BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**2367 of 2026**
Complaint filed on:	**29.05.2026**
Date of decision:	**14.08.2026**

Vikash Singh
R/o – H. No. 54, Karuna Vihar Apartment, Plot No. 9, Dwarka, Sec 18 A, New Delhi, Delhi — **Complainant**

Versus

Imperia Structures Ltd.
Registered Office at: - A-25, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi-110044 — **Respondent**

CORAM:
Shri Arun Kumar — **Chairman**

APPEARANCE:
Sh. Nipun Rao (Advocate) — Complainant
Ms. Nitin Sharma (Advocate) — Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees 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 complainants, 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	"The Esfera" Sector, 37 Gurgaon
2.	Nature of Project	Residential group housing colony
3.	DTCP License	64 of 2011 dated 15.07.2017
4.	Name of Licensee	M/s Phoenix Datatech Services Pvt. Ltd and ors.
5.	HRERA Registration	Registered Vide no. 352 of 2017 dated 17.11.2017 valid upto 31.12.2020
6.	Unit no.	E 504, Tower E (as per application ledger page 18 of complaint)
7.	Unit admeasuring	1578 sq. ft. (super area) (as per application ledger page 18 of complaint)
8.	Welcome Letter	29.08.2022 (as per page 16 of complaint)
9.	Date of builder buyer agreement	Not executed
10.	Possession clause	NA
11.	Due date of possession	29.08.2025

		(3 years from the date of welcome letter as per Fortune Infrastructure V Trevor D lima Judgement)
12.	Total sale Consideration	Rs.82,05,600/- (as per application ledger page 18 of complaint)
13.	Amount Paid	Rs.19,54,945/- (23% payment) (as per application ledger dated 30.11.2022 page 19 of complaint)
14.	Payment Plan	NA
15.	Demand letter of Rs.92,86,877/-	12.09.2022, 17.10.2022, (page 31 and 32 of the reply respectively)
16.	Pre cancellation Notice	15.11.2022 (page 33 of the reply)
17.	Cancellation letter	16.12.2022 (page 34 of the reply)
18.	Occupation certificate	07.05.2025 (page 28 of reply)

B. Facts of the complaint.

3. The complainant has pleaded the following facts:

a. That the genesis of the transaction dates back to the year 2014 when a commercial unit in a project named "Imperia H2O IT Space 44-45, Knowledge Park V, Greater Noida, U.P." was booked by the complainant's late father, Sh. Brij Kishore Singh, in the name of the complainant's mother, Mrs.

Chandrakanti Singh. Subsequently, after the unfortunate demise of the complainant's father, the said booking was transferred in favour of the complainant, Mr. Vikas Singh, against a new project of the respondent.

b. That pursuant to the said transfer, the respondent formally allotted Unit No. E-504, 2BKH with servant room, in Tower E, on the 5th Floor, having a super area of 1,578.00 Sq. Ft. in its project known as "THE ESFERA", situated at Sector 37D Gurugram, Haryana The respondent issued a welcome letter dated 29th August 2022, confirming the said allotment and assigned a new customer ID IMP-E-811 to the complainant.

c. That the complainant, in good faith and relying upon the representations of the respondent, has made timely payments towards the sale consideration of the said unit. The complainant has paid a total sum of Rs. 25,54,948/- to the respondent.

d. That the respondent has deliberately and illegally failed to execute the builder-buyer agreement as mandated under Section 13(1) of the Act. This provision unequivocally states that a promoter shall not accept a sum more than ten percent 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 written agreement for sale with such person and register the said agreement for sale. The respondent's action are in direct contravention of this statutory mandate.

e. That the complainant has made numerous attempts to contact the respondent through telephone calls, emails, and personal visits to their office, requesting them to execute the builder-buyer agreement and to provide updates on the construction status, the revised date of possession, and the status of statutory approvals such as the occupancy certificate and completion certificate. However, the respondent has adopted a completely evasive and non-cooperative approach, failing to provide any clear, satisfactory, or truthful responses.

f. That the non-execution of the builder-buyer agreement is a calculated and mala fide act by the respondent to keep the complainant in a state of uncertainty and to deprive him of his statutory rights under the act. Without a formal agreement, the complainant is unable to ascertain the promised date of possession, the specifications of the unit, the payment schedule, and other critical terms and conditions, thereby frustrating his rights under Section 19 of the Act.

