HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**999 of 2025**
Date of filing:	**04.07.2025**
First date of hearing:	**04.08.2025**
Date of decision:	**31.08.2026**

Rajni Sabharwal
W/o Late Sh. Harish Sabharwal
R/o 301, Bhavishya India Tower,
Opp. 10^{th} Avenue, Gaur City 2,
GR. Noida West-201009 ……COMPLAINANT

Versus

Oasis Landmark LLP
Godrej One, 5^{th} Floor,
Pirojshanagar, Eastern Express Highway,
Vikhroli (East), Mumbai-400079 ...RESPONDENT

Present: - Adv. Harpreet Singh, counsel for complainants through VC.

Adv. Saurabh Guaba, counsel of respondent through VC.

ORDER (NADIM AKHTAR –MEMBER)

1. Present complaint has been filed by the complainant on 04.07.2025 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, Act of 2016) read with Rule 28 of the Haryana

Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the RERA, Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. FACTS OF THE COMPLAINT

2. That in the initial phase of the transaction, complainant applied in the month of September, 2022, for a plot bearing No. D-155, Tower T-6, 2nd Floor, measuring 108.50 sq. mtr. (129.77 sq. ft.), for a total consideration of ₹88,85,414.56 in the project "Godrej Green Estate", Sector-34, Sonipat, Haryana.

3. That the complainant paid a sum of ₹8,88,542/- along with the application, which was acknowledged in the Allotment Letter dated 18.11.2022, annexed as Annexure C-1. Thereafter, the complainant made a further payment of ₹17,74,084/- against receipts. Subsequently, the complainant sought refund upon cancellation on account of non-execution of the Agreement for Sale (AFS), as required under the mandatory provisions of Section 13 of the Act. The email dated 30.04.2022 protesting the non-execution of the Agreement for sale under Section 13 is annexed as Annexure C-2. The booking was acknowledged through the Allotment Letter dated 18.11.2022.

4. That despite submission of all documents, upon cancellation on account of non-execution of the Agreement for sale even after receipt of 20% of the sale consideration, the respondent continued to raise payment demands. The complainant specifically refused to make any further payment in the absence of execution of the Agreement for sale as required under the Act. The email dated 05.02.2023 in this regard is annexed as Annexure C-3. The cancellation request was accepted, and all original documents were surrendered to the respondent. The complainant was made to sign a Cancellation Letter dated 05.04.2023, annexed as Annexure C-4. Thereafter, demands continued to be raised even after submission of the documents, to which the complainant specifically objected through email dated 11.06.2023, annexed as Annexure C-5.

5. That under Section 13 of the Act, the respondent is not authorized to accept more than 10% of the consideration or raise demands beyond 10% unless an Agreement for Sale is executed in the prescribed format and registered before the Sub-Registrar. In the present case, no Agreement for Sale was ever executed or registered. Section 13 of the Act is reproduced below for the kind perusal of this Hon'ble Authority:

> *"13. (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building, as the case may be, as an advance payment or an application fee, from a person without first entering into a*

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written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.
(2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed."

In such circumstances, where the respondent was not authorized to raise demands beyond 10% of the consideration, the charging of interest or penalty on alleged delayed payments is stated to be unauthorized. The complainant has alleged that such conduct amounts to an unfair trade practice. The prescribed format under U.P. RERA is annexed as Annexure C-6 for reference only, though the same may not be binding in the State of Haryana. An order passed by U.P. RERA on violation of Section 13 is also annexed as Annexure C-7 for reference only and is not stated to be binding in Haryana.

6. That despite submission of all original documents, no refund has been made by the respondent till date despite regular follow-up by the complainant. The complainant has sought refund along with interest on the ground that the cancellation was sought due to the respondent's lapse. The Statement of

Account is annexed as Annexure C-8, the demand is annexed as Annexure C-9, and the cancellation is annexed as Annexure C-10.

7. That the complainant has not filed any other case on the same cause of action before any Court, Forum, Tribunal or Commission. Hon'ble Authority has the territorial jurisdiction to entertain and decide the present complaint, as the cause of action has arisen within its jurisdiction.

B. RELIEFS SOUGHT

8. Complainant has sought following reliefs:

   i. Refund with interest @ mclr+2%, as per RERA norms;

   ii. Refund of alleged delay interest charged by the respondent, under the pretext of delayed payment;

   iii. Litigation charges; &

   iv. Any other relief, which this Hon'ble court may deem fit and proper, may also be granted, in the interest of justice, equity and fair-play.

