BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 5736 of 2025
Date of complaint : 24.11.2025
Order pronounced on: 23.10.2026

Shalabh Gupta
Resident of: A-402, Pioneer Presidia, Sector – 62, Gurugram, Haryana – 122102. **Complainant**

Versus

1. M/s Pareena Infrastructures Pvt. Ltd.
Registered office: Flat no.2, Palm Apartments, Plot no.13B, Sector-6, Dwarka, New Delhi – 110075.
Corporate address: C7A 2nd Floor, Omaxe City Centre Mall, Sohna Road, Sector-49, Gurugram, Haryana – 122018. **Respondent No.1**

2. Surender Kumar Verma
Office at: C-7, Second Floor, Omaxe City Center Mall, Sohna Road, Gurugram, Haryana – 122018. **Respondent No.2**

CORAM:

Shri Arun Kumar **Chairman**

APPEARANCE:

Shri Lal Singh Thakur, Advocate Complainant
Shri Prashant Sheoran, Advocate Respondents

ORDER

1. The present complaint 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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.No.	Particulars	Details
1.	Name of the project	"Mi Casa" situated at Sector, 68 Gurugram.
2.	Nature of Project	Residential Group Housing Colony
3.	Project area	Licensed area – 13.48275 Acres Project area - 12.25085 Acres
4.	DTCP License	111 of 2013 dated 27.12.2013 Valid up to 26.12.2026 (Area 10.12 acre) 92 of 2014 dated 13.08.2014 Valid up to 12.08.2026 (Area 0.64 acres) 94 of 2014 dated 13.04.2014 Valid up to 12.08.2026 (Area 2.73 acres)
5.	Name of Licensee	Pareena Infrastructure Private Limited and 2 others
6.	HRERA Registration	**Registered** (12.25085 acres) Vide no. 99 of 2017 dated 28.08.2017 Valid up to 30.12.2022
7.	RERA Extension	Extension No. 12 of 2023 dated 19.06.2023 Extended up to 30.12.2023
8.	RERA Extension	PROJECT CONTINUATION-RC/REP/HARERA/GGM/99 OF 2017/7(3)/47/2024/06 DATED 23.07.2024 **Further extended up to 30.12.2025**
9.	Unit no.	3203, 32nd floor, Tower - 5 (As per clause 1 of ABA at page 43 of complaint)
10.	Unit admeasuring	1245 sq. ft. (As per clause 1 of ABA at page 43 of complaint)

11.	Allotment letter	25.07.2015 (As per page 33 of complaint)
12.	Date of apartment buyer agreement	03.12.2015 (As per page 37 – 75 of complaint)
13.	Possession clause	***13. Completion of Project*** *That the developer shall under normal conditions subject to force majeure* ***complete construction of tower/Building in which the said flat is to be located within 4 years of the start of construction or execution of this agreement, whichever is later*** *as per the said plans and specifications seen and accepted by the Flat Allottees.....* **[Emphasis Supplied]** (As per page 50 of complaint)
14.	Date of start of construction	26.04.2016 (As mentioned in demand letter dated 06.04.2016 at page 17 of reply)
15.	Due date of possession	**26.10.2020** [26.04.2020 + 6 months on account of Covid-19] (Note: Due date to be calculated 4 years from the date of start of construction i.e., 26.04.2016, being later plus grace period of 6 months) ***[Note: Grace period of 6 months allowed as per HARERA notification no. 9/3-2020 dated 26.05.2020]***
16.	Basic sale consideration	Rs.68,72,400/- (As per summary of dues annexed with BBA at page no. 65 of the complaint)
17.	Total sale consideration ***[BSP + EDC/IDC + FFC + Car parking + Club membership charges + IFMS + Power Backup]***	Rs.81,45,705/- (As per summary of dues annexed with BBA at page no. 65 of the complaint)
18.	Amount Paid	Rs.51,08,759 /- (as per SoA dated 16.06.2022 page 81 of complaint and receipts dated 09.06.2022, 16.06.2022 and 25.07.2022 page 76 – 78 of complaint)