g. That the conduct of the respondent constitutes a fundamental breach of the implied contract that came into existence upon the issuance of the welcome letter and the acceptance of substantial payments. The respondent is estopped by its conduct from resiling from its obligations. The refusal to formalize the terms of the allotment in a written agreement is a clear indication of the respondent's intention to not be bound by any fixed timelines or quality standards, which amounts to an unfair trade practice.

h. That the respondent's actions are a flagrant violation of its duties and obligations under Section 11 of the Act, which obligates the promoter to be responsible for all obligations, responsibilities, and functions under the provisions of the Act and to provide information relating to the project to the allottee. The deliberate withholding of the builder-buyer agreement is a direct breach of this duty.

i. That the lack of transparency and the refusal to execute a formal agreement raise serious concerns regarding the potential misappropriation and diversion of funds collected from the complainant and other allottees. Such conduct casts a grave doubt on whether the respondent is complying with the provisions of Section 4 of the Act. which mandates the maintenance of funds in a separate RERA account.

j. That the illegal and arbitrary actions of the respondent have caused immense mental agony, harassment, and severe financial prejudice to the complainant. The complainant's hard-earned money is stuck with the respondent without any security of a formal agreement or any clarity on the future of the project, thereby depriving him of the rightful ownership and enjoyment of his property.

k. It is therefore prayed that in the interest of justice, the compliant may kindly be allowed and necessary direction as mentioned in relief sought may kindly be issued against the respondent and also direct the respondent to execute the builder buyer agreement in favor of complainant. The complainant reserves the right to seek compensation from the promoter for which he shall make a separate application before the Adjudicating Officer, if required.

l. That no other compliant, suit, is pending or decided by any other court or forum between the same parties on same cause of action. Hence, the cause of action has been arising to the complainant to file the present complaint before the Authority.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:

   a. Direct the respondent to forthwith execute the builder-buyer agreement in respect of Unit No. E-504, in the project "THE ESFERA", Sector 37D, Gurugram, Haryana, in the prescribed format and register the same, incorporating a just and reasonable date for handing over possession.

   b. Direct the respondent to pay interest at the prescribed rate for every month of delay from the date of receipt of payments till the execution of the builder-buyer agreement.

   c. Direct the respondent to provide a clear and definitive timeline for the completion of construction and for obtaining the occupancy certificate for the said project.

d. Pass an interim order restraining the respondent, its agents, or employees from creating any third-party rights, interest, or charge in respect of the said Unit No. E-504 and from cancelling the allotment of the complainant during the pendency of the present complaint.

e. Award the costs of this litigation to the complainant.

5. On the date of hearing, the authority explained to the respondents /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. The present complaint is wholly untenable, lacks merit, and does not disclose any valid cause of action against the respondent company. Accordingly, the same is liable to be dismissed.

II. That the averments made therein pertain to an altogether different project being developed by the respondent company at Knowledge Park-V, IT Space 44-45, Greater Noida, and therefore have no direct nexus whatsoever with the present transaction. The complainant has deliberately sought to introduce facts relating to a separate allotment in an attempt to create a misleading and prejudicial narrative before this Authority. Such averments are wholly irrelevant for the adjudication of the present dispute and do not disclose any cause of action against the respondent in relation to the present transaction. Consequently, the same deserve to be disregarded, and the complaint, being founded upon irrelevant and extraneous facts, is liable to be dismissed.

III. That in respect of the said allotment, the complainant was himself in persistent default of his payment obligations and failed to adhere to the agreed payment schedule despite repeated opportunities. Owing to such continuous defaults, the allotment was duly cancelled in accordance with the applicable terms and conditions, and the complainant was informed of the same vide cancellation letter dated 15.01.2019.

IV. That the complainant had, at his own request, sought allotment/booking in the project "Esfera II" after the cancellation of the earlier allotment. However, no transfer of funds from the earlier project to the present allotment was ever effected. The complainant cannot now be permitted to selectively rely upon isolated facts while suppressing the circumstances that led to the cancellation of the earlier allotment. The present averments are, therefore, nothing but an attempt to divert attention from the complainant's own defaults and to prejudice the fair adjudication of the present matter.

V. That the complainant has incorrectly alleged that all payments were made in a timely manner in accordance with the demands raised by the respondent company. The record, however, clearly demonstrates that the complainant has been in persistent default since the inception of the transaction and repeatedly failed to adhere to the agreed payment schedule.

