

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

Date of decision: 25.08.2026

NAME OF THE BUILDER		M/s SS Group Pvt. Ltd.	
PROJECT NAME		"SS Omnia, Village Badha, Sector 86, Tehsil District Gurugram"	
Sr. No.	Case No.	Case title	Appearance
1.	CR/6015/2025	Sanjeev Garg Vs. S.S Group Private limited	Sh. Vijay Pal Chauhan Advocate Sh. Dhruv Dutt Sharma Advocate
2.	CR/6016/2025	Rakhi Garg Vs. S.S Group Private limited	Sh. Vijay Pal CHauhan Advocate Sh. Dhruv Dutt Sharma Advocate
CORAM: Shri Arun Kumar			Chairman

ORDER

1. This order shall dispose of both the complaint titled above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "SS Omnia, Village Badha, Sector 86, Tehsil District Gurugram" being developed by the same respondent/promoter i.e., "M/s S.S. Group Pvt. Ltd." The terms and conditions of the allotment letter, buyer's agreements and the fulcrum of the issue involved in all these cases pertain to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.
3. The details of the complaints, status of reply, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given below:

Project Name and Location		SS Omnia SS Omnia, Village Badha, Sector 86, Tehsil District Gurugram			
DTCP License No. and validity		113 of 2013 dated 30.12.2013 valid up to 29.12.2019			
RERA Registered or Not Registered		Registered 94 of 2017 dated 28.08.2017 valid up-to 27.08.2020			
Possession clause as per the buyer's agreement		8. Possession 8.1 The developer proposes to hand over the possession of the premises within a period of 36 months from the date of signing of this agreement. The allottee(s) agrees and understands that the developer shall be entitled to a grace period of 180 days, after the expiry of thirty-six month for applying the OC [Page 31 of complaint]			
Occupation certificate		10.08.2022 (page 17 of reply)			
Sr. No.	Complaint No., Case Title, Date of filing of complaint and reply status	Unit no. and size	Execution of BBA Due date of possession	Total Sale Consideration / Total Amount paid by complainant	Offer of possession (OOP) and cancellation letter
1.	CR/6015/2025 Sanjeev Garg & Rakhi Garg Vs.	OFF-408, 4 th floor (Page 24 of complaint) OLD UNIT.	18.08.2015 (Page 23 of complaint) 14.02.2019 (including	BSP-₹25,77,336/- (Page 16 of reply) AP₹15,09,439/- (Page 16 of reply)	OOP: 22.08.2022, 01.05.2024 Cancellation: 21.06.2024



	S.S. Group Private Limited DOF: 09.12.2025 Reply: 14.01.2026	OFF-510 area admeasuring 383 sq.ft. *Note: Unit change through letter dated 25.09.2019 (page 36 of reply)	grace period of 180 days)		
2.	CR/6016/2025 Rakhi Garg & Sanjeev Garg Vs. S.S. Group Private Limited DOF: 09.12.2025 Reply: 14.01.2026	OFF-410, 4 th floor (Page 24 of complaint) FF-510 area admeasuring 383 sq.ft. *Note: Unit change through letter dated 25.09.2019 (page 36 of reply)	06.01.2016 (Page 23 of complaint) 06.06.2019 (including grace period of 180 days)	BSP-₹22,68,471/- (as per SOA, page 16 of reply) AP-₹14,55,327/- (as per SOA, page 16 of reply)	OOP: 22.08.2022, 01.05.2024 Cancellation letter: 21.06.2024

The complainant herein is seeking the following reliefs:

1. Refund & Litigation cost.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
BSP	Basic Sales Price
AP	Amount paid by the allottee/s
OOP	Offer of Possession

4. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/6015/2025 titled as "Sanjeev Garg & Rakhi Garg Vs. M/s S.S. Group Pvt. Ltd."** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Unit and project related details

