HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**456 of 2025**
Date of filing:	**08.04.2025**
First date of hearing:	**07.07.2026**
Date of decision:	**31.08.2025**

Pradeep Jhalani

S/o Sh. Late Babulal Jhalani,

R/o 3rd Floor, K-86A, KalkaJi

New Delhi-110019

......COMPLAINANT

Versus

Pivotal Infrastructure Pvt. Ltd.

Registered Office: 704-705 JMD Pacific Square,

Sector-15, Part-II, Gurugram, Haryana ......RESPONDENT

Present: - None for the complainant.

Adv. Nitesh Dalal, proxy counsel for Adv. Karan Kaushal, main counsel for the respondent through VC.

ORDER (NADIM AKHTAR –MEMBER)

1. Present complaint has been filed by the complainant on 08.04.2025 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. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of 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 table:

S.No.	Particulars	Details
1.	Name and location of the project	"Royal Heritage", Sector-70, Faridabad
2.	RERA registered/not registered	Lapsed project Earlier registered vide registration no. 47 of 2018 dated 14.09.2018
3.	Unit No.	1202, 12th floor Tower- T-10

4.	Super area	1265sq. ft.
5.	Date of execution of Flat Buyer Agreement and allotment	23.05.2013
6.	Deemed date of possession	23.11.2016 (42 months from the date of execution of agreement)
7.	Total Sale price	₹35,44,169/-
8.	Amount paid by the complainant	₹22,75,000/-
9.	Occupation certificate	30.11.2017
10.	Offer of possession	08.12.2017

B. FACTS OF THE COMPLAINT

3. Case of the complainant is that the complainant booked an apartment in March 2012 with M/s Pivotal Infrastructure Pvt. Ltd. (hereinafter referred to as the "Builder") in its project "Ansal Royal Heritage", situated at Sector-70, Faridabad. The Builder allotted Flat No. T-10-1202, admeasuring 1265 sq. ft., for a total consideration of ₹35,44,169/-. Complainant has made payments aggregating to ₹22,75,000/- to the Builder on different dates..

4. The flat was initially booked in the name of Pradeep Jhalani, HUF. Subsequently, due to difficulties in obtaining a home loan in the name of the HUF, the booking was transferred to Pradeep Jhalani (Individual). The

original allotment letter was retained by the Builder and a fresh allotment letter bearing No. 000806 dated 23.05.2013 was issued.

5. The complainant alleges that the builder had promised to execute the Builder Buyer Agreement (BBA) immediately after clearance of the application money of ₹3,00,000/-. However, despite repeated requests and follow-ups, the execution of the BBA was delayed. The complainant relies upon his emails dated 16.05.2012, 07.06.2012, 26.10.2012 and 28.03.2013, which have been annexed as Annexure A.

6. The complainant alleges that despite the first payment having been made on 10.03.2012, the builder treated 23.05.2013 as the date from which the period of 42 months for delivery of the flat was to be calculated. The relevant pages of the BBA have been annexed as Annexure B.

7. The complainant further states that the project was initially marketed as "Ansal Royal Heritage", prominently using the name "Ansal". Subsequently, the builder started referring to the project as "Royal Heritage" by removing the word "Ansal". The builder's letter dated 05.09.2012, acknowledging the project name as "Ansal Royal Heritage", has been annexed as Annexure C.

8. The complainant states that several communications were initially sent through email addresses prominently bearing the name "Ansal", whereas

subsequently the builder started using email addresses bearing the domain "*pivotalinfrastructure.com*". One such email dated 29.05.2013 has been annexed as Annexure D. According to the complainant, this created suspicion regarding the association between the Builder and Ansal.

9. The complainant alleges that after collecting substantial booking amounts, the pace of construction of the project became slow and was disproportionate to the amounts demanded from the homebuyers. He states that despite repeated requests, the builder did not provide adequate information regarding the progress of construction.

10. The complainant further alleges that the builder raised substantial demands within a short period. Through demand notice dated 13.03.2013, builder demanded ₹16,34,615/-, while through another demand notice dated 02.11.2013, an amount of ₹31,93,070/- was demanded. Copies of these demand notices have been annexed as Annexure E.

11. That approximately 90% of the flat cost had been demanded within a short period, possession was ultimately offered only on 08.12.2017. He alleges that this demonstrated a substantial gap between the amounts collected and the actual progress of construction.

