BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

First date of filing:	**31.10.2025**
Date of order:	**23.07.2026**

1. Rajinder Kumar Kariro
2. Arti Kariro
R/o: House No. 2068, Sector- 4, Near Huda Gymkhana Club, Gurugram, Haryana-122001 — **Complainants**

Versus

M/s Elan Buildcon Private Limited
Regd. Office at: L-1-1100, G/F, Sangam Vihar, Gali No. 25, New Delhi-110062 — **Respondent**

CORAM:

Shri Phool Singh Saini — **Member**

APPEARANCE:

Sh. Varun Giri (Advocate) — Complainants
Sh. Ishaan Dang (Advocate) — Respondent

ORDER

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

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 and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Elan Town Centre", Sector-67, Badshahpur, Gurgaon.
2.	Nature of the project	Commercial
3.	Area of project	2 acres
4.	DTCP license and validity	License no. 84 of 2012 dated 28.08.2012 valid up to 27.08.2024 (Change in Developer from Sana Realtors Pvt. Ltd. in the name of Elan Buildcon Pvt. Ltd. as per order dated 08.04.2019)
5.	Name of licensee	Khanna Developers Pvt. Ltd. and 2 others
6.	RERA Registration and validity	Registered Vide registration no. 23 of 2018 dated 02.02.2018 and valid up to 01.02.2022
7.	Allotment letter	03.03.2018 (As per page no. 23 of the complaint)
8.	Unit no.	KIOSK-0261 (As per page no. 28 of the complaint)
9.	Unit area	450 sq. ft. (As per page no. 28 of the complaint)
10.	Date of execution of buyer's agreement	09.03.2018 (As per page no. 23 of the complaint)

11.	Possession clause	**11(a) Schedule for possession of the said unit:** ***The developer based on its project planning and estimates and subject to all just exceptions endeavors to complete construction of the said building/said unit within a period of 36 months from the date of this agreement with an extension of further twelve (12) months*** *unless there shall be delay or failure due to Govt. department delay or due to any circumstances beyond the power and control of the developer or force majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the allottee(s) to pay in time the total consideration and other charges....xxxx* (As per page no. 39 of the complaint)
12.	Due date of possession	09.03.2022 (As per possession clause of buyer's agreement)
13.	Payment plan	Possession Linked
14.	Sales consideration	Rs. 35,19,000/- (As per payment plan on page no. 56 of complaint)
15.	Total amount paid by the complainant	Rs. 43,04,249/- (As per customer ledger on page no. 60 of complaint)
16.	Conditional offer of possession for fit-outs	18.09.2020 (As per page no. 61 of the complaint)
17.	Occupation certificate	09.03.2021 (As per page no. 84 of the reply)
18.	Intimation regarding obtaining of occupation certificate	23.03.2021 (As per page no. 87 of the reply)
19.	Request for Surrender of unit by the complainant	27.12.2024 (As per page no. 68 of the complaint)

B. Facts of the complaint:

3. That the complainants have made following submissions:

   i. The respondent launched one project namely 'Elan Town Centre' located at Sector- 67, Village Badshahpur, Gurugram- Sohna Road, Distt. Gurugram, Haryana and the complainants came to know about the said project of the respondent company from various advertisements published in the newspapers and other sources. Upon further enquiries at the site office, the representatives of respondent company assured that the said project of the respondent will be delivered within 3 years of allotment and said that the respondent company is a reputed developer and is developing a world class commercial complex.

   ii. The complainants were induced by the representations made by the respondents' representatives and the attractive brochure. Believing the same to be true, the complainants applied for allotment of a retail/kiosk unit in the aforesaid project on 15.01.2018. Consequently, a Kiosk Unit bearing No. 261, 2nd Floor, measuring 450 sq. ft. (super area), located in the food court of Elan Town Centre, was allotted to the complainants via the allotment letter dated 03.03.2018. The total sale consideration for the said unit was ₹35,19,000/- exclusive of taxes.

   iii. Thereafter, a builder buyer agreement dated 09.03.2018 was executed between the complainants and the respondent duly registered vide Vasika No. 6328 dated 08.08.2019. The complainants paid each and every installment on time against the demand raised by the respondent as per the payment schedule and till date an amount of Rs. 43,04,249/- has been paid by the complainants to the respondent.