C. REPLY ON BEHALF OF RESPONDENT

Respondent filed a detailed reply on 27.07.2026 pleading therein as under:

9. At the outset, the respondent submits that the present complaint is misconceived, false, frivolous, and has been filed with a malafide intent only to mislead this Hon'ble Authority and to conceal the Complainant's own contractual defaults. The Complainants have failed to make payments as per

the Payment Schedule agreed under the Application Form, Allotment Letter, and Builder Buyer Agreement (hereinafter referred to as "BBA") and have also failed to come forward for timely registration of the said Agreement despite repeated reminders from the Respondent. The Complainants, after being fully aware of the terms and conditions of allotment, voluntarily executed all the contractual documents and was bound by their provisions. However, the complainant defaulted in making timely payments, committed a material breach, and are now attempting to take undue advantage of their own wrong by seeking refund contrary to the contract.

a. *Failure of the complainants to make payments as per agreement*

10. The complainant, after going through and understanding the Payment Schedule incorporated under the Cost Sheet, Allotment Letter and the BBA, voluntarily executed the same. That as per Clause 6 of the BBA, time was the essence of the contract, and the complainant was obligated to make timely payments. However, the complainant defaulted in making payments, thereby committing a material breach as contemplated under Clause 10.3 of the BBA. Despite repeated reminders, the complainant failed to pay the due instalments towards the total sale consideration, and accordingly, the respondent was constrained to issue several reminder letters dated 28.03.2023, 03.04.2023, 12.04.2023 and 26.04.2023, wherein the respondent kept requesting the

complainant to come forward and make timely payments as agreed under the payment schedule incorporated under the contractual documents but the complainant paid no heed to the same. Copy of the said letter is annexed herewith as Annexure R2. Thus, the default lies entirely with the complainant, and the respondent has not committed any breach or deficiency. The Respondent has acted strictly in terms of the contract, and there is no violation of Section 13 of the RERA Act as alleged.

b. Delay on the part of the complainants to execute and register the BBA

11. Clause 19 of the Application Form categorically provides that if the complainant fails to come forward for registration of the BBA, the Respondent shall be entitled to cancel the Application and forfeit the Booking Amount. Further, clause 5 of the Allotment letter provides that the complainant shall come forward and register the BBA within 15 days from the date of Allotment, however, complainant failed to comply with the same. That the respondent, through emails and reminder letters dated 01.05.2023, 07.05.2023, 17.05.2023, 07.06.2023, 26.03.2023 and 11.04.2023, repeatedly requested the complainant to execute and register the BBA. However, the complainant failed to do so and thereby violated the agreed terms. Copies of the reminder letters are annexed as Annexure R3. The complainant has

intentionally concealed such correspondence and has approached this Hon'ble Authority with unclean hands.

c. *Complainants misleading the Hon'ble Authority*

12. The complainant, after doing independent research and due diligence, applied for allotment of a plot in the Respondent's project "Godrej Green Estate", situated at Sector 34, Sonipat, Haryana. The complainant voluntarily executed the Application Form. Pursuant thereto, the Allotment Letter dated 18.11.2022 was issued to the complainant for Plot No. D-155, for a total sale consideration of ₹88,85,414/-. Copy of the Allotment Letter is annexed as Annexure R4. As per Clause 5 of the Allotment Letter, the complainant was required to register the BBA within 15 days of issuance of the Allotment Letter, failing which the respondent was entitled to cancel the allotment and forfeit the booking amount. However, the Complainants failed to comply despite reminders. Eventually, the complainants executed the Builder Buyer Agreement (BBA) only on 30.03.2023 after substantial delay. Copy of the executed BBA is annexed as Annexure R5.

d. *Contractual terms and default*

13. As per Clause 2.5 and Clause 6 of the BBA, the complainant was required to make payments as per the Payment Plan (Schedule VI) and it was expressly agreed that "time is the essence" for both parties. Further, Clause 10.3 of the