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

Sr. No.	Particulars	Details
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1.	Name and location of the project	SS Omnia, Village Badha, Sector 86, Tehsil District Gurugram.
2.	Nature of project	Commercial complex
3.	HRERA Registered or not registered	Registered 94 of 2017 dated 28.08.2017 valid upto 27.08.2020
4.	DTCP license	113 of 2013 dated 30.12.2013 valid up to 29.12.2019
5.	Date of BBA	
6.	Unit no. (Office Space)(Old unit)	OFF-410, 4 th floor (Page 24 of complaint)
	Unit no. (Office Space) (New unit)	OFF-510 area admeasuring 383 sq.ft. *Note: Unit change through letter dated 25.09.2019 (page 36 of reply)
7.	Area admeasuring	329 sq.ft. (carpet area) (Page 24 of complaint)
8.	Possession Clause	Clause 8.1 The developer proposes to hand over the possession of the premises within a period of 36 months from the date of signing of this agreement. The allottee(s) agrees and understands that the developer shall be entitled to a grace period of 180 days, after the expiry of thirty-six month for applying the OC [Page 31 of complaint]
11.	Due date of possession	06.06.2019 (including grace period of 180 days)
	Payment Plan	Construction Linked payment plan
12.	Total sale consideration	Rs. 22,68,471/- (as per SOA, page 16 of reply)
13.	Amount paid by the complainants	Rs.14,55,327/- (as per SOA, page 16 of reply)
14.	Date of Occupation Certificate	10.08.2022 (page 17 of reply)
15.	Offer of possession (New unit)	22.08.2022 (page 70 of complaint)
16.	Offer of possession	01.05.2024 (page 84 of complaint)
17.	Reminder	01.05.2024 (page 85 of complaint)



18.	Cancellation	21.06.2024 (page 96 of complaint)
19.	Refund amount vide cheque dated 18.06.2024	10,62,387/- (page 97 of complaint)
20.	Conveyance deed in favour of third person	22.05.2025 (page 20 of reply)

B. Facts of the complaint:

6. The complainant has made the following submissions: -

- I. That the complainant's on showing the rosy pictures has booked an office space/office in the said project and paid Rs. 2,02,665/-, vide cheque no.655648 dated 11.03.2014 drawn on HDFC, Gurgaon. This payment was duly acknowledged by respondent, and respondent issued a provisional registration letter dated 25.03.2014 and confirmed the booking of the unit office bearing no. OFF-408 on 4th floor area 342 Sq.ft. on a basic sale price Rs.5142 Sq.ft.
- II. That on 18.08.2015 an one-sided builder buyer agreement got signed between complainants and respondents. The said BBA was done after 18 months from the booking and subsequently payments made by the complainants and the said BBA was not registered with sub registrar despite several requests made by the complainants. The total cost of the said unit is Rs. 19,88,388/- + tax, cost includes BSP, PLC, EDC & IDC. Extra Rs. 3,50,000/- to be paid at the time of possession for reserved car parking.
- III. That the complainant's again paid Rs. 2,09,761/- on 06.06.2014 and Rs. 2,06,213/- on 09.08.2014. Hence total payment of Rs. 6,18,639/- was made by the complainants till 09.08.2014 which is 30% of the total cost of the unit. The 30% payment was demanded/received by the respondents long before signing of BBA i.e. 18.08.2015.



- IV. That the complainants paid Rs. 4,45,400/- on 08.06.2019, vide cheque no. 000091 dated 08.06.2019 drawn on HDFC, Gurgaon as per the letter of demand received dated 08.12. 2018. Complainants again paid Rs. 4,45,400/- on 12.07.2019, vide cheque no.000093 dated 12.07.2019 drawn on HDFC, Gurgaon as per the letter of demand received dated 20.06.2019. Having paid all the above demands by the respondent, complainants had paid Rs. 15,09,439/- till 12.07.2019 which is 70% of the total sales consideration as per BBA payment plan.
- V. That after having received 70% of the payment from the complainants, the respondents sent emails dated 04.10.2019 & 05.10.2019 intimating change in unit no., floor no. and layout plan of the unit without obtaining any consent from the complainants.
- VI. That respondents through email dated 04.10.2019 sent an intimation letter dated 25.09.2019 to inform complainants that the super area has been increased to 374 sq.ft. from the earlier agreed super area of 342 sq.ft. as mentioned in BBA. Increase in the area was just on paper whereas as per the new revised layout plan shared by the respondent, carpet area of the unit was reduced from the agreed layout in the BBA. So, this had a doubly negative impact on the complainants that they need to pay more for the less carpet area being delivered to them. All this resulted into the super built-up area loading in excess to 60~65%. This was a unilateral decision taken by the respondent without providing any reason / justification for such a change having significant impact on the sale consideration. Hence complainant never agreed for such unilateral changes been made after receiving 70% of the payment. Complainant raised concerns to the respondent by personally visiting their office at Gurugram. This act of respondent

was also arbitrarily and against the provision of RERA Act.