19.	Payment Plan	Construction linked payment plan (As per page 66 of complaint)
20.	Demand letter **[On excavation = Rs.6,36,118/-]**	06.04.2016 (As per page 17 – 18 of reply)
21.	Reminder letters **[On excavation = Rs.23,737/-]**	04.07.2016 & 03.09.2016 (As per page 20 – 21 of reply)
22.	Demand letter **[On completion of basement roof = Rs.5,38,626/-]**	02.02.2017 (As per page 22 – 23 of reply)
23.	Reminder letters **[On completion of basement roof = Rs.5,38,626/-]**	02.06.2017 (As per page 24 – 25 of reply)
24.	Demand letter **[On completion of 3rd Floor slab = Rs.11,03,426/-]**	17.07.2017 (As per page 26 – 27 of reply)
25.	Reminder letters **[On completion of 3rd Floor slab = Rs.14,30,562/-]**	31.01.2018, 13.04.2018, 08.01.2019, 14.05.2019, 08.06.2019 & 10.07.2019 (As per page 29 – 42 of reply)
26.	Final opportunity letter **[On completion of 3rd Floor slab = Rs.14,30,562/-]**	10.09.2020 (As per page 43 – 45 of reply)
27.	Demand letter **[On completion of work slab = Rs.55,63,549.38/-]**	04.03.2022 (As per page 46 – 47 of reply)
28.	Pre cancellation Notice **[On completion of work slab = Rs.55,63,549.38/-]**	26.03.2022 (As per page 48 – 50 of reply)
29.	Cancellation letter **[Due to known payment of Rs.55,63,549.38/-]**	30.04.2022 (As per page 51 – 53 of reply)
30.	Occupation certificate	03.01.2023 *[For Tower – I, II, III & EWS]* (As per page 92 – 94 of reply) **&** **03.06.2024** *[For Tower IV, V, VII (EWS), Community Building & Convenient Shopping]* (As per page 87 – 89 of reply) & 24.11.2025 *[For Tower – VI, VII, VIII & EWS (5th to 6th]*

		(As per copy of OC available at www.tcpharyana.gov.in)
31.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

I. That the respondent is a private limited company which is duly incorporated under the provisions of the Companies Act 1956, and is fully responsible for the acts, conduct business and carryon day-to-day affairs through its managing director or chairman or directors.

II. That the respondent is in the business of real estate development business, thus, in its usual course of business purchase the land, enter into joint ventures, enter in collaboration agreement, enters into marketing and development agreement spectra with various stakeholders including but not limited to land owners.

III. That 'Mi Casa' is a residential Group Housing project being developed by the respondent situated in the Sector 68, Gurugram, Haryana, where in the Complainant book the flat of 2 Bhk Type II, admeasuring 1245 Square Feet (Super Area), Unit No. TS-3203, Tower No. 5, 32nd Floor in the said project. The Director, Town and Country Planning DTCP Haryana has granted license to develop and construct said Group Housing project in favour of the owners on dated 28.04.2015 vide Memo bearing No. ZP-973/AD(RA)/2015/6699.

IV. The respondent give advertisement in newspapers as well as through their channel partners and showed a rosy picture about the project. The complainant relied upon the advertisements and visited the project site. The respondent's representatives made promises and commitments at the time of site visit and solicited the complainant to invest his hard-earned money in respondent's project.

V. That the complainant relied heavily on the representations affirmations and commitments made by the respondent staff and representatives and only on their asking has approached for purchase of flat/apartment in the said project having an approximate area of 1245 square feet with Base Price of Rs.68,72,000/- and Total Sale Price for Rs.81,45,705/- due to inclusion of additional charges (EDC + PLC+ Car Parking Space & Car Parking Charges+ Fire Fighting Charges + Additional Levy). The complainant had made payment to the tune of Rs.6 Lakh as initial booking amount through cheque no. 280223 dated 18.02.2014, which was encashed on 24.02.2014.

VI. That the complainant had again made the payment to the tune of Rs.8,22,642/- vide cheque 280225 dated 25.04.2015 vide single Receipt No. MI/CV/0231 for the cumulative total amount of Rs.14,22,642/- and Rs.50,000/- through cheque No. 000035 on 25.07.2015 vide Receipt No. MI/R/0198.

VII. That after receiving the said payments of Rs.14,72,642/- in total, and after continuous visits and persuasions made by the complainant, the apartment buyer's agreement was executed finally between the respondent and complainant on dated 03.12.2015. And, as per the agreement, the completion of the project would be done within 4 years of execution of this agreement or date of starting of construction, whichever is later.