12. That under the BBA, possession ought to have been delivered within 42 months, and according to his calculation the due date was 08.09.2015. He alleges that possession was offered only on 08.12.2017, resulting in substantial delay.

13. The complainant further states that rumours regarding a dispute over the project land were circulating in the market. According to him, the existence of the dispute was subsequently confirmed through a public notice published in the Hindustan Times, concerning a dispute between the Builder and DD Motors Pvt. Ltd. The newspaper publication has been annexed as Annexure F.

14. The complainant states that the alleged land dispute also caused concern to his home-loan banker, Canara Bank, which stopped further disbursement and required execution of an indemnity bond by the complainant and the builder. The email dated 15.03.2014 from Canara Bank requiring the indemnity bond has been annexed as Annexure G.

15. In view of the uncertainty regarding the project land, the complainant proposed that further payments be accepted "under protest". The Builder allegedly refused the proposal. The complainant relies upon his email dated 14.03.2014 and the builder's reply dated 15.03.2014, collectively annexed as Annexure G-1.

16. The complainant further alleges that on 04.06.2014, the builder invited existing and prospective customers to invest in its upcoming project "Devaan" at Gurgaon and, in the accompanying literature, claimed that the "Royal Heritage" project had already been completed/delivered. A copy of the said email and literature has been annexed as Annexure H.

17. The complainant states that he repeatedly offered to pay the outstanding amount subject to satisfactory clarification regarding utilisation of the money collected and the reasons for delay in possession. He relies upon his detailed email dated 08.03.2014, addressed to the builder and other authorities, raising concerns regarding disproportionate demands and non-deployment of funds in the project. The same has been annexed as Annexure I.

18. The complainant maintains that for the purpose of calculating the contractual period, the date of the first payment, i.e., 10.03.2012, should be treated as the effective date. Accordingly, he contends that the possession was due by 08.09.2015, being 42 months from the date of first payment.

19. The Builder eventually issued an offer of possession dated 08.12.2017, which has been annexed as Annexure J.

20. The complainant refused to accept the possession on the ground that the possession offered was defective. His letter dated 02.04.2018, containing the grounds for refusal, has been annexed as Annexure K.

21. The grounds for refusal of possession, as stated by the complainant, included that:

- the society had only a temporary entrance gate;
- construction was still continuing in the adjoining tower;
- there was no separate boundary wall restricting the movement of labour;
- the flat was allegedly not fit for occupation;
- clarity was lacking regarding permanent electricity connection, pollution-control NOC and installation of the sewerage plant; and
- promised amenities such as the swimming pool and club were still under development.

22. The complainant also alleges that the infrastructure provided by the builder was of poor quality and that residents were facing continuing problems.

23. The complainant thereafter sent further letters dated 12.04.2018 and 15.06.2018, raising concerns regarding the defective possession, including the absence of a proper approach road. These letters have been annexed as Annexure L. The builder, vide its letter dated 29.10.2018, replied to the

complainant's letter dated 02.04.2018 and inter alia, stated that the existing approach road to the society was temporary and that the main entrance would be constructed near Tower 1 after the Government acquires and constructs a 24-metre-wide road. The said reply has been annexed as Annexure M. The complainant contends that the BBA did not permit the builder to offer possession with a temporary approach road where the permanent access was dependent upon future action by a Government agency. He further expressed apprehension that the existing temporary access could be closed before the permanent road was constructed.

24. A further letter dated 01.06.2019 was sent by the complainant seeking clarification regarding the approach road and other outstanding issues. According to the complainant, the builder did not respond to the said communication. The letter has been annexed as Annexure N.

25. The complainant also states that a police complaint was lodged against the Builder before the Commissioner of Police, Faridabad, bearing Diary No. 227/CC/E dated 21.01.2021. According to the Complainant, no action was taken on the said complaint till the date of filing of the present proceedings.

26. Further, complainant has filed applications dated 04.08.2025, 24.02.2026 sand 19.06.2026 in the registry in support of their pleadings. The Authority has

duly taken these applications on record and considered the same for the proper and just adjudication of the matter.