VI. That the complainant had initially defaulted in relation to the earlier allotment, sought adjustment of the amounts paid therein, and thereafter requested allotment of an altogether different unit. The table relied upon by the complainant purports to show receipt of a cash payment. The respondent company categorically denies having received any such cash amount. No entry reflecting receipt of the alleged cash payment exists in the company's official accounts or records, and the acknowledgment relied upon by the complainant appears to be fabricated and cannot be treated as proof of payment.

VII. That the complainant's allegation that he repeatedly visited the office and sent emails seeking execution of documents and resolution of issues is specifically denied for want of proof. No such communications have been received by the respondent company from the complainant. it is submitted that the respondent company made efforts to facilitate the transaction and called upon the complainant to comply with his contractual obligations.

VIII. That however, despite repeated opportunities, the complainant failed to regularize his account and clear the outstanding dues. The delays and issues, if any, arose solely on account of the complainant's own persistent defaults and non-compliance, and not due to any act or omission on the part of the respondent company.

IX. That the allegation that the complainant made repeated efforts to contact the respondent company through emails, telephone calls, or any other mode of communication is wholly unsubstantiated and devoid of any supporting evidence. No such emails, calls, or communications were ever received by the respondent company.

X. That the averments made by the complainant are merely self-serving assertions intended to create a false impression before this Authority. In the absence of any documentary proof, the allegations regarding repeated follow-ups and attempts at communication are liable to be rejected. On the contrary, it was the complainant who consistently failed to comply with his obligations despite being afforded sufficient opportunities by the respondent company.

XI. That the complainant has failed to place on record a single email, letter, or any other communication evidencing that he ever approached the respondent company seeking execution of the builder buyer agreement. The allegation that the respondent company deliberately refrained from executing the agreement with a mala fide intention to deprive the complainant of his rights is wholly baseless, unsupported by any material on record, and deserves to be rejected outright.

XII. That the complainant himself was in default of his payment obligations under the earlier allotment. Consequently, the amount deposited by him was dealt with in accordance with the applicable terms and conditions governing the said allotment. The allegation that the amount was transferred from the earlier project to the present project is incorrect and misleading. In fact, no such transfer of funds ever took place. In fact, no such transfer of funds ever took place. Rather, the receipts pertaining to the present booking reflect payments aggregating only to Rs. 13,76,400/-. The remaining receipts relied upon by the complainant pertain to the earlier allotment and cannot be construed as evidence of any transfer of funds to the present project. It is pertinent to mention that, in case any such transfer been affected, the complainant would have been in possession of and would have annexed the relevant receipts, statements, or documentary evidence reflecting the same. Significantly, no such document has been placed on record by the complainant.

XIII. That the earlier booking pertained to a separate project situated in Uttar Pradesh and governed by the provisions applicable thereto. Any dispute arising out of or relating to that allotment constitutes an independent cause of action and cannot be adjudicated in the present proceedings. The complainant is, therefore, seeking to introduce irrelevant and extraneous issues in an attempt to divert attention from his own defaults and create a misleading narrative before this Authority.

XIV. That the complainant has sought to attribute the non-completion of formalities to the respondent company, whereas the record clearly reflects that the complainant himself failed to come forward and make the requisite payments. It is pertinent to mention that the total sale consideration of the unit is Rs. 85,33,821/- , whereas the complainant has paid only Rs.

13,76,400/- till date. Thus, a substantial portion of the sale consideration remains outstanding. The complainant has been in persistent default since the very inception of the transaction and has consistently failed to discharge his contractual obligations. In these circumstances, the complainant cannot seek to shift the consequences of his own defaults upon the respondent company or allege any deficiency on its part.

XV. That the respondent company has at all times acted as a fully compliant promoter and has undertaken all necessary steps in accordance with the applicable laws and regulatory requirements. The respondent company has duly obtained the occupation certificate after completing all requisite formalities for the complete project, including the tower where the unit in question is located.

XVI. That possession of numerous units in the project has already been handed over to various allottees, which itself demonstrates that the project is complete and that the respondent company has fulfilled its obligations in a timely and lawful manner. In such circumstances, the allegations seeking to portray the respondent company as being negligent, non-compliant, or deficient in the discharge of its obligations are wholly baseless and contrary to the factual record. The complainant cannot, by making bald and unsupported allegations, seek to undermine the respondent company's proven track record of compliance and performance. Mere assertions, without any factual foundation or proof, cannot be relied upon to establish any wrongdoing on the part of the Respondent Company. In the absence of any material to substantiate the allegations, the same deserve to be rejected outright and are accordingly denied.