VIII. That the respondent then raised a demand through demand letter sent through their e-mail feedback@pareena.in on dated 06.04.2016 and therefore the complainant had made the payment of Rs.6,15,030/- through cheque no. 000047 vide Receipt No. MI/R/0602 dated 26.04.2016 and Rs.21,087.61 through credit note vide receipt no. MI/CV/0712 dated 26.04.2016.

IX. That the project became severely delayed with very slow pace of construction and the developers as well as its officials had not shared any information and

avoided the matter of development of project on one aspect or another, causing lots of harassment and mental torture to the complainant as well as his family.

X. That in the month of September, 2017, the complainant had got e-mail on his e-mail id shalabhdotgupta@gmail.com that the project got the RERA registration of its project MICASA RERA Registration No. Mi Casa – 99 of 2017 dated 28.08.2017 vide Memo No. HRERA (Reg) 387/2017/817 dated 28.08.2017.

XI. That from 2016 to 2022, the respondent had neither sent any information regarding the construction of the project or progress of the project. That in the month of January, 2022, the complainant had visited the Head Office of the respondent and met its representative Amit Soni to know about the progress of the project as well as time of completion and even specifically asked for the occupation certificate because the project was already delayed.

XII. That on dated 08.03.2022, the respondent had again raised the demand of Rs.55,47,819/- through e-mail with its employee Ravi Kumar and Amit Soni in loop. That the complainant had responded to the email asking for an update on the occupation certificate but shockingly, could not get any reply. That the complainant had also requested for a meeting with the higher officials of the respondents but again did not receive a reply.

XIII. That the petitioner had responded through the e-mail and asked for the update on the occupation certificate, but again they had not responded to the e-mail. And, even requested for the physical meeting but they had avoided the matter and send no reply.

XIV. That on 07.05.2022, the complainant had visited the office of the respondents and met their representative Amit Soni in its head office after numerous follow-ups and requests for availability. But surprisingly and shockingly, the complainant still did not receive any clarity on project completion or

occupation certificate. However, Amit Soni persuaded the complainant to make some further payments towards the booking along with the promise that all the penalties or interest on past delayed payments would be waived off.

XV. That in Jun 2022 the complainant had handed over 4 cheques made out to the respondent no. 1 i.e., Pareena Infrastructure Pvt Ltd against the pending dues. Even, received signed and stamped receipts for the same from the respondent no. 1:

i. 09 June 2022: cheque #000009 of Rs.10,00,000/-
ii. 16 June 2022: cheque #000011 of Rs.10,00,000/-
iii. 16 June 2022: cheque #000013 of Rs.4,00,000/-
iv. 25 June 2022: cheque #000014 of Rs.10,00,000/-

And, on 25.06.2022, the complainant had received the copy of statement of account from the respondent.

XVI. That on dated 24.02.2023, the complainant was shocked to receive an email from DG Anti Profiteering from email ID: dgap.cbic@gov.in with the subject "Anti-profiteering investigation against M/s Pareena Infrastructure Pvt. Ltd. (Project: - Micasa)". That the complainant had forwarded the said e-mail to the respondents on the e-mail ids amit.soni@pareena.in, ravi.kumar@pareena.in, accounts@pareenainfra.com, feedback@pareena.in, sanjay.gupta@pareena.in) but shockingly, the respondents had not sent any reply of the said e-mail, causing mental harassment to the complainant and his family.

XVII. That on 26.04.2024, as the complainant had tried calling the official Amit Soni of the respondents, so went to its office. After a long wait, met other respondent's representative Ravi Kumar and was shocked on being told that the allotment of the apartment made in favour of the complainant had been cancelled by the respondents. The complainant was also informed that their representative namely Amit Soni had left the organization a few months ago.

It is important to mention here that the respondent builder is himself guilty of committing delay in completion of the project, which required to be completed in the year 2017 with all legal compliance, as per HRERA and more shockingly without serving any demand notice, cancelled the booking of the flat/property, which was booked in the year 2014, despite of payment of considerable amount to the builder in most arbitrary, unlawful, conspicuous and arbitrary manner

XVIII. That the complainant then tried to meet the promoter Mr Surender Verma i.e. the respondent no. 2, who was in the office at that time but the respondents had avoided the matter of meeting on one pretext or another and meeting could not took place.