- VII. That on 15.04.2021 respondent sent another demand of Rs.2,73,896/- and arbitrarily the respondent increase the area of the office from 342Sq. Sq. ft. to 374 Sq.ft. and also demanded the amount for increased area. This demand was not paid by the complainants since this was deviation from the signed BBA and violation of prevailing RERA norms. The complainants visited the respondent office/ management of the company and registered their concern over the change in agreed plans and extra cost being demanded on account of alleged increase in super built-up area but respondent never paid any heed to these requests of the complainants.
- VIII. That on 07.02.2022 the respondent sent another demand of Rs.4,36,437/-. The complainants again requested respondents to kindly settle their issues and not to change the unit and cost but respondent again overlooked the genuine request made by the complainants. On 27.08.2022 the respondent sent an email regarding offer of possession. Offer for possession was issued by builder vide letter dated 22.08.2022. Builder demanded exorbitant extra amount in leu of illegal unilateral changes it made without obtaining any consent from the buyers. This offer for possession letter was in complete violation to the payment schedule agreed in BBA. Builder mischievously/intentionally imposed heavy penalty on the buyer for not paying their illegal demand letters from 8th instalment onwards. Respondent did not mention/agreed for any delay penalty to be paid to complainants for many years of delay in completion of project on part of the respondents. Along with offer for possession, Respondent unilaterally asked complainants to sign the ANNEXURE C

(Undertaking) which had clauses stating that the buyer cannot raise any claim or dispute in future. This was completely illegal and against the rights of the complainants.

- IX. That on 02.09.2022 complainants sent an email to the Respondent intimating that offer for possession is not valid and work is not yet finished. Complainants again raised their unaddressed / unresolved issues related to the major changes in the overall project scheme and increase in super built-up area and requested to address these concerns. Complainants shared photographs with the email to evidence that work is not yet completed at site. Also request the respondent to update their latest e-mail ID and postal address for further communications. Respondents did not give any heed to the concerns raised by the complainants, neither through e-mail and nor during several face-to-face meetings that took place at respondent's office.
- X. That the respondent to pressurize the complainants sent a reminder letter dated 01.05.2024, imposing heavy interest and penalties and demanded Rs.21,48,470/- as outstanding payment. This exorbitant outstanding demand was sent even after the fact that complainants had already paid 70% (Rs.15,09,439/-) of total sale consideration i.e. 19,88,388/- + taxes as mentioned in the BBA. Only 30% outstanding amount as per BBA payment schedule amounting to Rs. 9,97,812 + service tax was balance. The complainants again visited the respondent's office to raise concerns & settle the issues but respondent was adamant on his illegal demands and did not pay any heed to the request of the complainants.
- XI. That respondents sent an email dated 25.06.2024 regarding

cancellation of unit no.508. This was completely illegal and unilateral decision taken by the respondent without any discussion or consent or notice to the complainants. Respondent provided details of a cheque of Rs.10,79,638/- cheque No.009994 dated 18.06.2024 drawn on Kotak Mahindra Bank as refund and deducted huge amounts from the complainant's payments, which is against the prevailing RERA norms. It is also humbly submitted that till date the complainants have not received the above-mentioned cheque.

- XII. That the complainants promptly replied via email on 26.06.2024, rejecting the respondent's unilateral and illegal cancellation. They also requested that the respondent provide the unit to resolve the issue.
- XIII. That the complainants sent several emails, also done telephonic conversation, visited respondents' office to have face to face meetings between 26.06.2024 to 11.02.2025, but respondent was completely adamant on all its illegal demands and never paid any attention to the complainant's concerns. The cancellation email dated 25.06.2024 from respondent and further email communications between 26.06.2024 till 11.02.2025.
- XIV. That as the respondent failed to live up of its commitment and failed to deliver the possession of the office/shop. The complainant's asked the respondent to settle the issues, not to change the area, not to increase the sale consideration, not to raise exorbitant demand letters with increased demands and penalties but respondent not paid any heed hence this complaint.
- XV. That the complainants duly paid all the demands made by the respondent in line with the agreed BBA until 70% of the sale consideration. This was only after respondent unilaterally started

sending exorbitantly increased demands which were not in line with the BBA that complainants raised their concerns & showed their inability to pay such unilateral & illegal demands. Complainants were always ready to pay demands as per the agreed payment schedule in BBA.