BBA stipulates that in case of default in payments for more than three months, the respondent is entitled to cancel the allotment and forfeit the Booking Amount (Earnest Money). The Booking Amount/Earnest Money, being 10% of the total sale consideration, was a genuine pre-estimate of loss and not a penalty, as provided under Clause 2.3.1, Clause 5.2, and Clause 8.6 of the BBA. The complainant made only a part payment of ₹17,77,084/- and failed to pay the remaining balance. The respondent has strictly adhered to the terms of the Agreement and raised demands only as per the Payment Schedule incorporated under the BBA. The Respondent also obtained the Completion Certificate dated 29.03.2023 from the Directorate of Town and Country Planning, Chandigarh, Copy of which is annexed as Annexure R6. As on 27.04.2023, there is a principal outstanding amount of ₹35,54,164/- and interest outstanding is of an amount of ₹63,446/-. Further, identical disputes based on similar facts arising out of the same project has already been decided by the Authority in complaint bearing no. 508 of 2024, 798 and 799 of 2024. Copy of judgments are annexed at Annexure R-7(colly)

e. *Losses suffered by the respondent*

14. The Respondent has suffered significant financial loss and opportunity cost due to non-payment by the Complainants. The Complainant's default deprived the Respondent of the right to sell the said plot to another genuine

buyer who could have complied with the agreed payment terms. The Application Form, Allotment Letter, and BBA clearly defined that 10% of the sale consideration shall be treated as Earnest Money, meant to ensure performance of the buyer's obligations. In the present case, the Complainants having defaulted, the forfeiture of Earnest Money is strictly in accordance with the contract. The said amount represents a genuine pre-estimate of damages, and its forfeiture is lawful.

f. Complainants cannot take advantage of their own wrong

15. The complainant, having defaulted in making timely payments and voluntarily sought cancellation, cannot now claim refund by invoking the equitable jurisdiction of this Hon'ble Authority. The Complaint is an afterthought, filed only to evade contractual obligations and extract undue financial benefit. Hence, it deserves to be dismissed with exemplary costs.

D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

16. Counsels appearing on behalf of both the parties reiterated the submissions made in their respective complaint/reply and supporting documents. The issues arising therefrom have already been addressed and dealt with in the foregoing paragraphs of this order. Learned counsel for the respondent further submitted that, vide previous orders passed by the Authority the respondent

was burdened with a cost of **₹15,000/- payable to the Authority and ₹7,000/- payable to the complainant**. It was submitted that the respondent has already deposited the cost of ₹15,000/- with the Authority. However, with regard to the remaining cost of ₹7,000/- payable to the complainant, the respondent has filed an application seeking waiver of the said cost on 21.08.2026 in the registry.

17. The Authority has considered the request of the respondent for waiver of the cost of ₹7,000/- payable to the complainant. The Authority is of the considered view that there are no sufficient or justifiable grounds for waiving the cost imposed upon the respondent vide the previous orders. The said cost was imposed after due consideration of the circumstances of the case and has attained finality. Accordingly, the request of the respondent for waiver of the cost of ₹7,000/- is declined.

E. ISSUES FOR ADJUDICATION

18. Whether the complainants are entitled for refund of the amount deposited by them along with interest in terms of Section 18 of RERA, Act of 2016?

F. OBSERVATIONS AND DECISION OF THE AUTHORITY

In light of the background of the matter as captured in this order and also the arguments submitted by the learned counsels for both the parties, the Authority observes as under:

19. That the complainant had booked a plot in the real estate project; "Godrej Green Estate" being developed by the promoter namely; "Oasis Landmark LLP" and in consonance to the same, complainants were allotted plot no. D-155, admeasuring 108.50 sq ft. in the project known as "Godrej Green Estate" situated at Sector-34, Sonipat, Haryana vide allotment letter dated 18.11.2022. The Builder Buyer Agreement was executed between the parties on 30.03.2023. Complainant has paid a total sum of ₹17,77,084/- against the total sale consideration of the unit amounting to ₹88,85,414/- . Respondent received a conditional Completion Certificate from the competent Authority on 29.03.2023.

20. As per Clause 8.1 of the agreement for sale "*The promoter, based on the approved plans and specifications shall offer possession of the plot on or before 31.03.2025.....*" As clearly stated in the agreement, deemed date of possession as per agreement is **31.03.2025.**

21. First issue to be adjudicated by the Authority is whether complainant is entitled to get full refund of his paid amount along with interest or not?

22. The Authority has heard the submissions made by the parties and has perused the pleadings and documents placed on record. The complainant has sought the primary relief of refund of the amount paid along with interest @ MCLR

+ 2%, as per RERA norms; and refund of the alleged delay interest charged by the respondent under the pretext of delayed payment.

23. The respondent, on the other hand, has opposed the complaint primarily on the ground that the complainant committed default in making payments as per the agreed Payment Plan and thereafter voluntarily sought cancellation of the allotment. The respondent has relied upon the Application Form, Allotment Letter, Builder Buyer Agreement dated 30.03.2023, Payment Plan and the various contractual clauses relating to payment, cancellation and default. Before examining the submissions of both the parties, it is necessary to determine the factual chronology emerging from the documents placed on record.

