BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**6285 of 2025**
Date of first hearing:		**15.01.2026**
Date of decision:		**23.07.2026**

Mr. Anil Kumar
R/o: - House No. 731, Sector-5, Gurugram Haryana-122001 — **Complainant**

Versus

M/s Bestech India Private Limited.
Regd. Office at: Unit no. 5D, 5th Floor, Assets Area 4, Delhi Aerocity, Hospitality District, New Delhi – 110037 — **Respondent**

CORAM:
Shri Phool Singh Saini — **Member**

APPEARANCE:
Sh. Harshit Batra (Advocate) — Complainant
Sh. Ishaan Dang (Advocate) — Respondent

ORDER

1. The present complaint dated 12.12.2025 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"Park View Sanskruti", Sector- 92, Gurugram.
2.	Project area	12.7875 acres
3.	Nature of the project	Residential group housing
4.	DTCP license no. and validity status	i. 13 of 2009 dated 21.05.2009 valid up to 20.05.2024 ii. 43 of 2011 dated 13.05.2011 valid up to 12.05.2024
5.	Name of licensee	Spring Water Properties Pvt. Ltd. and others
6.	RERA Registered/ not registered	Not Registered
7.	Unit no.	1401, 13th floor, Tower/block- C (Page no. 17 of the complaint)
8.	Unit area admeasuring	1920 sq. ft. (Super area) (Page no. 17 of the complaint)
9.	Allotment letter	10.05.2013 (Page no. 13 of the complaint)
10.	Date of execution of agreement to sell	Not executed
11.	Possession clause	***12. COMPLETION OF CONSTRUCTION/ DELIVERY OF POSSESSION*** *i. That the possession of the said Apartment is proposed to be offered* ***by the Company to the Applicants(s)/Intending Allottee(s) within 36 months (excluding a grace period of 6 months) from the date of approval of the building plans or date of execution of Buyer's Agreement whichever is later,*** *subject to timely payment by the Applicants) of sale price, stamp duty and other charges due and payable according to the Payment Plan applicable to him/her/them or as demanded by the Company and subject to*

		force-majeure clause. It is made clear that the Company shall be entitled to a grace period of six months for any reason, whatsoever. *ii. The Applicant(s) agree that in case the Company is unable to hand over the Said Apartment and/or allot the Parking Space(s) to the Applicant(s) for his occupation and use due to the following reasons: -* *a) any legislation, order or rule or regulation made or issued by the Govt. or any other Authority or* *b) if any competent authority(ies) refuses, delays, withholds, denies the grant of necessary approvals for the proposed Apartment/ Building or;* *c) if any matter, issues relating to such approvals, permissions, notices, modifications by the competent authority(ies) become subject matter of any suit/ writ before a competent court or;* *d) due to force majeure conditions.* *Then in that event the Applicants)/ Intending Allottee(s) shall only be entitled to refund of the advance amount for the provisional allotment without any interest/compensation. In such event the applicant shall have no other right, claim or interest of whatsoever nature or kind in the Group Housing Complex or allotment so made.* *iii) In the event, Applicants)/ Intending Allottee(s) fails to take over the possession of the Apartment allotted within thirty (30) days from the date of offer of possession in writing by the Company, the Applicants)/ Intending Allottee(s) shall be liable to pay to the Company holding charges @ Rs. 5/- per sq. ft. of the Super Area per month and the maintenance charges as determined by the Company/Maintenance Agency for the entire period of such delay till the date when the physical possession is taken over by the Applicants) Intending Allottee(s).* (Page no. 34 of the reply)
12.	Approval of building plans	04.05.2013 [Page no. 149 of the reply]
13.	Due date of possession	04.11.2016