iv. It is pertinent to mention over here that on 18.09.2020, the respondent issued a letter of offer of possession for fit outs to the complainant wherein the complainants were informed that the super area of the allotted unit had increased from 450 sq. ft. to 482 sq. ft. Consequently, the complainants were compelled to pay an additional amount. Being middle-class individuals who invested their life savings, it was extremely burdensome to arrange the additional funds, yet they managed to comply.

v. After paying the entire sale consideration, when the complainant inspected the site of the respondent project, they found out that the front side of the said complex/mall was occupied by some third party who constructed an office and is running a building material business on that piece of land. This obstructed the visibility and façade of the complex of the respondent. At the time of the booking, the sales representative showcased a brochure that depicted a green lawn at the front of the project, creating an upscale and inviting commercial space. It is pertinent to mention over here that when the complainants booked the unit, this front side of the project was vacant and was in the possession of the respondent which was shown as the green belt to the complainant and was said to be maintained as a beautiful lawn in order to enhance the beauty of the complex/mall which was also shown in the brochures of the respondent.

vi. The actual site condition is entirely contrary to the representations made. All such images and in those descriptions, the mall was supposed to be the first contact with the service road and the representation was all about the approachability and visibility of the mall from the main road. The reality of the project is that the area which was supposed to be the green belt and which was the front of the mall is now an office of a third party and it is only now it is known that the land in front of the land was never owned by the Respondent and all the images were false. Due to the third-party structure the whole mall is now shadowed, and no part of the mall is visible to the people from the main road. Due to such an unfortunate event, the footfall is negligible in the mall, and the respondent is not willing to accept the mistake they have made.

vii. When the complainant wrote multiple emails to the respondent, he never received a satisfactory response and at the later stage the respondent said that they cannot do anything about the said third-party structure and that the said land also never belonged to them and the project was always made to be like this.

viii. Moreover, at the time of the booking of the said kiosk unit in the food court, the sales representatives of the respondent told the complainant that there will be total 25 units in the food court and now there are 100 units (approx.) made in the food court because of which no food service providers are willing to set up a shop in the spaces offered by the respondent as the unit sizes are impractically small which were reduced at the time of the completion of the project, making it impossible to operate a functional kitchen which is essential for any food court establishment due to this no big brands/names ever came to the mall.

ix. The respondent assured that the said commercial complex/mall would be leased to reputed brands such as Kwals and brands associated with kwals like McDonalds, KFC, Burger King, Domino's, Subway, Dunkin Donuts etc. These assurances were intentionally crafted to deceive our clients into investing their hard-earned money and lifetime savings in their project. These brands never came to the respondent as the unit's sizes were reduced by the respondent during the completion of the project.

x. After losing all the faith in the credibility & genuineness of the respondents, the complainants asked for cancellation of said unit & refund of their hard-earned money.

xi. The complainants sent numerous emails to the respondent for the refund and the respondent primarily responded through its email dated 31.12.2024 that they will refund the amount by deducting the earnest money and when the complainants personally visited the office of the respondent, the respondent agreed to refund and even asked for the required documentations for initiating the process of refund but later to this, the Respondent's attitude changed drastically and they denied any refund or buy back or cancellation of allotment.

xii. The respondent is thus liable to re-pay the amount of Rs. 43,04,249/- (with interest, which the complainant paid for the booked unit. Further, the respondent is liable to compensate the complainant for their above acts and deeds causing loss of time, opportunity, and resources to the complainant.

C. Relief sought by the complainant:

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

   i. Direct respondent to refund the amount of Rs.43,04,249/- along with 18% interest from the date of payment till actual realization.

D. Reply by Respondent:

5. The respondent has made following submissions:

i. The complainants have misinterpreted the provisions of the Real Estate (Regulation and Development) Act, 2016, hereinafter referred to as "RERA" and the Rules and Regulations made thereunder, as well as the terms and conditions of the duly executed and registered binding buyer's agreement dated 09.03.2018, registered on 08.08.2019 and the letter of assurance dated 20.02.2018 issued by the Respondent in favour of the complainants.

ii. The complainants have not come before this Hon'ble Authority with clean hands and have concealed the real and true facts and has presented the facts in a distorted manner so as to benefit themselves and the true and correct facts are set out in the succeeding paras of the present reply. In fact, the present complaint is nothing but an abuse of process of law to somehow or the other get the respondent entangled in frivolous litigation and to extort money and have undue gains at the cost and expense of the respondent and also to derail the operational project and also to defame the respondent and its brand. Furthermore, the complainants are demanding a refund when already the project has been duly completed, possession offered, the project having been made operational and functional.