- XVI. That the respondent with the malafide intent illegally cancelled the unit which was booked by the complainants way back in 2014 at prevailing rates of the time (11 years back). Now respondents, being aware of the steep hike in the real estate prices, intentionally cancelled the legal unit of the complainants and deprived them of their right to enjoy the benefits of price appreciation. Instead, respondents illegally sold the unit to some other party at currently prevailing high rates and enjoyed all the market appreciation on the cost of the complainants. due to non-performance of its obligations and duties the complainant's is going through mental pain and agony.
- XVII. That the entire sequence of events leading to the instant complaint establish the malafide intent of the respondent to defraud the complainant's of his hard-earned money. In this hue, it is reverentially submitted that such conduct on the part of the respondent is tantamount to breach of the contractual obligations of the agreement.
- XVIII. That due to the acts of the above and terms and conditions of the Agreement, the Complainant's has been unnecessarily harassed mentally as well as financially, therefore the Respondent is liable to compensate the Complainant's on account of aforesaid act of unfair trade practice.

C. Relief sought by the complainant:

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

- I. To get the unit or refund full amount paid by the complainant's along with applicable rate of interest.
 - II. To pay the complainants an amount of Rs. 2,00,000/- towards the pain suffering and mental harassment as well as loss of valuable time, money and energy.
 - III. To pay the complainants an amount of Rs. 75,000/- (towards the litigation cost of this complaint).
- D. Reply by respondent:**
- i. That the complainants have not approached the Authority with clean hands. The complainants have suppressed the true and material facts from the Authority and tried to misuse the process of law by filing this false and frivolous complaint against the respondent. The complainants have frustrated the terms and conditions of the buyer's agreement dated 18.08.2015, which was the essence of the arrangement between the parties and therefore, the complaint is not maintainable and should be rejected at the threshold.
 - ii. That in 2014, the complainants applied for allotment of office space bearing unit no. OFF-408 on fourth floor measuring 342 sq. ft Super Area in the upcoming commercial complex at Sector-86, Gurgaon to be developed by the respondent and made a payment of Rs. 2,02,665/-. Subsequently, a buyer's agreement dated 18.08.2015 was executed between the complainants and respondent.
 - iii. That the complainants have failed to make timely payments in accordance with the terms and conditions of the buyer's agreement as well as the payment plan annexed thereto, and therefore, the present complaint is liable to be rejected. Out of the revised total sale consideration of Rs. 25,77,336/- (including IFMSD of Rs. 56,100/- but excluding taxes, electricity and power backup charges), the complainants made payment of Rs. 15,09,439/- only, which is

approximately 58% of the total sale consideration. As per the construction linked payment plan opted by the complainants, an amount of Rs. 15,09,480/- (excluding interest) was outstanding and payable by the complainants as on 22.08.2022. Despite having expressly agreed to adhere to the payment plan, the complainants willfully defaulted in making payments towards the sale consideration of the unit, and thereby committed a breach of their contractual obligations.

- iv. That a demand letter dated 16.04.2021 for Rs. 3,54,178/- (including interest) was issued to the complainants towards the milestone due on 'commencement of top floor roof slab', however, despite receipt of the said demand letter, the complainants failed to make any payment. Thereafter, another demand letter dated 07.02.2022 for Rs. 8,28,973/- (including interest) was issued to the complainants towards the milestone due on 'commencement of brick work' and 'commencement of plaster work', but the complainants again failed to make any payment despite receipt thereof.
- v. That the respondent has duly obtained the Occupation Certificate dated 10.08.2022 in respect of the building where the unit in question is situated. Pursuant to the receipt of the Occupation Certificate, the respondent, vide its email dated 27.08.2022, offered possession of the unit to the complainants through its letter of offer of possession dated 22.08.2022, calling upon the complainants to complete the possession formalities and get the conveyance deed executed and further to make payment of a sum of Rs. 15,09,480/- (excluding interest).
- vi. That a reminder dated 01.05.2024 (already attached with the complaint as annexure C9) was sent to the complainants to make

payment of Rs. 15,09,480/- (excluding interest) and complete possession formalities, yet no payment was made by the complainants.