		(Note: - 36 months from date of agreement (not executed) or the date of building plans (04.05.2013) whichever is later + 6 months grace period) Calculated from the date of approval of building plan in the absence of date of buyer's agreement.
14.	Sale consideration as per details of payment plan	Rs.1,21,65,280/- (Page no. 18 of the complaint)
15.	Amount paid by the complainant	Rs.57,49,968/- (As admitted by the respondent in its reply at page 4 of the reply)
16.	Payment plan	Construction linked payment plan (Page no. 18 of the complaint)
17.	Occupation certificate /Completion certificate	19.06.2018 (Page no. 166 of reply)
18.	Reminder letters	19.02.2015, 07.04.2015, 23.04.2015, 20.06.2015, 06.08.2015, 21.08.2015, 07.09.2015, 21.09.2015, 05.11.2015, 20.11.2015, **05.12.2015 Final Notice** **22.01.2016 Call Notice** **05.03.2016 Reminder-1** **21.03.2016 Call Notice** **26.03.2016 Reminder-2** **05.04.2016 Final Notice** **07.05.2016 Reminder-1** **23.05.2016 Reminder-2** **07.06.2016 Final notice** **22.09.2016 Call Notice** **08.11.2016 Reminder-1** **24.11.2016 Reminder-2** **08.12.2016 Final Notice** **17.12.2016 Call Notice** **04.02.2017 Reminder-1**

		20.02.2017 Reminder-2 **08.03.2017 Final Notice** (Annexure R-7, on page 69 to 109 of reply)
19.	Cancellation letter	22.04.2017 (Page no. 111 of the reply)
20.	Offer of possession	15.02.2019 (Annexure R-12, page 114 the reply)
21.	Allotment letter issued by the respondent and created third party rights in favour of Mr. Shiv Singh Pathania and Mrs. Ayushi Tyagi	10.08.2021 (Page no. 115 of reply)
22.	Conveyance deed executed in favour of Mr. Shiv Singh Pathania and Mrs. Ayushi Tyagi	13.04.2022 (Page no. 120 of reply)

B. Facts of the complaint

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

I. That in the year 2013, the respondent was blazoning itself as one of the supreme real estate developers in the market, expanding with a number of real estate projects with high prospects of great returns. It predominantly advertised and assured of its fine development status, speedy procurement of the necessary licenses and permissions required from the competent authority for its plotted development, timely delivery of possession without any delays, and the stellar quality of its developments. That relying on the assurances, promises, representations, and warranties of the respondent, the complainant decided to make a booking in the residential group housing of the respondent known under the name and style "Park View Sanskruti" located at Sector 92, Gurugram.

II. That the complainant, vide allotment letter dated 10.05.2013, was allotted Flat No. 1401 on the 13th floor in Tower No. C, admeasuring 1920 sq. ft. in the project. That no builder buyer agreement has been executed by the respondent. it is pertinent to mention here that the respondent, without even executing the builder buyer agreement, had already demanded more than 10% of the total sale consideration of the said unit from the complainant which is a gross violation of the Section 13(1) of the Act, 2016 which explicitly states that no builder shall be allowed to accept a sum more than ten percent of the total sale consideration of the apartment, plot or building as the case may be.

III. That as per the payment plan annexed with the allotment letter, the complainant has made payment of Rs.66,11,780/- to the respondent. The complainant fulfilled his due obligations, made timely payment as and when demanded by the respondent. It is respectfully submitted that the respondent has failed to comply with the mandatory provisions of the Act, 2016 with respect to registration of the project.

IV. That the respondent's failure to register the project is not a technical lapse but a fundamental breach of statutory duty under Section 3 of the Act, 2016. That the complainant made repeated requests to the respondent to execute the builder buyer agreement, but the till date the respondent has failed to execute the agreement and has collected a substantial amount of money. Furthermore, the respondent has failed to complete the construction of the project within the stipulated time and miserably failed to abide by its obligations. At this instance, it is submitted that in a case where there is no ascertainment of the due date of delivery of possession, a reasonable time needs to be taken, as was observed by the Hon'ble Supreme Court in ***Fortune Infrastructure and***

Ors. vs. Trevor D'Lima and Ors., Civil Appeal Nos. 3533-3534 of 2017, Decided On: 12.03.2018.