C. RELIEFS SOUGHT

27. Complainant has sought following reliefs:

    i. Since the offered possession is defective, direct the builder to withdrawn the same with effect from its offer as if possession has not yet been offered.

    ii. The offer for possession being invalid and since possibility of valid possession offer looks further far away in view of long pending provision of basic amenities particularly legal and approved approach road, I do not wish to wait for any further time and builder be directed to return my money along with interest @ 12% with monthly rest right from date of 1st payment i.e 10-3-2012 till final date of payment.

    iii. The Complainant has been forced to incur expenses on rent for alternative accommodation due to the delay in possession. The total rent paid from date of promised possession ie 8-9-2015 till 27-2-25 amount to 114 months approximately and considering a modest rent of at the rate of 15000/- per months amounts to approximately INR

17,09,500. Builder be directed to pay rent @ 15000/- per month from 8-9-2015 till date of payment.

iv. The delay has caused significant mental agony, stress, and inconvenience to the Complainant. The Complainant claims a sum of INR 10,00,000 towards this.

v. Award costs of the complaint to the Complainants).

vi. Pass any other orders) as this Hon'ble Authority may deem fit and proper in the interest of justice..

D. REPLY ON BEHALF OF RESPONDENT

Respondent submitted a detailed reply on 24.10.2025 in the registry of the Authority pleading therein as under:

28. That the complainant approached the answering respondent for purchase of an apartment in the project "Royal Heritage" in March, 2012. Pursuant thereto, an allotment letter dated 23.05.2013 was issued in favour of the Complainant. Thereafter, the complainant entered into a Builder Buyer Agreement dated 23.05.2013 (hereinafter referred to as the "BBA") with the respondent for purchase of the said premises for a total sale consideration of ₹33,10,934/-, exclusive of applicable taxes, GST and other cess(es) payable under the applicable statutes. A copy of the allotment letter dated 23.05.2013 and the

BBA dated 23.05.2013 have been annexed and marked as Annexure R-1 and Annexure R-2, respectively.

29. That the present complaint, in the form in which it has been preferred, is not maintainable, as the Complainant has failed to approach this Hon'ble Authority with clean hands. The Complainant has deliberately suppressed material and relevant facts pertaining to his own defaults and failure to discharge his contractual obligations, which have a direct bearing upon the reliefs sought in the present complaint. The complainant cannot be permitted to seek equitable relief while withholding material facts concerning his payment obligations under the BBA. It is a settled principle that a person seeking equity must himself do equity and must approach the adjudicating forum with complete candour and bona fides.

30. That under Clause 4.3 of the BBA, the complainant had unequivocally agreed to pay the balance sale consideration in accordance with the payment plan contained in Annexure IV to the BBA, as and when demanded by the respondent, along with other applicable charges in terms of the BBA.

31. Further, as per Clause 4.5 of the BBA, the complainant had specifically agreed that time would be of the essence in respect of his obligations to make all payments under the BBA, including the total sale consideration, applicable

charges, interest, deposits, penalties, stamp duty, registration fee and other amounts payable in accordance with the demands raised by the answering Respondent and the agreed payment schedule.

32. That Clause 5.1.1 of the BBA specifically provides that execution of the sale/conveyance deed, handing over of possession and other consequential acts were subject to receipt by the respondent of the full sale consideration and other dues and charges, including maintenance charges and miscellaneous expenses payable under the BBA. However, the Complainant admittedly failed to remit the entire sale consideration payable under the BBA. Thus, the Complainant himself failed to comply with his contractual obligations and committed a material breach of the terms of the BBA.

33. That, in terms of Clause 7.1(i) of the BBA, failure to make payments within the time stipulated in the payment schedule contained in Annexure II, including failure to pay stamp duty, registration charges, incidental charges, increases such as IFMS, charges towards bulk supply of electrical energy, taxes and other amounts payable under the BBA, constituted an event of default on the part of the Complainant.

34. That Clause 8.1 of the BBA provided for handing over possession of the premises within 42 months from the date of execution of the BBA, subject to

timely payment by the complainant of all his obligations under the BBA. Therefore, the complainant cannot seek to rely upon the stipulated possession period while disregarding the corresponding contractual obligation to make timely payments.

35. That till date, the complainant has paid only a sum of ₹22,75,000/- towards the total sale consideration of ₹33,10,934/-, thereby leaving a substantial outstanding amount payable under the BBA. Copies of the receipts evidencing the payments made by the complainant amounting to ₹22,75,000/- have been annexed and collectively marked as Annexure R-3. The payment plan forming part of the BBA has also been placed on record for the convenience of this Hon'ble Authority.