iii. The complainants had approached the respondent through their property dealer/broker, M/s A & A Infratech, expressing an interest in booking a unit in the commercial project, 'Elan Town Centre' located in Sector 67, Village Badshahpur, Gurgaon-Sohna Road, Gurugram. The complainants had approached the Respondent after conducting extensive and independent investigations with regard to all aspects of the project and proceeded to book the unit after being fully satisfied with all aspects of the project including but not limited to the capability of the respondent to undertake development of the project and the various peculiar features of the project as well as the location of the project.

iv. All the queries pertaining to the project and all issues and concerns concerning the project and further all clarifications as sought for/ by the complainants were duly answered /clarified /provided by the representatives of the respondent and the documents pertaining to the project were made available to the complainants for inspection. It was only after the complainants were duly satisfied that the complainants took a well informed and conscious call to book a unit in the Project and had opted for a Special Fixed Return Payment Plan as per their own capabilities and requirements. The Complainants had duly submitted an Application Form dated 15.01.2018 The Complainants, inter alia, agreed and undertook to make timely payment as per the applicable payment plan and also to execute the buyer's agreement in the standard format of the respondent company as and when called upon to do so. The complainants agreed and acknowledged that the provisional allotment in their favour shall take effect only upon execution of the buyer's agreement. The complainants duly undertook to remain bound by and adhere to their contractual obligations.

v. Unit no. KIOSK-0261 admeasuring approximately 450 sq. ft. located on the Second Floor of the Project with Total Sale Consideration of Rs. 35,19,000/- (excluding applicable taxes, stamp duty, registration charges and other amounts payable in accordance with the buyer's agreement) was provisionally allotted in favour of the Complainants vide allotment letter dated 03.03.2018 under Special fixed return payment plan, on the agreed terms and conditions which were duly accepted and agreed to be honoured in a timely manner by the Complainants. Payment schedule was annexed along with the said allotment letter and duly accepted by the complainants. The said payment schedule was in consonance with payment plan as independently opted for by the complainants.

vi. The complainants had agreed and undertaken to make payment as per the payment plan applicable to them. as per the special payment plan applicable to the complainants, the complainants undertook to pay 35% of the basic sale price on booking, 35% of the basic sale price plus 100% EDC & IDC and 100% of PLC on completion of Super Structure/Top Roof Slab and on offer of possession, the Complainants had undertaken to pay 30% of the Basic Sale Price, 100% of Car Parking (usage rights), IFMS, stamp duty, registration charges, administrative charges, interest on delayed payments, if any, and other charges payable at the time of offer of possession as per the buyer's agreement.

vii. In furtherance to the allotment the respondent issued letter dated 20.02.2018 setting out the terms and conditions for payment of fixed amount of Rs 19,450/- (excluding applicable taxes), as per the terms and conditions mentioned therein. The aforesaid fixed amount was contingent upon the condition that the Complainants shall duly adhere to the agreed terms and conditions. That paras 4 and 5 of the said letter provided that the fixed amounts shall be payable till the date of offer of possession by the Respondent and that the offer of possession is not dependent upon grant of competition certificate and occupation certificate. It was also provided that after offer of possession, the respondent shall not have any liability or obligation for payment of fixed amount and shall stand completely discharged, absolved and relieved of its obligations to pay such fixed amount if the complainants failed to take possession. The understanding regarding the offer of possession not being linked to grant of occupation certificate/completion certificate was very much clear in so far as the respondent obligation for payment of fixed amount is concerned. The terms and conditions of payment of fixed amount were categorically clear and after having duly understood the implications thereof, the same were accepted by the complainants. From the contents of the complaint and the averment made therein by the complainants it seems that every attempt is being made by the complainants to somehow or the other link the offer of possession to payment of fixed amount, which never has been an understanding.

viii. In accordance with the letter dated 20.02.2018 referred to above, the Respondent duly paid the fixed amount amounting to Rs. 5,91,964/- (inclusive of TDS) to the complainants. The above payments are a matter of record, and the complainant cannot deny the same.