XIX. That on 03.05.2024, after repeated follow up number of times with Ravi Kumar, the complainant had shared Aadhar copy after Mr. Ravi asked the complainant to do so, though the reason was unclear and could not disclosed by the respondents or their representative.

XX. That on 28.05.2024, the complainant had visited the site to check the construction status of the project, but it is still not complete and ready for occupation or handover.

XXI. That the complainant had made total payment of rupees Rs.21,08,759.61/- and delivered cheques worth additional Rs.34,00,000/- for a total of Rs.55,08,759.61/- till date out of total Base Price of Rs.68,72,000/- and Total Sale Price for Rs.81,45,705/- due to inclusion of additional charges (EDC + PLC+ Car Parking Space & Car Parking Charges+ Fire Fighting Charges + Additional Levy), till date but they had not completed the project in time despite the fact that they had to deliver the possession till 3rd June 2016 as per the terms of the agreement, thus, delaying the possession of the apartment deliberately or for reasons known best to them. Such uncalled act

is leaving complainant in a lurch where he has left with no option but to be an aggrieved person/ victim in the hands of the respondent.

XXII. That the complainant had made number of calls and e-mails but the respondents are delaying the project for the reasons best known to them.

XXIII. That the complainant has suffered losses or damages due to false and incorrect statement and commitment made by the respondent for delivering the possession of flat within stipulated time.

XXIV. That the complainant number of times enquired about the status of construction and other development work to be carried out by the respondent but they never share any such information which is the gross violation of Section 19 (2) of RERA Act, 2016.

XXV. That the complainant had booked the property in aforesaid project to own a house for a standard living matching to his standard and taste but he has been cheated by the respondent as they have failed to fulfil their promise of giving the possession of the property on time and not completed the project by 2016 and after 8 years still the project is incomplete.

XXVI. That the respondents had taken the consideration amount from the complainant on the basis of their impressive pictures and false promises due to which complainant has drained out from his hard and savings and money taken from his family and relatives and by this way the respondent above cheated the complainant.

XXVII. That the respondents after indulging in unfair trade practice head intentionally grabbed the hard-earned money of the complainant and by this way also committed the offence of criminal breach of trust.

XXVIII. That the builder/ promoter the respondents with malafide intention and ulterior motive tried to grab the valuable money of the Petitioner/ Complainant are not executing the Sale Deed as per the Agreement to Sell dated 18.09.2023.

XXIX. That the petitioner has no option except to approach this Tribunal for the grievances and illegal misconduct of the respondents.

XXX. That the complainant has suffered losses or damages due to false and incorrect statement and commitment made by the respondents.

XXXI. That the complainant number of times enquired about the status of the Zoning Plan and other development work to be carried out by the respondents but they never share any such information which is the gross violation of Section 19 (2) of RERA act 2016.

XXXII. That the respondents after indulging in unfair trade practice had intentionally grabbed the hard-earned money of the complainant and by this way also committed the offence of criminal breach of trust.

C. Relief(s) sought by the complainant:

4. The complainant has sought following relief:

i. Direct the respondent to deliver the possession of the unit along with complete amenities;

ii. Direct the respondent to pay delay possession charges at 18% per annum interest from the promised date of delivery till the actual delivery of possession to the complainant, in interest of justice;

iii. Direct the respondent to make the payment of the monthly interest as instalment until the actual delivery of possession of the unit to the complainant;

iv. Direct the respondent to execute conveyance deed and registry in favour of the complainant as per the Act, in time bound manner;

v. To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under Section 420, 406 and 409 of the Indian Penal Code;

vi. To issue directions to pay the cost of litigation.

vii. Any other relief which this Authority may deem fit and appropriate in view of the facts and circumstances of this complaint.

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 has contested the complaint by filing reply on the following grounds: -

I. The present complaint is liable to be dismissed in limine as there exists no valid or subsisting contractual relationship between the parties. The allotment of Unit No. TS-3203 (the "Subject Unit" was already cancelled by the respondent on 30.04.2022 due to chronic, willful, and persistent defaults in payments by the complainant. All the demand letters/reminders along with pre-cancellation & cancellation letters are attached herein as Annexure R1 (colly).