- vii. That as per clause 6 of the buyer's agreement, which expressly provides that in case of delay of 60 days in making payment by the allottee(s) to the developer as per the schedule of payments, the developer shall have the right to terminate the agreement and forfeit the earnest money and any other amount of non-refundable nature. Thus, upon failure of the complainants to make the payment, despite repeated demands and reminders, the respondent was therefore constrained to cancel the allotment vide cancellation letter dated 21.06.2024 which was duly communicated to the complainants through e-mail dated 25.06.2024. Consequently, the complainants are left with no right, title, interest etc. in respect of the said unit. The respondent also sent a cheque bearing no. 009993 dated 18.06.2024 for a refundable amount of Rs. 10,79,638/- to the complainants after deducting the applicable forfeiture charges.
- viii. That subsequent to the cancellation of the booking / allotment of the complainants, the said unit was re-allotted to Mr. Kapil Chaudhary and even a conveyance deed bearing vasika no. 515 dated 11.04.2025 has been executed by the respondent in his favour.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings on the relief sought by the complainant:

- F.I Direct the respondent to refund the paid-up amount.**

13. The complainants were allotted a unit bearing no. OFF-408, situated on the 4th floor of the respondent's project named "SS Omnia", Sector 86, Gurugram, vide buyer's agreement dated 18.08.2015, for a total sale consideration of Rs. 25,77,336/-. The complainants have submitted that, as per clause 8.1 of the agreement, the promoter had undertaken to hand over possession of the unit within a period of 36 months from the date of execution of the agreement. The allottees had also agreed and understood that the promoter would be entitled to a grace period of 180 days beyond the expiry of the said period of 36 months, or such extended period as may be applicable, for applying for and obtaining the occupation certificate in respect of the group housing complex. Accordingly, the due date for handing over possession of the unit comes out to be 14.02.2019. The complainants have paid an amount of Rs. 15,09,439/- against the total sale consideration of Rs. 25,77,336/-. Thereafter, the respondent allegedly cancelled the allotment of the unit, which had been booked by the complainants in 2014. Aggrieved by the said cancellation, the complainants have filed the present complaint seeking a refund of the amount paid.
14. The counsel for the respondent submits that the complainants failed to make timely payments in accordance with the terms and conditions of the buyer's agreement and the payment plan annexed thereto, and therefore, the present complaint is liable to be dismissed. The respondent has duly obtained the occupation certificate dated 10.08.2022 in respect of the building in which the unit in question is situated. Thereafter, vide email dated 27.08.2022, the respondent forwarded the letter of offer of possession dated 22.08.2022 to the complainants, calling upon them to complete the possession formalities,

execute the conveyance deed, and pay the outstanding amount of Rs. 15,09,480/-. Subsequently, a reminder dated 01.05.2024 was issued to the complainants, calling upon them to pay the outstanding amount of Rs. 15,09,480/-, excluding interest, and complete the possession formalities. However, the complainants failed to make the payment. Consequently, owing to the complainants' failure to clear the outstanding dues despite repeated demands and reminders, the respondent cancelled the allotment vide cancellation letter dated 21.06.2024, which was duly communicated to the complainants through email dated 25.06.2024. The respondent further submits that third-party rights in respect of the unit have been created and that the conveyance deed has also been executed in favour of a third party on 11.04.2025. Now, the question before the Authority is whether the said cancellation is valid in the eyes of law?