24. The Complainant applied for allotment in the project "Godrej Green Estate", Sector-34, Sonipat, Haryana. The Allotment Letter was issued to the Complainant on 18.11.2022. The total consideration of the booked unit is ₹88,85,421/-. The Payment Plan annexed with the BBA provides for payment of the consideration at different stages/milestones, and the Complainant opted for the timely payment plan. The Statement of Interest placed on record by the complainant at page no. 67 of the complaint book reflects that the complainant had made payments aggregating to ₹17,77,084/-. The said statement records payments commencing from 19.09.2022 and thereafter on

various dates up to 09.01.2023. The documents further establish that the Builder Buyer Agreement was executed on 30.03.2023. Thereafter, the complainant sought cancellation of the allotment, which was accepted by the respondent vide Cancellation Acceptance Letter dated 05.04.2023.

25. The complainant has principally relied upon Section 13 of the Act and has contended that the respondent could not accept an amount exceeding 10% of the cost of the plot without first entering into and registering an Agreement for Sale. Section 13(1) of the Act prohibits a promoter from accepting a sum exceeding 10% of the cost of the apartment, plot or building, as the case may be, as advance payment or application fee, without first entering into a written Agreement for Sale with the allottee and registering the said agreement. In the present case, the total sale consideration was approximately ₹88,85,421/-. 10% thereof comes to approximately ₹8,88,542/-. The Statement of Interest produced by the complainant reflects total payments of ₹17,77,084/-. The dates of payment reflected in the said statement are prior to the date of execution of the BBA, i.e. 30.03.2023. Thus, the record demonstrates that the respondent had received an amount equivalent to approximately 20% of the total sale consideration prior to execution of the BBA dated 30.03.2023. The respondent has not disputed the fact that the BBA was executed only on 30.03.2023. Its defence is that the complainant was required to make

payments in accordance with the Payment Plan and that the complainant had voluntarily agreed to the contractual terms. The contractual obligation contained in the Payment Plan, however, cannot be considered in isolation from the statutory restriction contained in Section 13 of the Act. A contractual term cannot authorise a promoter to accept an amount in excess of the statutory limit where the statutory precondition contemplated under Section 13 has not been fulfilled. Accordingly, this Authority observes that the receipt of an amount of ₹17,77,084/- prior to execution of the BBA, being approximately 20% of the total consideration, is beyond the 10% threshold contemplated under Section 13 of the Act. However, the above finding by itself does not conclude the complainant's prayer for refund. The Authority is required to examine the subsequent conduct of the parties, particularly the execution of the BBA on 30.03.2023, the request for cancellation dated thereafter, the acceptance of cancellation by the respondent, and the contractual provisions governing cancellation and default.

26. The complainant has pleaded that no Agreement for Sale was ever executed or registered. However, the respondent has placed on record the BBA dated 30.03.2023, which bears the signature of the parties. Therefore, the complainant's assertion that "*absolutely no AFS was ever executed*" cannot be accepted as a factual proposition in view of the BBA placed on record. Once

the BBA was executed on 30.03.2023, the subsequent relationship between the parties was also governed by the terms and conditions contained therein, subject of course to the provisions of the Act and the Rules. It is, therefore, necessary to examine the relevant clauses of the BBA to determine the consequences of the cancellation sought by the Complainant.

27. The Respondent has relied upon ***Clause 6*** of the BBA, which provides that time is of the essence for both the Promoter as well as the Allottee. The said clause establishes that the parties were contractually bound to adhere to the stipulated payment schedule and other obligations. However, the said clause cannot be read independently of the other provisions of the BBA. In particular, where the agreement itself prescribes a specific procedure for declaring an allottee to be in default and for cancellation/termination on account of such default, the said procedure must also be considered. Accordingly, the mere recital that time is of the essence does not, by itself, establish that the complainant stood in default or that the Respondent was entitled to forfeit the entire amount paid by the Complainant.