II. The complainant remained a serial defaulter from 2016 onwards. Following multiple ignored demand notices and a pre-cancellation letter (26.03.2022), the allotment was legally terminated on 30.04.2022. The respondent has never revoked this cancellation. Any purported "dealings" or "receipts" issued thereafter are non-est in the eyes of the law and do not bind the respondent.

III. It is pertinent to mention here that the complainant has heavily relied on alleged interactions with one Mr. Amit Soni, who was an employee of the respondent company at the relevant time. According to the complainant's own version, he met Mr. Soni in May and June 2022-after the allotment had already been cancelled on 30.04.2022-and claims to have received promises of interest waivers and handed over cheques totalling Rs.34,00,000/- based on Soni's "persuasion."

IV. The respondent clarifies that Mr. Amit Soni was terminated from service on 29.06.2023. Subsequent to his departure, it was discovered that he had been involved in a massive professional fraud. The respondent has filed a detailed criminal complaint (dated 27.10.2025) before the Economic Offences Wing (EOW), Gurugram, against Amit Soni for creating forged documents, misappropriating funds, and making unauthorized commitments to allottees for his personal gain. The complainant's alleged dealings with Soni match the modus operandi of fraud for which the respondent is already prosecuting Soni. Any "receipts" or "settlements" purportedly provided by Soni post-cancellation are fraudulent, unauthorized, and were never part of the respondent's official records.

V. That apparently present complainant had conspired with said Amit soni and prepared forged and fabricated documents, without notice and knowledge of respondent.

VI. It is further submitted that the transactions mentioned by the complainant came into the notice and knowledge of the respondent only after the filing of the present complaint.

VII. The receipts produced by the complainant are not part of the company record. All these transactions were done by the complainant and said Amit Soni in active collusion with each other. Since the respondent has now come to know about one more fraud committed by said Amit Soni in active collusion with the complainant, the respondent will proceed to file a formal criminal complaint against the complainant as well. Investigations have revealed that Amit Soni unauthorizedly accessed the records, server, and database of the company to create false and forged documents and made illegal entries to facilitate this fraud. It is a settled principle of law that any transaction arising from the commission of an illegal act does not become

legal; it remains illegal and void ab initio since the very root of said act was illegal.

VIII. That Mr. Amit Soni was a mere employee and was never a Director, Chairman, or authorized signatory of the respondent. Under corporate and agency law, he possessed no authority to waive interest, offer penalty waivers, or revive a cancelled allotment. Any alleged promise or "receipt" issued by Soni in June 2022-after the formal cancellation-is a matter of unauthorized personal dealing that is not attributable to the respondent.

7. All other averments made in the complaint denied in toto

8. 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 those undisputed documents and oral as well as written submissions made by the parties.

E. Written submission filed by complainant:

9. The complainant has filed the written submissions on 21.08.2026 and no additional facts apart from the complaint or reply have been stated in the written submissions.

F. Jurisdiction of the Authority:

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

F.I Territorial jurisdiction

11. 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 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.

F.II Subject matter jurisdiction

12. 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) 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.*

13. 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.

G. Finding on the objections raised by the respondent.

G.I Objection regarding force majeure circumstances.

14. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as orders/ restrictions of the NGT in NCR as well as competent authorities account of the environmental conditions, ban on construction by the order of courts and adverse effects of covid etc. and others force majeure circumstances and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. Firstly, the events taking place such as orders of NGT in NCR region on account of the environmental conditions are for short duration which does not make a huge impact on project which can cause and justify inordinate delay of 3-4 years. Secondly, the respondent is claiming benefit of

lockdown in lieu of Covid-19, which came into effect on 23.03.2020, due to Covid-19 there may be a delay but the same has been set off by the government as well as authority while granting extension in registration of the projects, the validity which expired from March, 2020 for a period of six (6) months. The due date of possession in the present case as per clause 13 of apartment buyer's agreement dated 03.12.2015 is come to 26.04.2020, which is after March, 2020. Therefore, an extension of six months is to be given over and above the due date of handing over of possession in view of HARERA Notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Accordingly, the due date for handing over of possession is comes out to 26.10.2020. Thus, no period over and above grace period of 6 months can be given to the respondent-builder. Thus, the respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of its own wrong.