ix. The buyer's agreement containing the detailed terms and conditions of allotment was willingly and consciously executed by the complainants and the respondent on 09.03.2018 and thereafter duly registered on 08.08.2019, all with the consensus and conscious application of mind by the complainants who appended their signatures on the buyer's agreement and also appeared in person in the office of the jurisdictional sub-registrar of assurances, Gurugram, Haryana thereby admitting the execution thereof and the terms and conditions thereof. Pertinently, no objections whatsoever were raised by the complainants at the time of execution of the buyer's agreement or even thereafter and all the terms as captured and stated in the buyer's agreement were duly accepted without any demur or protest. The complainants are bound by the terms and conditions of the buyer's agreement and the same are binding upon the complainants with full force and effect and the allegations now being raised by the complainants is an afterthought to somehow or other not honour their contractual obligations and escape their commitments.

x. In the meanwhile pursuant to the enactment of the Real Estate (Regulation and Development) Act, 2016, the Project in question was registered under the provisions of RERA as an ongoing project. By letter dated 11.01.2020, the respondent informed the complainants as well as all other eligible allottees about the proposed revision of the layout plans of the project and informed the complainants that if the complainant had any objections/suggestions to the revised building plans, the same could be submitted in the office of the competent authority. It is a matter of record that the complainants never raised any objection to the revision in the building plan thereby implying that they agreed to and accepted the revision in the building plan which in fact was for the benefit of all unit allottees.

xi. The respondent completed construction of the project and accordingly proceeded further and had made an application to the competent authority on 20.03.2020 for the grant and issuance of the occupation certificate with respect to the said project. The complainants were further informed that further to this significant milestone, the complainants shall not be entitled to get the fixed amount with effect from the date of application for the occupation certificate, which was in due consonance with the agreed contractual arrangement and understanding. Pertinently, no objection whatsoever was raised by the complainants to the aforesaid letter and the cessation of payment of fixed amount and now at such a belated stage the already settled and reconciled issue is re-agitated upon for no just and valid cause and in fact it is an afterthought.

xii. As per the overall arrangement and understanding right from the very beginning of possession of the unit was offered to the complainants for the purposes of fit outs vide letter dated 18.09.2020 as per the overall contractual arrangement. The complainants were informed that the final super area of the unit stood revised from '450 sq ft (41.81 sq mtrs)' to '482 sq ft (44.78 sq mtrs)' and that the final dues had been calculated on the basis of the final super area. The complainants were called upon to clear their outstanding dues as per the attached statement.

xiii. In furtherance of the respondent's application to the competent authority for grant and issuance of occupation certificate and the respondent was granted and issued the occupation certificate dated 09.03.2021 vide Memo No. ZP-1081/AD (RA)/2021/6015 from the Town and Country Planning Department, Haryana. Pursuant thereto, the complainants were informed about issuance of the occupation certificate by the competent authority vide the respondent's letter dated 23.03.2021. The complainants were further informed that the respondent would shortly be communicating the details of documents to be executed as well as due payments and common area maintenance charges to be paid for the handing 9 over of possession and registration of the conveyance deed in favour of the complainants.

xiv. Various reminders were issued by the respondent and various follow up through various modes and means were made, calling upon the complainants to clear their outstanding dues. However, the same were ignored by the complainants and the complainants failed to act further and remained in default and breach of their contractual obligations.

xv. By the Respondent's letter dated 29.10.2021, the complainants were called upon to visit the office of the respondent for execution of documents and for payment of stamp duty, registration charges, legal /miscellaneous fee in connection with registration of conveyance deed in favour of the complainants and to pay common area maintenance charges for one-year w.e.f. 09.06.2021 and other charges as mentioned in the said letter. However, despite the due receipt of the said letter, and further follow ups, the complainants for no just and fair cause have failed to clear their outstanding dues and complete the requisite formalities and documentation so as to enable the Respondent to get the conveyance deed registered in their favour. It is very clear that it is the Complainants who are in continued breach and default of their contractual obligations including but not limited to the payment of the outstanding dues which have been pending for long as well as the completion of all procedural and paperwork formalities so that the title in the Unit as allotted to the complainants is duly transferred under a registered Conveyance Deed. The Respondent has been ready and willing to do so however, the non- clearance of the dues, non-payment of the Stamp Duty and registration charges and non-completion of the procedural formalities, all at the end of the complainants is preventing the respondent from conveying the title in the unit in favour of the complainants for which the respondent cannot be held liable, responsible and accountable.

xvi. It is evident that there is no default or lapse in so far as the Respondent is concerned and the respondent has duly acted and performed its obligations and deliverables in spite of the admitted position that the complainant is in breach of his obligations including but not limited to financial obligations. In fact, there is no justification for the institution of the present false and frivolous complaint. The complainants are not entitled to any relief claimed by way of the present complaint. The complaint filed by the complainants is baseless and nothing but an afterthought. The false and frivolous complaint has been filed with the malafide intent and for unjust enrichment. The false and frivolous complaint is liable to be dismissed with costs.