V. That the Hon'ble Supreme Court had held that where there is no time period for possession stipulated, the reasonable time for handover of possession is three years. In the present case, as no Builder Buyer Agreement has been executed, three years from the date of the Allotment Letter should be taken as a reasonable time for handing over possession. Hence, the due date of possession comes out to be 10.05.2016.

VI. That for almost 12 years, the respondent has wrongfully enjoyed a huge sum of money paid by the complainant with the desire of getting the unit in his name for his personal and domestic use. The promises, assurances, and warranties made by the Respondent were broken in the most unlawful and illegal manner. That till date, the respondent has not delivered possession of the unit and has unjustly enriched itself by accumulating hard-earned money from innocent buyers like the complainant. Respondent has intentionally caused wrongful gains to itself and wrongful losses to the complainant when, in fact, the complainant has deposited his hard-earned money by being ensnared in the false, lucrative, and sham promises of the respondent, when in fact, the respondent never intended to make any allotment in favour of the complainant. The respondent has acted in the most unlawful and illegal manner and has violated many provisions of the Act.

VII. That the implementation of the Act followed with crystalising the obligations of the respondent/builder, however, since March 2016, the respondent has been in constant default as it did not proceed with the execution of the agreement despite stringent obligations being derived from the Sections 11 and 13 of the Act, 2016. That at this juncture, it needs to be noted that allotment is considered to be a pre-requisite, which is followed by execution of the agreement, as is evident from the below mentioned provisions of the Act, 2016.

VIII. That the respondent has gravely violated the same by collecting more than 10% of the cost of the unit before the execution of the agreement. After lapsed of 12 years issuing the date of the allotment, but the respondent has not executed the builder buyer agreement till date.

IX. That it has been almost 12 years since the booking, that the respondent has been wrongfully enjoying the money of the complainant, including the returns and profit over the sum deposited by the complainant. Since the respondent failed to execute the agreement, the complainant cannot be perpetually made to wait for the possession of the unit. The Hon'ble Supreme Court, in various judgments, has upheld that in the absence of any agreement for sale and consequently for the ascertainment of the due date of delivery of possession of the Unit, a reasonable time should be taken from the date of Allotment and the reasonable time period to be 3 years. That time period of 3 years expired on 10.05.2016.

X. That while the complainant abided by its end of the bargain and made payments of Rs.66,11,780/- as per the demand raised by the respondent, the respondent has failed to complete construction and offer possession within a reasonable time. The respondent made tall promises and assured the innocent complainant that the unit would be delivered in time and that the complainant would soon be able to utilise it. That no further demand has been raised from the complainant, nor any offer of possession has been issued to the complainant till date. That without prejudice, it is also submitted that the complainant has received no intimation regarding the construction and completion of the project from the respondent. The complainant is ready to make payment of the balance sales consideration of the unit; however, no demand has been raised by the respondent. Thus, the respondent has delayed the construction and failed to offer a valid possession and compensation for the delay in possession. The basic obligations of the Act have been miserably violated by the respondent, due to its inordinate delay.

XI. That the respondent failed in complying with all the obligations provided under the concerned laws, rules, and regulations thereunder, due to which the complainant faced innumerable hardships. Moreover, the respondent made false statements about the progress of the project when inquired by the complainant. It is further submitted that, taking advantage of the dominant position and malafide intention, the respondent had resorted to unfair trade practices by harassing the Complainant by way of delaying the project by diversion of the money from the innocent and gullible buyer. Hence, the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

I. Direct the MCLR+2% from the due date of possession till the date of handing over of possession under section 18 of the Act; and/or,

II. Direct the Respondent to execute the unconditional conveyance deed under section 18 of the Act; and/or

III. Direct the respondent not to charge any illegal charges, including holding charges and the maintenance charges till the handing over of possession to the complainants; and/or;

Alternatively,

I. Direct the respondent to refund the amount paid by the complainant, along with the prescribed rate of interest @MCLR+2% from the respective date of payment till realisation;

II. Direct the respondent not to create any third-party rights against the subject unit before the full realization of the paid-up amount along with interest;