XVII. That in the present case, the complainant has been in persistent default of his payment obligations, and the disputes raised are a direct consequence of such defaults. Accordingly, the reliance placed upon the aforesaid judgments is wholly misplaced and does not advance the complainant's case.

XVIII. That any consequences complained of by the complainant are attributable solely to his own persistent defaults and failure to comply with his contractual obligations. The respondent company has at all times acted bona fide and in accordance with the applicable terms and provisions of law. Therefore, the complainant is not entitled to any relief on the basis of the self-serving allegations made herein.

XIX. That however, it is submitted that the complainant is not entitled to any of the reliefs sought in the present complaint. The allegations made by the complainant are false, misconceived, and contrary to the record. Further, the non-execution of the builder buyer agreement, was a direct consequence of the complainant's own defaults and failure to comply with the requisite terms and payment obligations. Accordingly, the present complaint is devoid of merit and is liable to be dismissed.

XX. That however, the respondent company denies that any valid cause of action has arisen in favour of the complainant. It is submitted that the present complaint has been necessitated solely on account of the complainant's own defaults and failure to comply with his contractual obligations.

XXI. That the allotment in favour of the complainant already stands cancelled on account of the complainant's persistent defaults and failure to comply with his payment obligations despite sufficient opportunities. The complainant has failed to adhere to the terms governing the allotment and has, therefore, forfeited any right, title, or interest that may have accrued in respect thereof.

XXII. That the respondent company has acted strictly in accordance with the applicable terms and conditions governing the allotment. Consequently, the complainant cannot seek any relief in relation to the cancelled unit. Any amount, if found refundable, shall be governed by the applicable contractual terms and policies of the respondent company, after accounting for the consequences arising from the complainant's own defaults and the deductions permissible thereunder. No enforceable right survives in favour of the complainant for seeking execution of a builder buyer agreement in respect of a cancelled allotment.

XXIII. That it is highly pertinent to mention that the complainant has been in continuous default of his payment obligations since the year 2022 and has failed to regularize his account despite being afforded sufficient opportunities by the respondent company. The total sale consideration of the unit is Rs. 85,33,821/- whereas the complainant has paid only Rs. 13,76,400/-, which is not even 30% of the total consideration. The conduct of the complainant clearly demonstrates a complete lack of intention and willingness to perform his part of the transaction.

XXIV. That the respondent company had, from time to time, duly communicated with the complainant regarding the outstanding dues payable in respect of the subject unit. A demand letter dated 12.09.2022 was issued to the complainant calling upon him to clear the outstanding amount in respect of unit no. E-504 in the project "The Esfera". Thereafter, a reminder notice dated 17.10.2022 was issued granting the complainant a further opportunity to regularize his payment obligations and specifically informing him of the consequences of continued default. Despite receipt of the aforesaid communications, the complainant failed to clear the outstanding dues and continued to remain in breach of his payment obligations.

XXV. That subsequently, a reminder-2 notice dated 15.11.2022 was issued by the respondent company, whereby the complainant was categorically informed that failure to clear the outstanding dues would constrain the respondent company to initiate cancellation proceedings in accordance with the applicable terms and conditions governing the allotment. The said communication was issued with a view to provide the complainant with a final opportunity to cure the default and continue with the allotment. However, despite the repeated indulgence shown by the respondent company, the complainant neither regularized the account nor complied with the payment demands raised by the respondent company.

XXVI. That consequently, a cancellation notice dated 16.12.2022 came to be issued by the respondent company. The aforesaid sequence of communications clearly establishes that the respondent company acted transparently, fairly and in accordance with the contractual terms governing the allotment. The respondent company did not resort to cancellation abruptly or arbitrarily, but only after issuing demand letters, reminder notices and a pre-cancellation notice, thereby affording adequate opportunities to the complainant to fulfil his obligations and protect his allotment.

XXVII. That the conduct of the respondent company is fully consistent with the duties and responsibilities cast upon a promoter under Section 11 of the Real Estate (Regulation and Development) Act, 2016. The respondent company duly communicated all material information relating to the allotment, raised demands in accordance with the applicable payment schedule, and continuously informed the complainant of the outstanding dues and the consequences arising from non-payment. The respondent company, therefore, discharged its obligations in a transparent and bona fide manner and took all reasonable steps to enable the complainant to continue with the allotment. Having failed to perform his own statutory and contractual obligations, the complainant cannot now seek to attribute the consequences of his defaults to the respondent company or allege any deficiency on its part.