28. The respondent has primarily relied upon ***Clause 10.3*** of the BBA to contend that the complainant committed a material breach by failing to make payments. Clause 10.3.1 provides for the consequences where the Allottee fails to make payments for two consecutive demands, including the demands

raised in accordance with the Payment Plan, despite notice being issued in that regard. The clause further contemplates payment of interest on the unpaid amount. Clause 10.3.2 further provides that where the default continues beyond the prescribed period, the Promoter may cancel/terminate the Agreement in accordance with the terms thereof, subject to the consequences stipulated therein. Therefore, the invocation of Clause 10.3 requires examination of the actual dates of the demands, the dates on which the payments became due, the notices issued to the Allottee and the period for which the alleged default continued. In the captioned complaint, the respondent has relied upon reminder letters dated 28.03.2023, 03.04.2023, 12.04.2023 and 26.04.2023. However, the BBA itself was executed on 30.03.2023 and the respondent accepted the complainant's cancellation request vide letter dated 05.04.2023. Thus, the Authority finds that the respondent's case of continued default has to be examined in the context of the fact that the cancellation request had already been accepted on 05.04.2023. More importantly, the respondent has relied upon Clause 10.3 to contend that the complainant was liable to suffer forfeiture on account of default. However, the contractual requirement regarding the duration and nature of default cannot be ignored. The Respondent has not demonstrated from the material presently on record that, after execution of the BBA on

30.03.2023, the complainant's alleged default continued for the contractual period necessary for invoking the termination consequences under Clause 10.3 before the cancellation was accepted on 05.04.2023. Therefore, the Authority is unable to accept the respondent's contention that the entire consequence of cancellation should be treated as a termination solely on account of the complainant's payment default under Clause 10.3.

29. ***Clause 8.6*** specifically deals with Cancellation by the Allottee. The clause provides that the Allottee has the right to cancel/withdraw the allotment by giving prior written notice of 60 days to the Promoter expressing the intention to terminate the Agreement. In the present case, the complainant sought cancellation and the respondent accepted the said request vide cancellation Acceptance Letter dated 05.04.2023. The respondent has specifically relied upon the contents of the said letter, wherein the complainant acknowledged that the cancellation had been requested on his/her own accord. The Authority finds that the cancellation was ultimately accepted by the respondent and the allotment stood cancelled pursuant to the request made by the Complainant. At the same time, the requirement of 60 days' notice under Clause 8.6 cannot be ignored. The respondent, instead of insisting upon the entire notice period, accepted the cancellation request on 05.04.2023. Therefore, the respondent, having accepted the cancellation, cannot subsequently treat the allotment as

subsisting for the purpose of continuing to accumulate contractual payment obligations beyond the date of acceptance of cancellation. The consequences of such cancellation would, therefore, have to be determined under the relevant provisions of the Agreement dealing with cancellation and refund.

30. ***Clause 5.2*** deals with cancellation of the allotment and prescribes the financial consequences thereof. Clause 5.2.2 deals with cases of 100% self-financing and provides for forfeiture of the Booking Amount and other amounts specifically contemplated therein, with the balance amount being refundable in accordance with the applicable law. The significance of Clause 5.2.2 is that even under the contractual terms relied upon by the respondent, cancellation does not result in automatic forfeiture of the entire amount paid by the Allottee. The clause contemplates forfeiture of the amount specifically permissible under the Agreement and refund of the balance. The respondent has contended that 10% of the sale consideration constitutes the Booking Amount/Earnest Money and that the same is liable to be forfeited. The Authority finds that the contractual stipulation regarding Booking Amount cannot be read to mean that every amount paid by the Allottee automatically becomes liable to forfeiture. The amount which may lawfully be retained by the respondent has to be determined in accordance with the specific contractual provision governing cancellation and the applicable provisions of

law. In the present case, the amount paid by the complainant is ₹17,77,084/-. The contractual documents relied upon by the respondent provide for Booking Amount equivalent to 10% of the total consideration. Accordingly, the Respondent may retain only the amount which is contractually and legally permissible under the applicable cancellation clause.

31. The Complainant has sought refund of the entire amount along with interest @ MCLR + 2%. The Authority has already observed that the respondent received approximately 20% of the total consideration prior to execution of the BBA, which was contrary to the restriction contemplated under Section 13. However, the Complainant subsequently executed the BBA on 30.03.2023 and thereafter sought cancellation, which was accepted by the Respondent on 05.04.2023. The present case is therefore not a case where the Promoter failed to deliver possession in accordance with an executed Agreement for Sale and the Allottee thereafter exercised a statutory right to withdraw on account of such failure. The cancellation in the present case was sought by the Complainant and accepted by the Respondent. Therefore, the Complainant cannot claim automatic refund of the entire amount with interest merely on the basis of Section 13. At the same time, the Respondent cannot retain the entire amount paid by the Complainant, particularly when the contractual cancellation provisions themselves contemplate refund of the balance amount

after permissible deductions. Accordingly, the complainant is entitled to refund of the balance amount remaining after deduction of the amount lawfully permissible to be retained by the respondent under the applicable cancellation clause. So, the Authority finds it to be a fit case for allowing refund in favour of complainant subject to forfeiture of earnest money. Earnest money is defined by Hon'ble Supreme Court in judgment dated 03.02.2025 passed in **Godrej Projects Development Limited vs. Anil Karlekar & Ors.** Civil Appeal no. 3334 of 2023.

