. The complainant failed to act further and

had been continued breach and default of his contractual and committed obligations.

- XII. That under such circumstances, the respondent acting in all fairness and transparency, again provided one last opportunity to the Complainant to complete his obligations by issuing Pre-Cancellation Letter dated 12.10.2023.
- XIII. That the respondent having duly applied to the competent Authority seeking grant and issuance of the occupation certificate on 25.05.2023 in respect of the project, which after having been duly considered, the occupation certificate was duly granted and issued by the competent Authority vide letter bearing Memo No. ZP-1261-Vol-II/JD(RA)/2023/37024 dated 31.10.2023.
- XIV. Further, the respondent upon the receipt of the occupation certificate on 31.10.2023, vide its letter dated 03.11.2023 duly intimated the complainant regarding the receipt of the occupation certificate for the project and advised the complainant to complete the requisite formalities. However, the complainant continued to remain heedless to the aforesaid Pre-Cancellation Letter dated 12.10.2023. Consequently, the respondent was left with no option and the respondent well within its rights was constrained to act further and cancel the allotment of the unit in favour of the complainant vide cancellation letter dated 16.11.2023. It is also pertinent to point out that on 07.11.2023, the complainant was contacted through WhatsApp and even the cancellation letter dated 16.11.2023 was shared with him on 24.11.2023 through WhatsApp but he failed to act further and respond. Further, to this an e-mail dated 13.02.2024 was also sent to the complainant informing him regarding the status of the unit as earlier allotted to him and which due to the breach and default on the part

of the complainant stood cancelled on 16.11.2023. The said e-mail of the respondent was duly received and read by complainant but for the reasons best known to him he failed to respond.

- XV. That later in the year 2024, the complainant vide his letter dated 08.02.2024 requested the respondent to allow him 6 months' time to initiate the possession and hand over formalities for the unit and to deposit the requisite full and final payment towards the unit and in reply the respondent vide its email dated 13.02.2024 duly informed the complainant that on account of admitted continued default and breach on the part of the complainant, the allotment of the unit already stood cancelled on 16.11.2023, of which the due intimation and communication was given to him and of which he has been admittedly well aware of.
- XVI. That after the cancellation of the allotment of the unit in question, the complainant was/is left with no right, title or interest in the same. The mere fact of payment of booking amount cannot legally create an indefeasible right in favour of the complainant especially when there is no breach on the part of the respondent and as the respondent has already complied with and fulfilled its contractual obligations by developing the project, applying for and obtaining at the first instance the occupation certificate on 31.10.2023 and thereafter, applying and obtaining the completion certificate on 20.12.2024 and also offering the possession of the unit for fit-out on 01.07.2023 and thereafter, again intimating on 03.11.2023 by advising the complainant to complete the procedural formalities and take the possession of the unit. Significantly, not even a single payment has been made by the complainant to the respondent during the entire period and this fact alone is sufficient to establish that the complainant did not wish to proceed with the transaction and infact

had abandoned the transaction by his own acts of omission and commission. Furthermore, the bald assertion of the complainant that he had allegedly repeatedly approached the respondent for enquiring about the unit in question are belied from the demand letters/reminders, referred to hereinabove. It was the respondent who had repeatedly requested the complainant to fulfil its payment obligations and other contractual but to no avail.

- XVII. That the respondent has duly completed construction of the project in question. The respondent duly applied to the competent Authority seeking grant and issuance of the occupation certificate on 25.05.2023 in respect of the project, which after having been duly considered, the occupation certificate had been granted and issued by the Competent Authority vide its Letter / Memo bearing Memo No. ZP-1261-Vol-II/JD(RA)/2023/37024 dated 31.10.2023. Thereafter, as per the established process, the respondent has proceeded further and also applied for and obtained completion certificate for the project from the competent Authority which has been granted and issued vide Memo No. LC-1851-II-JE(RK)/2024/40478 dated 20.12.2024. Therefore, even otherwise, no lapse/ fault/ default/ delay can be attributed to the respondent in the present case as the respondent has acted in a very fair and transparent manner duly and has complied with its obligations. The project is duly operational and functional with presence of various brands and over a period of time the project has been recognized as a landmark with its specific and distinctive features and attributes and the project is a landmark project. The present Complaint deserves to be dismissed on this ground alone.

XVIII. That the complainant has failed to point out any illegality on the part of the respondent. There does not exist a subsisting promoter-allottee relationship between the parties. Furthermore, no circumstances whatsoever have been pointed out by the complainant which can warrant grant of any relief to him.