III. To pass any other order as the Authority may deem fit.

5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions 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 contested the complaint on the following grounds: -

a) That the That the present complaint is not maintainable in law or on facts. The provisions of the Act, 2016 are not applicable to the project in question. The application for issuance of occupation certificate in respect of the apartment/tower in question was made on 30.06.2017, i.e. well before the notification of the Rules 2017. Subsequently occupation certificate has also been issued by the competent authority on 19.6.2018. Thus, the project in question is not an 'On-going Project" under Rule 2(1)(o) of the Rules. This Authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.

b) That the complaint is barred by limitation and liable to be dismissed on this ground as well. The allotment of the complaint was cancelled as far back as on 22.04.2017 due to persistent and willful defaults by the complainant, pertinently, the cancellation has not been challenged by the complainant.

c) That the complainant is an investor and defaulter and not an "aggrieved person" under the Act and as such the present complaint is not maintainable at his behest. The complainant never intended to reside in the apartment in question but have invested in the same for taking benefits after resale of the Apartment. However, due to recession in the real estate market, the complainant could not get desired benefits and defaulted in the payments towards respondent. This is evident from the fact that complainant had made total payment of only Rs.57,49,968/- out of total consideration of Rs.1,21,65,280/- which excludes the stamp duty, registration charges, interest on delayed payments and other amounts payable in accordance with the terms and conditions of allotment. The last payment was made on 19.01.2015, much before the so-called due date of possession according to the complainant.

d) That the respondent is a reputed and renowned real estate developer, enjoying an impeccable reputation in the real estate industry for the disciplined and time bound execution of projects undertaken by it. The projects implemented by the respondent are considered to be architectural landmarks. The respondent has successfully developed residential, commercial and IT projects in Gurgaon after obtaining necessary permissions and approvals from the competent authorities in accordance with law.

e) That the complainant, had approached respondent through his property dealer, M/s Terra Realtech Pvt. Ltd. and evinced an interest in purchasing a residential unit in the duly licensed residential project promoted and developed by the respondent known as "Park View Sanskruti" located in Sector 92, Gurgaon, Haryana. Prior to making the booking, the complainant had made elaborate, independent and detailed enquiries with regard to the nature of sanctions/permissions obtained by the respondent for the purpose of undertaking the development /implementation of the residential project referred to above. The complainant took an independent and informed decision, uninfluenced in any manner by the respondent to book the apartment in question.

f) That the complainant was provided with the application form containing the terms and conditions of provisional allotment and the complainant was given the opportunity to familiarize himself with the same. Clause 11 of the terms and conditions of booking was specifically brought to the complainant's notice which provided that timely payment of instalments/balance sale consideration/security deposits/charges, shall be the essence of the contract. It was specifically emphasized by the officials of the respondent that interest @ 18% per annum, compounded annually shall be levied on delayed payments and that in the event of delay in payment of outstanding amount along with interest, the allotment was also liable to be cancelled and earnest money, interest accrued and brokerage was liable to be forfeited.

g) That the attention of the complainant was also drawn to clause 12 of the terms and conditions of booking that specifically provides that possession of the apartment was proposed to be offered by the respondent, within 42 months (including grace period of 6 months) from the date of approval of building plans or date of execution of the buyer's agreement, whichever is later, subject to timely payment of the sale price and other charges as per the payment plan. The terms and conditions as set out in the application form were accepted by the complainant and, the complainant agreed and undertook to scrupulously comply with the same.

h) That after fully satisfying themselves with regard to all aspects of the project including but not confined to the capacity/capability of the Respondent to successfully undertake the construction, promotion, implementation of the residential project, the complainant had proceeded to book the property in question. The respondent had provisionally allotted apartment bearing no. C-1401, admeasuring 1920 sq. ft. of super area (approx.), situated on the 13th floor, in Tower C in the project, i.e. Park View Sanskruti, Sector 92, Gurgaon on receipt of the booking amount and on submission of the application form.