36. That the answering Respondent, on several occasions, issued notices to the Complainant calling upon him to clear the outstanding dues and regularise his account. The answering Respondent also issued notices of cancellation on account of continued non-payment. The details of the notices and letters are as follows:

Sr. No.	Notice/Letter	Date
1.	Notice for payment of due amount	10.09.2012
2.	Notice for payment of due amount	04.10.2012

3.	Letter of cancellation of unit	27.10.2012
4.	Notice for payment of due amount	10.05.2013
5.	Notice for payment of due amount	28.05.2013
6.	Notice for payment of due amount	15.01.2014
7.	Notice for payment of due amount	03.02.2014
8.	Letter of cancellation of unit	01.03.2014

Copies of the aforesaid notices and letters have been annexed and collectively marked as Annexure R-4.

37. That the respondent made repeated and bonafide efforts to provide the complainant with opportunities to clear the outstanding instalments and the interest accrued thereon on account of delayed payments. Various reminders and communications were issued to the Complainant from time to time, including communications dated 22.08.2012, 05.09.2012, 26.10.2012, 27.11.2012, 01.03.2013, 13.02.2013, 01.03.2013, 13.03.2013, 21.03.2013, 02.05.2013, 18.05.2013, 13.06.2013, 03.08.2013, 23.08.2013, 02.09.2013, 01.10.2013, 02.11.2013, 11.12.2013, 09.12.2014, 09.01.2015, 09.01.2018, 08.12.2017 and 24.10.2018.

38. The aforesaid communications clearly demonstrate that the answering Respondent had repeatedly called upon the complainant to regularise his account and discharge his outstanding payment obligations. Despite the repeated opportunities and reminders, the complainant failed to make the requisite payments in accordance with the agreed payment schedule. Copies of the aforesaid reminders and communications have been annexed and collectively marked as Annexure R-5.

39. That the complainant's failure to make timely and complete payments under the BBA constitutes a material circumstance directly relevant to the reliefs claimed in the present complaint. The complainant, having failed to fulfil his reciprocal contractual obligations, cannot seek refund and other consequential reliefs by placing reliance solely upon the alleged delay in possession while suppressing his own persistent payment defaults.

40. It is further submitted that as per Clause 7.3 of the BBA, the complainant had specifically agreed that timely payment of instalments and other charges by him would be the essence of the BBA. In the event of failure to make timely payments, the respondent was entitled to cancel the allotment and the complainant was liable to forfeit the entire amount of earnest money and other amounts in accordance with the terms of the BBA.

41. It is further submitted that the complainant has deliberately suppressed a material fact before this Hon'ble Authority regarding the financial consequences expressly agreed between the parties in case of delayed payment. As per the terms and conditions of the BBA, any delay in payment of the due instalments by the Complainant attracted interest at the rate of 18% per annum for the first 90 days of default and thereafter at the rate of 24% per annum for the remaining period until the outstanding amount was paid to the answering Respondent.

42. The complainant was fully aware of the aforesaid contractual stipulations at the time of execution of the BBA. However, despite such knowledge, the complainant has failed to disclose the said provisions while seeking refund with interest @ 12% per annum from the date of his first payment. It is submitted that the complainant cannot be permitted to selectively rely upon the terms of the BBA which are favourable to him while simultaneously suppressing the corresponding contractual obligations undertaken by him.

43. It is, therefore, submitted that the aforesaid suppression of material facts is relevant for determination of the reliefs claimed by the Complainant and demonstrates that the Complainant has not approached this Hon'ble Authority with complete candour and bona fides. The reliefs sought by the Complainant,

particularly refund with interest, are liable to be considered in the backdrop of his admitted outstanding dues and his contractual obligation to make timely payments under the BBA.

44. Further, respondent has filed application dated 28.07.2026, in the registry in support of their pleadings. The Authority has duly taken these application on record and considered the same for the proper and just adjudication of the matter.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

45. 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.

F. ISSUE FOR ADJUDICATION

46. Whether the complainant is entitled for refund of the amount deposited by him along with interest in terms of Section 18 of RERA, Act of 2016?