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

E. Jurisdiction of the authority:

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

D.I Territorial jurisdiction

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

D.II Subject matter jurisdiction

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

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

8. 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.

9. 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." SCC Online SC 1044 decided on 11.11.2021 and followed in M/s Sana Realtors***

Private Limited & others V/s 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."*

10. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the above-mentioned matter, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by the complainant.

F. Findings on relief sought by the complainant:

F.I Direct the respondent to refund the amount of Rs.43,04,249/- along with 18% interest from the date of payment till actual realization.

11. The complainants were allotted a unit no. KIOSK-261 in the project of respondent "Elan Town Centre" in Sector-67, Gurugram vide allotment letter dated 03.03.2018 for a sale consideration of Rs.35,19,000/-. The parties herein entered into buyer's agreement on 09.03.2018 and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs.43,04,249/-. It was pleaded by complainants that on 27.12.2024 vide email, the complainants have requested the respondent to cancel the allotted unit and refund the paid-up amount.

12. In the present case, though the offer for fit out has been made way back in 18.09.2020 but that has been made before obtaining occupation certificate, thus that offer of possession stands invalid. The occupation certificate has been obtained by the respondent on 09.03.2021. The core issue arising herein is that the front side of the said complex/mall was occupied by some third party who constructed an office and is running a building material business on that piece of land as stated by the complainants in their complaint. However, the complainants have surrendered the unit on 27.12.2024. The complainants have sought cancellation of the unit after the completion of the unit and occupation certificate has been obtained.

13. Now when the complainant approached the Authority to seek refund of the amount paid for the originally allotted unit, it is observed that under clause 4 of the application form, the respondent-builder is entitled to forfeit the 10% of the basic sale consideration. The clause 4 is reproduced herein below:

> *"The Allottee(s) agrees and confirms that out of the total amounts) paid / payable by the Allottee(s) for the Said Unit, 10% of the Total Consideration of the Said Unit shall be treated as Earnest Money to ensure fulfilment of the terms and conditions as contained in the Application and this Agreement. In the event, the Allottee(s) fails to perform any obligations or commit breach of any of the terms and conditions, mentioned in the Application and / or this Agreement, including but not limited to the occurrence of any event of default as stated in this Agreement and the failure of the Allottee(s) to sign and return this Agreement in original to the Developer within 30 days of dispatch, the Allottee(s) agrees, consents and authorizes the Developer to cancel the allotment and on such, the Allottee(s) authorizes the Developer to forfeit the Earnest Money, brokerage, interest on delayed payments along with Non Refundable Amounts and any amounts paid / payable against interest on investment as well as any other returns paid / payable by the Developer. Thereafter the Allottee(s) shall be left with no right. interest and lien on the Said Unit / Said Complex. This is in addition to any other remedy / right, which the Developer may have."*

14. That the above-mentioned clause provides that the promoter is entitled to forfeit the earnest money paid for the allotment and interest

component on delayed payment (payable by the allottee for breach of an agreement and non-payment). As per the aforesaid clause the builder is entitled to forfeit 10% of the basic sale consideration and empowers to promoter to recover interest on delayed payments along with other amount of non-refundable nature.

15. 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 Urs. VS. Sarah C. Urs., (2015) 4 SCC 136,*** and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** *(decided on 29.06.2020)* *and* ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** *(decided on 12.04.2022)* ***and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022,*** held that 10% of basic sale price is a 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."

16. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainant i.e., Rs.43,04,249/- after deducting 10% of the basic sale consideration and return the remaining 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 surrender i.e., 27.12.2024 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. Directions of the Authority:

17. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

   i) The respondent/promoter is directed to refund the amount i.e., **Rs.43,04,249/-** received by it from the complainants after deduction of 10% of sale consideration of Rs.35,19,000/- as earnest money along with interest at the rate of 10.80% p.a. on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of surrender i.e., 27.12.2024 till the actual date of refund of the amount.

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

18. Complaint stands disposed of.

19. File be consigned to the registry.

(Phool Singh Saini)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.07.2026