15. Upon perusal of the documents placed on record, it is observed that the complainants had paid an amount of Rs. 15,09,439/- up to 16.07.2019, as submitted by them. Thereafter, the respondent issued reminder/demand letters dated 16.04.2021 and 07.02.2022, calling upon the complainants to clear the outstanding dues. Subsequently, upon obtaining the occupation certificate dated 10.08.2022, the respondent issued an offer of possession letter dated 22.08.2022, along with a demand/reminder letter, raising a demand of Rs. 17,32,478/-. However, the complainants again failed to clear the outstanding dues. Thereafter, vide letter dated 01.05.2024, the respondent once again called upon the complainants to take possession of the unit within 15 days and issued a demand for payment of Rs. 21,48,470/-. Despite repeated reminders, the complainants failed to take possession of the

unit after making the requisite payments. Consequently, the respondent proceeded with the cancellation of the allotment vide letter dated 21.06.2024, informing the complainants that the allotment of the unit had been cancelled. The respondent also issued a cheque bearing no. 009993 dated 18.06.2024 for a refundable amount of Rs. 10,79,638/-.

16. The Authority has gone through the payment plan (page 47 of the complaint) of the buyer's agreement executed between the parties. Further, upon considering the documents available on record as well as the submissions made by both the parties, it is ascertained that the complainant has paid only an amount of Rs.15,09,439/- against the subject unit. The respondent issued demand/reminder letters for payment of the outstanding amount. The Authority is of the considered view that the respondent was justified in raising the demands as per the payment plan agreed upon between the parties. However, the complainants continued to remain in default and failed to make the payment even after various reminder letters, which ultimately led to the cancellation of the unit vide letter dated 21.06.2024.
17. As per clause 1.2(f) read with clause 6 of the buyer's agreement executed between the parties, the respondent has a right to cancel the unit and forfeit the earnest money where an allotment of the unit is cancelled due to default of complainant to make timely payments as per the agreed payment plan. Clause 1.2(f) and Clause 6 of the buyer's agreement are reproduced under for ready reference:

"f) Earnest Money

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

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

The Flat Buyer(s) agrees that the conditions for forfeiture of EARNEST MONEY shall remain valid and effective till the execution and registration of the conveyance deed for the said FLAT and that the Flat Buyer(s) hereby authorizes the Developer to effect such forfeiture without any notice to the Flat Buyer(s) and the Flat Buyer(s) has / have agreed to this condition to indicate his/her/their commitment to faithfully fulfil all the terms and conditions contained in his/her/their application and this Agreement."

"6. TIME IS THE ESSENCE

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

18. Further, Section 19(6) and Section 19(7) of the Act of 2016 cast an obligation on the allottees to make necessary payments in a timely manner. The respondent provided sufficient opportunities to the complainants and ultimately cancelled the allotted unit of the complainant vide letter dated 21.06.2024. Hence, the cancellation of the unit, in view of the terms and conditions of the buyer's agreement dated 18.08.2015, is held to be valid.
19. Now, the second issue for consideration arises as to whether after cancellation the balance amount after deduction of earnest money of the sale consideration of the unit has been sent to the claimants or not. The issue with regard to deduction of earnest money on cancellation of

a contract arose in cases of ***Maulla Bux VS. Union of India, (1970) 1 SCR 928*** and ***Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in ***CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in ***CC/2766/2017*** in case titled as ***Jayant Singhal and Anr. VS. M3M India Limited*** decided on **26.07.2022**, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money **shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be** in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

20. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of Regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent can't retain more than 10% of sale consideration as earnest money on cancellation. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the basis sale consideration and return the remaining amount along with interest at the rate of 10.80% (*inadvertently mentioned as 10.85% in the proceeding dated 13.10.2026*) (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of termination/cancellation i.e., 21.06.2024 till the actual date of refund of the amount 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. Cancellation is valid. No case of delay possession charges is made out. The respondent is directed to refund the paid-up amount after deducting the earnest money which shall not exceed the 10% of the basic sale consideration along with interest at the prescribed rate, i.e., 10.80% per annum (*inadvertently mentioned as 10.85% in the proceeding dated 13.10.2026*) from the date of cancellation till the actual date of refund of the amount within the timelines provided in Rule 16 of the Rules, 2017, *ibid*. The amount already paid by the



respondent to the complainants, if any may be adjusted from the refundable amount and shall return the balance amount to the complainants.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
22. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
23. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
24. Files be consigned to the registry.



Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
25.08.2026

HARERA
GURUGRAM