G. OBSERVATIONS AND DECISION OF AUTHORITY

49. The Authority has gone through the rival contentions advanced by the parties, the pleadings available on record, the documents placed on record, the written

submissions filed by the Complainant and the submissions advanced by the parties during the course of hearing. In light of the background of the matter as captured in the preceding paragraphs of this order, the Authority observes and records its findings as under.

50. It is an admitted fact that the complainant booked an apartment in the Respondent's project namely "Royal Heritage", Sector-70, Faridabad. The Complainant was allotted Apartment bearing No. 1202, 12th Floor, Tower-10, admeasuring 1265 sq. ft., vide Allotment Letter dated 23.05.2013. An Apartment Buyer Agreement/Builder Buyer Agreement was executed between the parties on the same date, i.e. 23.05.2013. The total sale consideration of the subject unit is ₹35,44,169/-, against which the complainant has admittedly paid a sum of ₹22,75,000/-. The copies of the payment receipts have been placed on record.

51. It is also an admitted position that the respondent obtained the Occupation Certificate in respect of the subject unit on 30.11.2017 and subsequently issued an offer of possession dated 08.12.2017 to the Complainant. The complainant, however, did not accept the said offer of possession and has approached this Authority seeking withdrawal from the allotment and refund

of the amount deposited by him, along with interest and other consequential reliefs.

52. The first issue which arises for consideration is with regard to the contractual date for handing over possession. As per Clause 8.1 of the Builder Buyer Agreement dated 23.05.2013, the respondent was obligated to hand over possession of the allotted unit within 42 months from the date of execution of the Agreement or from the date of commencement of construction of the said building, whichever is later. In the present case, no specific or cogent material has been placed on record by either party to establish the exact date of commencement of construction of the building in which the subject unit is situated. In the absence of an ascertainable date of commencement of construction, the Authority deems it appropriate, for the purpose of determining the contractual date of possession, to reckon the period of 42 months from the date of execution of the Builder Buyer Agreement, i.e. 23.05.2013. Accordingly, the contractual period of 42 months expired on **23.11.2016**.

53. The documents available on record show that the respondent obtained the Occupation Certificate only on 30.11.2017, i.e. after expiry of the contractual period, and issued the offer of possession thereafter on 08.12.2017. Thus,

even on the basis of the Builder Buyer Agreement dated 23.05.2013, the Respondent could not offer possession within the period stipulated under Clause 8.1 of the Agreement. There is, therefore, a delay in obtaining the Occupation Certificate and offering possession beyond the contractual period. The respondent has sought to explain the aforesaid delay by relying upon the defaults committed by the complainant in making timely payments. It has been contended that the complainant did not make payment of the entire sale consideration in accordance with the agreed payment schedule and that, in terms of the Builder Buyer Agreement, timely payment was an essential obligation of the Complainant.

54. The Authority has considered the aforesaid contention. It is an admitted position that the complainant has paid only **₹22,75,000/- against the total sale consideration of ₹35,44,169/-**. The respondent has placed on record its statement of account and various notices/reminders issued to the complainant for payment of outstanding dues. The Respondent has also relied upon Clauses 4.3, 4.5, 5.1.1, 7.1(i) and 7.3 of the Builder Buyer Agreement to contend that timely payment of instalments and other charges was the essence of the contract and that failure to make timely payment constituted an event of default.

55. Authority also deems appropriate to peruse the payment plan which is opted by the complainant to adjudicate the claim of the complainant. It is clear from the Annexure IV annexed to the apartment buyer agreement dated 23.05.2013, that complainant opted for construction linked payment plan. According to the said plan, complainant was supposed to make payments after specific days from the booking. However, as per receipts annexed by the complainant, payments were made during the years 2012 and 2013 only. After the year 2013, no payments were made by the complainant. The respondent had also issued repeated notices and reminders to the complainant as annexed as Annexure R-5 to the reply book, calling upon him to clear the outstanding amounts. Thus, the complainant cannot be said to have fully complied with his payment obligations under the Apartment Buyer Agreement. The Respondent has further relied upon ***Clause 7.3*** of the Apartment Buyer Agreement, whereby the complainant had agreed that timely payment of instalments and other charges would be the essence of the agreement and that in case of default, the respondent would be entitled to cancel the allotment and forfeit the earnest money in accordance with the terms of the Agreement. The respondent has also contended that the Complainant has suppressed the contractual provisions relating to interest on

delayed payments, under which delayed instalments attracted interest at the stipulated contractual rates.