The present proceedings are nothing but an attempt to shift the burden of the complainant's own non-compliance upon the respondent company and, therefore, do not warrant any equitable or discretionary relief from this Authority.

XXVIII. That in view of such persistent and prolonged defaults, the allotment stands cancelled in accordance with the applicable terms and conditions, and no subsisting right, title, or interest survives in favour of the complainant in respect of the said unit. Consequently, the complainant is not entitled to seek allotment, possession, execution of any builder buyer agreement, or any other relief pertaining to the unit, and at best can only claim such refund, if any, as may be permissible after giving effect to the deductions applicable under the governing terms and conditions.

XXIX. That the respondent company has acted bona fide and strictly in accordance with the applicable terms, conditions, and provisions of law. Accordingly, the complainant is not entitled to any relief whatsoever, and the present complaint deserves to be dismissed with costs.

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 theses undisputed documents.

E. Jurisdiction of the authority

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

E.I. Territorial jurisdiction

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 allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> *Section 34-Functions of the Authority:*
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to forthwith execute the builder-buyer agreement in respect of Unit No. E-504, in the project "THE ESFERA", Sector 37D, Gurugram, Haryana, in the prescribed format and register the same, incorporating a just and reasonable date for handing over possession.

F.II Direct the respondent to pay interest at the prescribed rate for every month of delay from the date of receipt of payments till the execution of the builder-buyer agreement.

F.III Direct the respondent to provide a clear and definitive timeline for the completion of construction and for obtaining the occupancy certificate for the said project.

F.IV Pass an interim order restraining the respondent, its agents, or employees from creating any third-party rights, interest, or charge in

respect of the said Unit No. E-504 and from cancelling the allotment of the complainant during the pendency of the present complaint.

F.V Award the costs of this litigation to the complainant.

13. The complainant submitted that he booked unit no. E 504, Tower E, 5th floor in the project "The Esfera", Sector-37C, Gurugram and paid an amount of Rs. 19,54,945/- as per the agreed payment schedule. It was contended that no Builder Buyer Agreement was executed, possession was to be delivered within three years from the date of execution of the welcome letter, however, the respondent failed to hand over possession within the stipulated period despite receiving substantial consideration. The complainant further submitted that the demand notices-cum-possession offers dated 12.09.2022 and 17.10.2022 were illegal as they were issued without obtaining the requisite Occupation Certificate and that the demands raised towards increased area, escalation charges and other dues were arbitrary and unjustified. It was also contended that the Occupation Certificate was obtained only on 07.05.2025 and therefore earlier possession offers were invalid.

14. On contrary, the respondent submitted that the complaint voluntarily booked the unit. The respondent submitted that all taxes, escalation charges and increased area charges were levied strictly in accordance with the applicable laws and that possession was to be offered after obtaining the requisite Occupation Certificate. It was further contended that despite repeated reminders and opportunities, the complainant failed to clear the outstanding dues and did not take possession of the unit, resulting in issuance of pre-cancellation and cancellation notices in accordance with the terms of the agreement.

15. After consideration of all the facts and circumstances, Authority is of view that the subject unit of the complainant was cancelled by the respondent on 16.12.2022 after sending various reminders dated, 12.09.2022, 17.10.2022,

and for the payment of outstanding dues. The complainant contested the demands on account of increase in area and escalation cost stating that the same are arbitrary and unilateral. As per the application ledger dated 30.11.2022 the total sale consideration was Rs.82,05,600/- and the complainant has paid Rs. 19,54,945/- against the unit. However, the respondent has further raised a demand of Rs.92,86,877/- towards the increase in area, escalation cost etc.

16. Moreover, the Authority has observed that, despite the respondent's repeated efforts to collect outstanding payments, the complainant failed to make the required payments towards the unit. The respondent issued numerous reminders in this regard and further cancelled the unit vide letter dated 16.12.2022. The Authority observes that Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. However, 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 ***of Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj ors. VS. Sarah C. ors., (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 farmed 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."*

17. 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.19,54,945/- 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. 16.12.2022 till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. Directions of the Authority.

18. 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 respondent/promoter is directed to refund the paid-up amount of Rs. 19,54,945/- after deducting 10% of the sale consideration of Rs. 82,05,600/- (as per application ledger) 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 i.e., 16.12.2022 till its 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.

19. The complaint stands disposed of.

20. Files be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory
Authority, Gurugram
Dated: 14.08.2026