> "This Court in the case of SatishBatra v. SudhirRawal (supra), after considering the earlier judgments of this Court, has observed thus:
> *"15. The law is, therefore, clear that to justify the forfeiture of advance money being part of "earnest money" the terms of the contract should be clear and explicit.* ***Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the depositor to be forfeited in case of nonperformance by the depositor****. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get double the amount, if it is so stipulated. It is also the law that part-payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards partpayment of consideration and not intended as earnest money then the forfeiture clause will not apply.*
> *16. When we examine the clauses in the instant case, it is amply clear that the clause extracted hereinabove was included in the contract at the moment at which the contract was entered into. It represents the guarantee that the contract would be fulfilled. In other words, "earnest" is given to bind the contract, which is a part of the purchase price when the transaction is carried out and it will be forfeited when the transaction falls through by reason of the default or*

failure of the purchaser. There is no other clause that militates against the clauses extracted in the agreement dated 29-11-2011.

We are, therefore, of the view that the seller was justified in forfeiting the amount of Rs 7,00,000 as per the relevant clause, since the earnest money was primarily a security for the due performance of the agreement and, consequently, the seller is entitled to forfeit the entire deposit. The High Court has, therefore, committed an error in reversing the judgment of the trial court."

Further, as per 2.3.1 clause of plot buyer agreement earnest money shall be 10% of the total price. Also as per the decision in Appeal no. 292/2019 titled as **Experion Developers Pvt Ltd vs Sanjay Jain & Smt. Kokila Jain,** wherein Hon'ble Appellate Tribunal has observed that 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. Respondent can be allowed to deduct only 10% of sale price as earnest money which works out to **₹8,88,542/-** (sale price is ₹88,85,414/-) and return remaining amount to the complainant.

32. In view of the aforesaid discussion, the earnest money, being 10% of the total sale price of **₹88,85,414/-**, comes to **₹8,88,542/-**. The complainant had initially paid an amount of ₹5,00,000/- on 06.10.2022. Since the said amount was less than the earnest money by ₹3,88,542/-, the said shortfall is required to be adjusted against the subsequent payment of ₹2,88,542/-, also made by the complainant on 06.10.2022. After such adjustment, a further shortfall of

₹1,00,000/- remains towards the earnest money, which is accordingly adjusted against the third payment of ₹1,00,000/- made by the complainant. Thus, the entire amount of earnest money stands adjusted against the aforesaid payments and no amount remains refundable out of these three payments. Accordingly, the remaining amount, if any, paid by the complainant beyond the earnest money is liable to be refunded along with applicable interest. The calculation of the principal amount and interest up to 31.08.2026 is as under:-

Sr. No.	Amount in ₹	Date of payment	Interest upto 31.08.2026 in ₹
1.	8,88,542/-	19.01.2023	3,47,306/-
Total=	**8,88,542/-**		**3,47,306/-**

33. The complainant is seeking compensation towards litgation charges. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as *"M/s Newtech Promoters and Developers PvL Ltd. V/s State of U.P. &ors."* (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the

complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

34. Further, with regard to the reliefs sought by the complainant mentioned in Para 8 (ii), of this order, the complainant has neither pressed upon nor argued during the hearing. Therefore, the Authority deems it appropriate not to adjudicate on these reliefs.

I. DIRECTIONS OF THE AUTHORITY

35. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

    i. Respondent is directed to refund the an amount of **₹12,35,848/-** to the complainant and pay further interest beginning from 31.08.2026 till actual realization of the amount at the rate of 10.80%. Authority also directs the respondent not to create any third party rights on the unit allotted to the complaint till full realization of entire amount.

    ii. The respondent is also directed to pay the said amount of ₹7,000/- to the complainant within one week from the date of uploading of this order.

iii. A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.

36. Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.

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NADIM AKHTAR
[MEMBER]