56. The Authority finds that the aforesaid payment defaults are relevant circumstances while determining the relief to which the complainant is entitled. However, the same cannot be considered in isolation. It is equally relevant that the respondent admittedly did not obtain the Occupation Certificate within the contractual period of 42 months and that the offer of possession was issued only on 08.12.2017.

57. The Authority further observed that, despite the alleged defaults and issuance of cancellation notices, the respondent has categorically stated during the hearing that the allotment has never actually been cancelled and the subject unit continues to stand in the name of the Complainant. Therefore, the respondent itself continued to treat the allotment as subsisting and did not bring the contractual relationship to an end by effecting cancellation. It is also a matter of fact, despite sending notices for cancellation to the complainant, the amount paid by the complainant still subsists in the hands of the respondent builder till date.

58. The next primary issue requiring consideration is whether the complainant was justified in declining the possession offered on 08.12.2017 on account of the absence of the permanent ***24-metre-wide approach/sectoral plan road***.

59. The complainant has submitted that the possession offered by the respondent was defective and could not be treated as lawful and complete possession because the sanctioned 24-metre-wide approach road had not been provided. In support of his contention, the complainant relied upon the respondent's communication dated 29.10.2018, wherein the respondent acknowledged that the existing approach road was temporary and that the permanent 24-metre-wide access road was to be constructed after acquisition of the requisite land by the competent Government authority. The respondent has disputed the liability for construction of the said road. Respondent submitted that construction of the 24-metre-wide sectoral road was never an obligation undertaken by the respondent under the Agreement and that the road was to be developed by the competent planning authority. It was further submitted that the respondent had already taken up the issue with the concerned authorities and that construction of the road was dependent upon acquisition of the requisite land by the nodal/competent agency. He further submitted that that proceedings have also been initiated before the Hon'ble Punjab and

Haryana High Court regarding construction of the said road and that in **Civil Writ Petition No. 17179 of 2026**, vide order dated **16.07.2026**, the Hon'ble High Court directed the DTCP to undertake construction of the approach road. Relevant part of order dated 16.07.2026 is reproduced below:

> *"2. Learned counsel for the petitioner has submitted that the appointment of nodal agency is envisaged under Clause 4.1 of the policy dated 21.08.2015, which policy has been annexed as Annexure P-6, in order to implement the construction and operation of 24 meter wide 'Sectoral Plan Road'. It is submitted that to highlight the said fact, the detailed representation dated 18.03.2026 has been given to the Director General, Town & Country Planning Department, Haryana (respondent no.2) and submitted that at this stage, the petitioner would be satisfied in case respondent no.2 considers the said representation and takes action in accordance with law*
>
> *3. Keeping in view the above said facts and circumstances, the present petition is disposed of with a direction to respondent no.2 to consider the points mentioned in the representation dated 18.03.2026 as expeditiously as possible and to take appropriate action in accordance with law."*

60. The Authority observes that the petitioner (respondent in the present complaint) therein relied upon Clause 4.1 of the Policy dated 21.08.2015, which envisages appointment of a nodal agency for implementation of the construction and operation of the 24-metre-wide Sectoral Plan Road. It was further submitted before the Hon'ble High Court that a detailed representation dated 18.03.2026 had been submitted to the Director General, Town &

Country Planning Department, Haryana, highlighting the issue relating to construction of the said road. The Hon'ble Punjab and Haryana High Court, vide order dated 16.07.2026, taking note of the submissions made before it, disposed of the petition with a direction to the concerned respondent, namely the Director General, Town & Country Planning Department, Haryana, to consider the points mentioned in the representation dated 18.03.2026 as expeditiously as possible and to take appropriate action in accordance with law.

61. From the aforesaid order, it is evident that the issue relating to the construction of the 24-metre-wide sectoral Plan Road is within the consideration of the competent Government/planning authority. The Hon'ble High Court has not, in the said proceedings, recorded any finding holding the present respondent solely responsible for construction of the said road. Nor has the Hon'ble High Court adjudicated upon the contractual rights and liabilities of the parties under the Builder Buyer Agreement. Accordingly, the said order is relevant only to the limited extent of determining the nature of the obligation relating to the 24-metre-wide road.