i) That allotment letter was issued in favour of the complainant on 10.05.2013 whereby apartment bearing no C-1401 was provisionally allotted to the complainant. The payment plan was appended along with the allotment letter reflecting the total sale consideration payable by the complainant to be Rs.1,21,65,280/- (exclusive of applicable taxes, stamp duty, registration charges, interest of delayed payments, if any, and other charges payable at the time of possession).

j) That vide letter dated 24.08.2013, the complainant was informed about Section 194IA of the Income Tax Act, 1961, regarding deduction of Tax at Source (TDS). The buyer's agreement in respect of the apartment was dispatched to the complainant for execution under cover of letter dated 10.09.2013. The complainant was called upon to execute and return both copies of the buyer's agreement to the respondent within 15 days. However, due to mala fide and mischievous reasons, the complainant never executed the buyer's agreement although having agreed and undertaken to execute the buyer's agreement, in the standard format of the respondent company, at the time of booking.

k) That right from the very beginning, the complainant was extremely irregular as far as payment of instalments was concerned. The respondent was compelled to issue demand notices, reminders etc., calling upon the complainant to make payment of outstanding amounts payable by the complainant under the payment plan opted by the complainant. The respondent issued various payment demands and reminder letters to the complainant. The demand notices clearly mentioned the milestone of construction achieved hence status of construction was duly informed to the complainant vide demand notices and otherwise. The complainant was repeatedly urged to clear his outstanding dues in order to avoid accrual of interest on delayed payments as well as to avoid cancellation of his allotment. However, the repeated reminders and requests were wilfully ignored by the complainant.

l) That the complainant was specifically called upon to make complete payment of outstanding dues and that part payment would attract delayed payment interest on the unpaid amount. However, the complainant ignored the reminders issued by the respondent. Thus, on account of the willful and persistent defaults by the complainant in refusing to make the payment as per the applicable payment plan, final notice dated 08.03.2017 was issued by the respondent calling upon the complainant to clear his outstanding dues within 15 days failing which the allotment was liable to be cancelled.

m) That on account of willful and persistent defaults by the complainant despite repeated opportunities to rectify his defaults, the respondent was constrained to cancel the provisional allotment in his favour vide cancellation letter 22.04.2017. The complainant was informed that the amounts paid by the complainant stood forfeited in accordance with the terms and conditions of booking. The complainant was informed that the complainant was not left with any right, title or interest in the apartment in question. That it is pertinent to note that the last payment made by the complainant was on 19.01.2015. Thereafter, despite repeated demand letters, reminders and final notice dated 08.03.2017, the complainant failed to clear the outstanding dues in terms of the agreed payment plan, thereby committing persistent default and compelling the respondent to cancel the allotment vide letter dated 22.04.2017.

n) In view of the aforesaid contractual stipulations read with the Haryana Real Estate Regulatory Authority, Gurugram (Forfeiture of Earnest Money by the Builder) Regulations, 2018, the promoter is legally entitled, upon cancellation occasioned by the allottee's default despite due notice, to retain/adjust the permissible earnest money (up to 10% of the total sale consideration) together with the applicable interest on delayed payments. In the present case, the admittedly continuous default of the Complainant squarely attracts the aforesaid contractual and statutory provisions, and the respondent is legally entitled to levy and recover interest on delayed installments in accordance therewith.

o) That the cancellation letter referred to above was sent by Registered Post, courier as well by email by way of abundant caution. However, since the cancellation was not delivered by post, by email dated 26.05.2017, the complainant was informed that pursuant to cancellation of allotment, the complainant was not left with any right, title or interest in the unit. The cancellation letter was duly received by the complainant but the complainant neither contacted the respondent nor did they take any legal action to challenge the cancellation notice sent by the respondent.

p) Although under no legal obligation to do, nevertheless as a gesture of goodwill, the Respondent sent a letter dated 15.02.2019, informing the complainant that the project had received the occupation certificate from Directorate of Town and Country Planning, Haryana, Chandigarh and that the complainant could obtain possession of the unit in question on payment of balance consideration. Thus, the complainant was given yet another opportunity to reinstate the allotment of unit subject to payment of balance amounts as per the buyer's agreement. however, the complainant failed to make any payment and in fact did not even bother to contact the respondent.