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

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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 allottee 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 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;

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.
13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the **Hon'ble Apex Court in Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others** SLP (Civil) No. 13005 of 2020 decided on 12.05.2022, wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant.

F.I. Direct the respondent to refund the entire paid-up amount along with interest.

F.II Direct the respondent to pay Rs.3,00,000/- for mental agony.

F.III Direct the respondent to pay Rs.80,000/- for litigation cost.

15. The complainant submits that he booked a commercial unit bearing No. 4F-015 (CAFE), admeasuring approximately 513 sq. ft. in the project "Elan Epic", Sector 70, Gurugram for a total sale consideration of Rs.60,90,785/-. Pursuant to the booking application dated 18.11.2019 and the Provisional Allotment-cum-Demand Letter dated 08.02.2020, the complainant paid a total sum of Rs.21,29,045/-. Further, contended that after issuance of the allotment letter, the respondent remained completely silent and did not contact, assist, or communicate with the complainant for more than three years. Thereafter, on 21.08.2023, the respondent suddenly demanded penalty charges of Rs.437/- per sq. ft. plus GST for alleged delayed payment and enclosed a possession letter dated 01.07.2023. Subsequently, the respondent unilaterally issued a cancellation letter dated 16.11.2023, cancelling the allotment and forfeiting Rs.19,62,119/- out of the total amount of Rs.21,29,045/- paid by the complainant, leaving only Rs.1,66,926/- refundable.
16. On contrary the respondent contests the complaint as being not maintainable in law and on facts, contending that the complainant consciously abandoned the transaction after 2020, failed to execute the Buyer's Agreement despite repeated requests, and remained in continuous default of payment obligations. Despite allotment of the unit vide letter dated 08.02.2020, the complainant failed to execute the Buyer's Agreement and ignored reminder letters dated 21.12.2020, demand and reminder letters issued in 2022, pre-cancellation notices issued between August 2022 and June 2023, possession-related communications including offer of possession dated 01.07.2023 and subsequent reminders, and the final pre-cancellation notice dated 12.10.2023. The respondent submits that it duly completed construction, applied for occupation certificate on 25.05.2023, obtained the occupation

certificate on 31.10.2023 and the completion certificate on 20.12.2024, and repeatedly informed the complainant regarding the status of the project and possession formalities. As the complainant failed to cure the defaults despite several opportunities, the respondent was constrained to cancel the allotment vide letter dated 16.11.2023, which was also communicated through WhatsApp and email. The respondent further submits that the complainant himself, by letter dated 08.02.2024, sought six months' time to complete possession formalities, thereby admitting his default, but was informed that the allotment had already stood cancelled.

17. Now, the question before the authority is whether the cancellation issued vide letter dated 16.11.2023 is valid or not?
18. Upon consideration of the documents placed on record and the submissions made by both the parties, the Authority observes that the complainant was allotted commercial unit bearing No. 4F-015 (CAFE) vide Provisional Allotment-cum-Demand Letter dated 08.02.2020 and had deposited a sum of Rs.21,29,045/- towards the sale consideration. The record further reveals that despite allotment of the unit, the complainant failed to execute the Buyer's Agreement and did not adhere to the payment obligations arising under the allotment. The respondent has placed on record various reminder letters, demand notices, pre-cancellation notices issued from time to time calling upon the complainant to execute the Buyer's Agreement and clear the outstanding dues. The respondent has also established that the project was completed and the Occupation Certificate was obtained on 31.10.2023. Despite repeated opportunities having been granted, the complainant neither complied with the payment demands nor completed the necessary formalities for continuation of the allotment. In these circumstances, the Authority is of the considered view that the respondent was justified in proceeding with

cancellation of the allotment vide letter dated 16.11.2023 he said cancellation cannot be said to be arbitrary or illegal.

19. Section 19(6) of the Act of 2016 casts an obligation upon the allottee to make necessary payments in a timely manner. In view of the above observations, the cancellation of the unit vide letter dated 16.11.2023 is held to be valid. However, while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. Further, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land 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, the respondent is directed to refund the paid-up amount of Rs.21,29,045/- after deducting 10% of the sale consideration being earnest money along with an interest @ 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 on the refundable amount, from the date of cancellation of the unit i.e. 16.11.2023 till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. Directions of the authority

21. 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. The cancellation letter dated 16.11.2023 is held to be valid, accordingly the respondent is directed to refund the paid-up amount of Rs.21,29,045/- after deducting 10% of the sale consideration being earnest money along with an interest @10.80% p.a. on the refundable amount from the date of cancellation letter i.e., 16.11.2023, till its actual realization.

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.

22. Complaint stands disposed of.

23. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.05.2026