62. The Authority therefore finds that, on the material available on record, construction of the 24-metre-wide Sectoral Plan Road cannot be treated as an

express contractual obligation of the respondent under the Builder Buyer Agreement. The road was to be dealt with by the competent planning authority/nodal agency in accordance with the applicable policy. Consequently, the respondent cannot be held solely responsible for non-construction of the said public sector road.

63. However, the aforesaid finding does not completely answer the question whether the complainant's refusal to accept possession was wholly unjustified. The Respondent's own communication dated 29.10.2018 acknowledges that the existing access was temporary and that the permanent 24-metre-wide access was dependent upon acquisition and construction by the competent authority. Thus, the grievance raised by the complainant regarding the approach road was not merely an unsubstantiated allegation. The issue concerning permanent access to the project was a real and continuing issue requiring consideration by the competent authority.

64. The Authority also takes note of the fact that the Occupation Certificate had been issued on 30.11.2017 and the possession offer was made on 08.12.2017, whereas the complainant approached this Authority only in the year 2025. Upon being questioned about such delay, the complainant submitted that he

had remained in continuous discussions with the respondent concerning construction of the approach road and was awaiting resolution of the issue.

65. Although the delay in approaching the Authority is a circumstance which cannot be completely ignored, there is no material on record to establish that the complainant had accepted the possession or that the parties had finally settled the dispute regarding the approach road. On the contrary, the respondent has admitted that the unit continues to stand in the name of the complainant and that no cancellation has actually been effected. Thus, the allotment remained subsisting even the amount paid by the complainant remains in the hands of respondent only.

66. The Authority now proceeds to consider the appropriate relief in the light of the respective conduct of the parties. The complainant has categorically submitted that he does not wish to continue with the allotment and has elected to withdraw from the project. The respondent, without prejudice to its rights and contentions, has also expressed its willingness during the proceedings to refund the amount deposited by the complainant, subject to deduction of 10% of the total sale consideration in accordance with the contractual terms. Even complainant has not objected to the same.

67. The Authority is of the considered view that, in the peculiar facts and circumstances of the present case, the complainant cannot reasonably be compelled to continue with the allotment when he has clearly elected to withdraw and seek refund, particularly when the contractual possession period had expired before the respondent obtained the Occupation Certificate and issued the offer of possession.

68. At the same time, the Authority cannot lose sight of the admitted payment defaults on the part of the Complainant. The Complainant admittedly paid only ₹22,75,000/- against the total sale consideration of ₹35,44,169/- and failed to pay the balance amount in accordance with the payment schedule. The respondent had issued repeated notices and reminders on account of such defaults. Therefore, the complainant cannot be treated at par with an allottee who has fully discharged his payment obligations and thereafter suffered delay solely attributable to the promoter.

69. The Authority is accordingly required to balance the equities between the parties. The respondent's delay in obtaining the Occupation Certificate and issuing the offer of possession beyond the contractual period cannot be ignored. Equally, the complainant's admitted defaults in payment cannot be disregarded. 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. 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 7.2 clause of 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 **₹3,54,416**/- (sale price is ₹35,44,169/-) and return remaining amount to the complainant.

70. In view of the aforesaid discussion, the earnest money, being 10% of the total sale price of ₹35,44,169/-, comes to **₹3,54,416/-**. The complainant had initially paid an amount of ₹3,00,000/- on 11.04.2012. Since the said amount was less than the earnest money by ₹54,416/-, the shortfall of ₹54,416/- is required to be adjusted from the subsequent payment of ₹5,00,000/- made by the complainant. Accordingly, after adjustment of the aforesaid shortfall, the amount of **₹4,45,584/-** remains refundable out of the second payment. The remaining amounts paid by the complainant are also 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.	4,45,584/-	12.11.2012	664626/-
2.	5,75,000/-	12.06.2013	821592/-
3.	9,00,000/-	13.06.2013	1285703/-
Total=	19,20,584/-		27,71,921/-

71. The complainant is seeking compensation of ₹10,00,000/- towards mental agony, stress and inconvenience to the complainant . 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.

72. Further, with regard to the reliefs sought by the complainant mentioned in Para 26 (iii) 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

73. 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 an amount of **₹46,92,505/-** 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. 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.

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]