q) That in the meanwhile, the respondent was compelled to sell the unit in question at a substantial loss. The unit was further resold for sale consideration of Rs.1,05,31,360/- whereas at the time of the booking by the Complainant the unit had been sold at the price of Rs.1,21,65,280/- (exclusive of applicable taxes and other charges payable at the time of possession). The respondent reserves its rights to seek damages and compensation for the losses suffered by it including but not limited to loss of Rs.16,33,920/- in terms of sale price and Rs.4,84,932/- in terms of service tax & GST, by filing a complaint before the Adjudicating Officer. Conveyance Deed has also been registered in favour of the present owner of the unit on 13.04.2022.

r) That from the averments made hereinabove it is evident that the respondent has made every effort to accommodate the complainant by repeatedly granting him extension of time in making payment of installments which were required to be paid by the complainant.

s) That thus the allegations levelled by the complainant against the respondent are totally baseless and do not merit any consideration by the Authority. The complainant has failed to make the payments as per the agreed payment plan. The complainant has admittedly till date only made payment of Rs.57,49,968/- against the consideration amount of Rs.1,21,65,280/- (exclusive of applicable taxes and other charges payable at the time of possession). It is ridiculous on the part of the complainant to claim failure in delivery of possession of the said apartment in question by paying approximately 47% of the sale consideration. It would not be out of place to mention that the respondent has deposited an amount of Rs.4,84,932/- towards service tax & GST to the government.

t) That the project in question has been completed on time and there has been no delay on the part of the respondent in offering possession to the other allottees of the project who have paid all the dues. On the contrary, the respondent had completed construction of the project and applied for the occupation certificate in respect of the same from the competent authority on 30.06.2017 itself. Occupation certificate has also been granted by the competent authority. Actually, the complainant never had sufficient funds to make payment of the sale consideration and have proceeded to make false and baseless allegations against the respondent so as to try and cover up their own lapses and wilful defaults.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

10. 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.*

11. 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 complainant at a later stage.

12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** *and reiterated in case of* ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022***wherein it has been laid down as under:

> *"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19*

clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

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

F. Findings on the objections raised by the respondent

F.I. Objection regarding entitlement of DPC on ground of complainant being investor.

14. The respondent has taken a stand that the complainant is an investor and not a consumer. Therefore, he is not entitled to the protection of the Act and to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of the consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and paid total price of

Rs.57,49,968/- towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

15. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainant is an allottee as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant.

G. I. Direct the MCLR+2% from the due date of possession till the date of handing over of possession under section 18 of the Act; and/or,

G. II Direct the Respondent to execute the unconditional conveyance deed under section 18 of the Act; and/or

G.III Direct the respondent not to charge any illegal charges, including holding charges and the maintenance charges till the handing over of possession to the complainants; and/or;

Alternatively,

G. I Direct the respondent to refund the amount paid by the complainant, along with the prescribed rate of interest @MCLR+2% from the respective date of payment till realisation;

G. II Direct the respondent not to create any third-party rights against the subject unit before the full realization of the paid-up amount along with interest;

G.III To pass any other order as the Authority may deem fit.

16. The complainant was allotted a unit bearing no. 1401, 13th floor in tower C in the project "Park View Sanskruti" Sector-92, Gurugram developed by the respondent/builder for a total consideration of Rs.1,21,65,280/- and he paid a sum of Rs.57,49,968/- which is approx. 47.29% of the total sale consideration. An allotment letter dated 10.05.2013 was issued by the respondent to the allottee in regard to the above-mentioned unit and the due date for completion of the project and offer of possession was fixed on 04.11.2016. The complainant failed to pay amount due against the allotted unit.