H. Finding on the reliefs sought by the complainant.

H.I Direct the respondent to deliver the possession of the unit along with complete amenities;

H.II Direct the respondent to pay delay possession charges at 18% per annum interest from the promised date of delivery till the actual delivery of possession to the complainant, in interest of justice;

H.III Direct the respondent to make the payment of the monthly interest as instalment until the actual delivery of possession of the unit to the complainant;

H.IV Direct the respondent to execute conveyance deed and registry in favour of the complainant as per the Act, in time bound manner;

H.V Any other relief which this Authority may deem fit and appropriate in view of the facts and circumstances of this complaint.

15. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

16. In the present complaint, vide letter of allotment dated 25.07.2015, the complainant was allotted a unit bearing no. 3203, 32nd floor, Tower - 5,

admeasuring area of 1245 sq. ft. super area. An apartment buyer's agreement was executed on 03.12.2015 inter-se parties for the allotted unit, for total sale consideration of Rs.81,45,705/- against which the complainant/allottee has paid an amount of Rs.51,08,759/- till 25.07.2022. The complainant has opted for construction linked payment plan.

17. The respondent has contended that the complainant has defaulted in making timely payment from the beginning. Further contended that upon completion of the said milestone, as per the opted payment plan, it has issued various demand letter's on 06.04.2016, 02.02.2017, 17.07.2017 & 04.03.2022, reminder letters to said demands on 04.07.2016, 03.09.2016, 02.06.2017, 31.01.2018, 13.04.2018, 08.01.2019, 14.05.2019, 08.06.2019 & 10.07.2019, final opportunity letter dated 10.09.2020, and a pre-cancellation letter dated 26.03.2022, which the complainant has failed to make the fill payment. Consequently, the respondent has cancelled the unit of the complainant vide cancellation letter dated 30.04.2022 after issuing several demands, reminder letters and after giving ample opportunities. Now the question arises before the Authority whether the cancellation is valid or not, in the eyes of law?

18. Upon consideration of the documents available on records and submissions of both the parties, the Authority observes that, pursuant to the allotment, the complainant has already paid an amount of Rs.21,08,759.61/- before cancellation of the unit, against the total sale consideration of Rs.81,45,705/-. It is further observed, that at the time of cancellation of the allotment, the respondent had already received an amount of Rs.21,08,759.61/-. As per the statement of account dated 16.06.2022 placed on record at page no. 79 – 81 of complaint, it is evident that even after issuance of the cancellation letter dated 30.04.2022, the complainant has made further three payments each amounting to Rs.10,00,000/- via cheques i.e., total amounting to Rs.30,00,000/-, which were duly accepted by the respondent and issued payment receipts on 09.06.222,

16.06.2022 & 25.06.2022 respectively (page 76 – 78 of complaint). Therefore, the complainant has paid an amount of Rs.51,08,759/-, which constitutes almost the 74.33% of basic sale consideration & 62.71% of total sale consideration of against the allotted unit.

19. The respondent issued various reminder/demand letters dated 06.04.2016, 04.07.2016, 03.09.2016, 02.02.2017, 02.06.2017, 17.07.2017, 31.01.2018, 13.04.2018, 08.01.2019, 14.05.2019, 08.06.2019, 10.07.2019, & 04.03.2022 to the complainant, calling upon them to clear the outstanding dues. Thereafter, a pre-cancellation letter dated 26.03.2022, followed by a final cancellation notice dated 30.04.2022, was issued to the complainant, granting them an opportunity to pay the outstanding amount of Rs.55,63,549.38/- along with applicable interest within 7 days, failing which the booking of the above unit in the project "Mi Casa" shall be cancelled as per the terms & conditions of the apartment buyer's agreement.

20. Further, despite several requests and demand letters, the complainant neither contacted the respondent nor deposited the entire outstanding dues. And as per Clause 7 of the buyer's agreement dated 03.12.2015, the respondent/promoter has a right to cancel the unit in case the allottee has breached the agreement to sell executed between both the parties. Clause 7 of the buyer's agreement is reproduced as under for a ready reference:

> *7. TIME IS ESSENCE*
> *That the Time is the essence with respect to the Flat Allottee(s) obligations to pay the Sale Price as provided in Annexure-1, Summary of dues along with other payments such as applicable Service Tax, stamp duty, registration fee and other charges stipulated under this Agreement to be paid on or before due date or as and when demanded by the Developer as the case may be and also to perform or observe all the other obligations of the Flat Allottee(s) under this Agreement.* ***It is clearly agreed and understood by the Flat Allottee(s) that it shall not be obligatory on the part of the Developer to send reminders regarding the payments to be made by the Flat Allottee(s) as per the Schedule of Payments in Annexure-II or obligations to be performed by the Flat Allottee(s).*** *In case of delay in making payment by the Flat Allottee(s) to the Developer as*

per the Schedule of Payments as stated in Annexure-II, then the Flat Allottee(s) shall pay interest on delayed payments@ 18% p.a. compounded quarterly at the time of every succeeding instalment 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 Flat Allottee(s) fails to pay the Instalments) along with interest within 60 days, from the due date, the Developer shall have the right to terminate the Agreement and forfeit the EARNEST MONEY as detailed hereinabove and allotment of the said apartment shall stand cancelled*** *and the flat Allottee(s) shall not have any lien/charge/interest/right on the said apartment.*

21. In view of the aforesaid findings, the Authority observes that the respondent cancelled the unit of the complainant after giving adequate demands notices. Thus, the cancellation in respect of the subject unit is valid in the eyes of law and the relief sought by the complainant is hereby declined as the complainant/ allottee has violated the provision of Section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan annexed with the buyer's agreement dated 03.12.2015, thus, only refund can be granted to the complainant after certain deductions as prescribed under law.

22. The Authority further observes that Clause 5 of the buyer's agreement talks about that in the event of default or breach of any terms and conditions of the buyer's agreement by the allottee, the respondent is entitled to forfeit the amount of earnest money. The relevant Clause 5 of the buyer's agreement is reproduced as under for a ready reference:

5. ERANEST MONEY
The Allottee(s) agrees that out of the amounts) paid/payable towards booking amount for provisional allotment of the apartment or towards total price; the amount paid by the Allottee(5) towards booking amount along with the application for the provisional allotment of the said apartment and all other amounts paid towards the said apartment till, at the time of or after the execution of the Apartment Buyers Agreement, ***up to 15% of the basic sale price, shall be treated as earnest money (as the case may be)*** *to ensure fulfilmenc by the applicants) of the terms and conditions as contained in this application and Apartment Buyers Agreement. The applicant(s) hereby authorizes the Company to forfeit this earnest money along with interest paid, due or payable along with any other amount non-refundable in nature.*

> *In the event;* ***the Allottee(s) falls to perform any obligations or commits breach of any terms and conditions mentioned in the Application, Allotment Letter and the Apartment Buyer Agreement including but not limited to the occurrence of any event of default as stated in this Apartment Buyer Agreement or default in payment of instalments, despite having been issued demand/ notice in that regard, the Developer shall have the right to forfeit the amount of Earnest Money without any further notice to the Allottee(s).*** *If the amount paid by the Allottee(s) is less than the forfeitable amount, then the Allottee(s) undertake to make good the shortfall of the forfeitable amount. This is in addition to any other remedy/right, which the Developer may have. The parties agree that the conditions for forfeiture of earnest money shall survive till the execution and registration of the conveyance deed for the Apartment.*

23. However, 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 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."*

24. 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, and the respondent/ promoter can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. Thus keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.51,08,759/- after deducting 10% of the sale consideration, being earnest money along with an interest @10.95% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the such balance amount, from the date of cancellation i.e., 30.04.2022 till actual refund of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017 ibid.

H.VI To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under Section 420, 406 and 409 of the Indian Penal Code;

25. The complainant is at liberty to approach the appropriate authority/ forum w.r.t the above-mentioned relief.

H.VII To issue directions to pay the cost of litigation.

26. The complainant is seeking above mentioned relief w.r.t litigation expenses. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)***, has held that the Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation costs and legal expenses.

I. Directions of the Authority:

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

    i. The cancellation letter dated 30.04.2022 is valid in the eyes of law. Therefore, the respondent/ promoter is directed to is directed to refund the paid-up amount of Rs.51,08,759/- after deducting 10% of the sale consideration, being earnest money along with an interest @10.95% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the such balance amount, from the date of cancellation i.e., 30.04.2022 till its actual realization.

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

28. Complaint as well as application, if any, stands disposed of accordingly.

29. File be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.10.2026