17. The respondent had sent various reminders letters, final notices and call notices dated 19.02.2015, 07.04.2015, 23.04.2015, 20.06.2015, 06.08.2015, 21.08.2015, 07.09.2015, 21.09.2015, 05.11.2015, 20.11.2015, 05.12.2015, 22.01.2016, 05.03.2016, 21.03.2016, 26.03.2016, 05.04.2016, 07.05.2016, 23.05.2016, 07.06.2016, 22.09.2016, 08.11.2016, 24.11.2016, 08.12.2016, 17.12.2016, 04.02.2017, 20.02.2017 and final notice letter dated 08.03.2017 to make payment of the outstanding due. The complainant continued with his default and again failed to make payment even after receipt of the final reminder letter. Thereafter, the respondent issued cancellation notice dated 22.04.2017. There is nothing on the record which shows that respondent-builder had refunded the amount paid by the complainant. Thereafter, as per the averment of the complainant, he approached the respondent/promoter for refund of the amount deposited. The respondent assured to refund the amount. Despite of the above assurance, no refund has been made to the complainant/allottee till date. The counsel for the respondent states that a delayed payment interest liability of Rs.18,93,174/- has arisen against the complainant/allottee on the date of cancellation. Further, the respondent contended that it has sold the unit at a much lower rate and the respondent be allowed the deduction of statutory taxes and brokerage etc.

18. Accordingly, the complainant failed to abide by the terms of the booking application form executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule. This reluctant behavior of complainant led to issuance of notice of cancellation by the respondent on 22.04.2017. Now, the question before the authority is whether this cancellation is valid?

19. On consideration of documents available on record and submissions made by both the parties, the Authority is of the view that the unit in question was allotted to the complainant under construction linked payment plan, as annexed with the allotment letter dated 10.05.2013. As per the payment plan, the respondent vide 'call notice' dated 19.02.2015, requested the complainant to remit the demand on account of "Basic sale price- On Casting of 6^{th} floor slab" amounting to Rs.10,76,160/- on or before 23.05.2015. Thereafter, the respondent has sent numerous reminders, call notice and final notice dated 07.04.2015, 23.04.2015, 20.06.2015, 06.08.2015, 21.08.2015, 07.09.2015, 21.09.2015, 05.11.2015, 20.11.2015, 05.12.2015, 22.01.2016, 05.03.2016, 21.03.2016, 26.03.2016, 05.04.2016, 07.05.2016, 23.05.2016, 07.06.2016, 22.09.2016, 08.11.2016, 24.11.2016, 08.12.2016, 17.12.2016, 04.02.2017, 20.02.2017 and final notice letter dated 08.03.2017 to the complainant for make payment of the outstanding due. The complainant continued with his default and again failed to make payment even after receipt of the final reminder letter. Thereafter, the respondent issued cancellation notice dated 22.04.2017. 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 annexed with the allotment letter dated 10.05.2013 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount

after certain deductions as per clause 11 of the booking application form and the regulation of the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018.

20. As per clause 11 of the application form, the respondent/promoter has right to cancel the unit and forfeit the earnest money in case the allottee has breached the terms and conditions of the application form executed between both the parties. Clause 11 of the application form is reproduced as under for ready reference:

> ***Clause 11. TIME IS ESSENCE:***
>
> *That timely payment of installments/balance sale consideration/ security deposits/ charges shall be of essence in respect of this application. This application does not constitute an Agreement to Sell. It shall be incumbent on the Applicant/ Intending Allottee(s) to comply with the terms of payment and other terms and conditions of allotment/ sale, as contained in this Application Form.* ***In case the installments are delayed, the Applicant/Intending Allottee(s) shall pay interest on delayed payments @ 18% per annum compounded quarterly at the time of every succeeding installment*** *which shall be calculated from the due date of outstanding* ***payment amount without prejudice to the Company's right to cancel the allotment. Even then, if the Applicants) Intending Allottee(s) fails to pay the installment along with interest within 75 days. from the due date, the Company shall forfeit the amount of Earnest Money/ registration money deposited by him/ her/ them along with brokerage paid****, if any, and the allotment shall stand cancelled and he/she/ they shall have no lien/ charge/ interest right on the said Apartment. The sums, it any, paid over and above the Earnest Money shall be refunded without any interest by the Company after adjustment of interest on delayed payments, if any, due from the Applicants) / Intending Allottee(s). Further, in case the Applicants) Intending Allottee(s), at any stage, seeks cancellation of allotment and/or refund of the amount deposited, the Company may, at its discretion forfeit the Earnest Money, brokerage paid, interest* ***accrued and refund the remaining amount paid by the Applicants)/Intending Allottee(s). The Earnest Money has been quantified to be 20% of the basic sale price.***

21. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Ors. VS. Sarah C. Urs., (2015) 4 SCC 136,*** 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."*

22. That it is an admitted position that, subsequent to the cancellation of the subject unit, the respondent issued an offer of possession dated 15.02.2019 after obtaining the requisite Occupation Certificate on 19.06.2018 from the competent authority. The complainant, however, was unable to take possession of the subject unit on account of his failure to discharge the outstanding financial liabilities. The respondent thereby afforded the

complainant yet another opportunity to seek reinstatement/restoration of the allotment, subject to payment of the outstanding balance amounts in accordance with the applicable payment plan. Despite the said opportunity, the complainant neither made the requisite payment nor took any effective steps to approach the respondent for restoration of the allotment. Thereafter, the respondent created third-party rights in respect of the subject unit in favour of Mr. Shiv Singh Pathania and Mrs. Ayushi Tyagi on 10.08.2021 and issued an allotment letter in their favour. Subsequently, the respondent executed a conveyance deed in favour of Mr. Shiv Singh Pathania and Mrs. Ayushi Tyagi on 13.04.2022. However, it is undisputed fact, despite creation of the aforesaid third-party rights, the respondent failed to refund to the complainant the amount deposited by him in accordance with the terms and conditions of the booking application form and the allotment letter.

23. The Authority observes that the promoter is bound by and responsible for discharging all obligations, responsibilities and functions prescribed under the Real Estate (Regulation and Development) Act, 2016, the rules and regulations framed thereunder, as well as the contractual obligations arising under the application form and/or the agreement executed with the allottee

24. In the present case, the allotment of the subject unit was cancelled by the respondent on account of the complainant's failure to pay the outstanding dues. The said cancellation was admittedly effected in the year 2017 and was not challenged by the complainant before any competent forum within a reasonable period. Consequently, the Authority observed that the validity of the cancellation could not be permitted to be questioned at such a belated stage. However, notwithstanding the validity of the cancellation, the respondent failed to refund the amount deposited by the complainant after cancellation of the allotment. The respondent continued to retain and utilise

the said amount for a substantial period, extending to nearly nine years from the date of cancellation, without making the requisite refund to the complainant.

25. In view of the aforesaid facts and circumstances, the Authority proceeded on the premise that, after cancellation of the complainant's allotment, the respondent issued an allotment letter dated 10.08.2021 in favour of Mr. Shiv Singh Pathania and Mrs. Ayushi Tyagi and subsequently executed the conveyance deed in their favour. Thus, the respondent obtained consideration from the subsequent allottees in respect of the same unit while simultaneously retaining the amount previously deposited by the complainant, without refunding the same. Accordingly, the Authority held that the complainant was entitled to refund of the amount deposited by him, subject to applicable deductions, as per booking application form/allotment letter with interest at the prescribed rate, from 10.08.2021, i.e., the date on which the allotment letter was issued in favour of the third-party allottees.

26. In view of the above-mentioned findings, the Authority is of the view that as per the provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent/builder has to return the remaining amount after deducting 10% of total sale consideration as earnest money, but that was not done. So, the respondent/builder is directed to refund the amount received from the complaint after deducting 10% of the basis sale consideration and return the amount along with interest at the rate of 10.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of issuing allotment letter to the third party i.e., 10.08.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the Authority

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

    i. The respondent is directed to refund the paid-up amount after deducting 10% of the sale consideration along with interest on such balance amount at the rate of 10.80% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of issuing allotment letter to the third party i.e., 10.08.2021 till its actual realization.

    ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

28. Complaint as well as applications, if any, stand disposed of accordingly.

29. File be consigned to registry.

Dated: 23.07.2026

(Phool Singh Saini)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram