

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,  
GURUGRAM**

**Complaint no.:** 2647 of 2023  
**Date of decision:** 03.07.2024

Sh. Rajat Verma  
**R/o:** - M-141, Kapil Vihar, Sector 21C, Faridabad,  
Haryana- 121001

**Complainant**

Versus

Suposhaa Realcon Private Limited.  
**Regd. office at:** - 12A, Tower-2, M3M International  
Financial Center, Sector-66, Gurugram, Haryana-  
122002

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri Karamvir Kamal (Advocate)

Complainant

Shri Kapil Bakshi and Ms. Shriya Takkar (Advocates)

Respondent

**ORDER**

1. This 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 provision of the Act or the Rules and regulations made thereunder 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Smart world Orchard", Sector- 61, Gurugram Manesar Urban Complex, Gurugram, Haryana
2.	Project area	20.60 Acres
3.	Nature of the project	Affordable Plotted colony (DDJAY)- Independent Floor Residence
4.	DTCP license no. and validity status	68 of 2021 dated 16.09.2021 valid upto 15.09.2016
5.	Name of licensee	Auspicious infrastructure and 10 others.
6.	RERA Registered/ not registered	74 of 2021 dated 03.11.2021 valid upto 31.12.2024
7.	Unit no.	F-6D, Plot no. F-6, Type 3 BHK, 4 <sup>th</sup> floor
8.	Unit area admeasuring	1549 Sq. Ft. super area 939.37 sq. ft. carpet area (Page 73 of complaint)
9.	Allotment Letter	26.09.2022 (Page 70 of complaint)
10.	Date of execution of BBA	10.11.2022 (Page no. 87 of complaint)
11.	Possession clause	<b>Clause 7.1</b> <i>(ii)The Promoter assures to offer possession of the Independent Floor Residence along with exclusive right to use undivided demarcated proportionate terrace and basement area and one car parking space as per agreed terms and conditions herein on or before the Completion Time Period i.e. 31 Dec 2024 unless there is delay due to Force Majeure Event, reasons beyond the control of the Promoter, non-compliance on the part of the Allottee(s) including on account of any default on the part of the Allottee(s), Court orders, Government policy/guidelines, decisions affecting the regular development of the Project or due to</i>



		<p>any event or reason, which is recognized as a ground for extension by the Authority. If, the completion of the Independent Floor Residence is delayed due to the above conditions, then the Allottee(s) agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Independent Floor Residence along with exclusive right to use undivided demarcated proportionate the terrace and, basement area and one car parking space as may be approved by the competent authorities. (Page 96 of complaint)</p>
12.	Due date of possession	31.12.2024
13.	Total sale consideration	Rs. 1,84,64,899/- (Page 72 of complaint)
14.	Amount paid by the complainants	Rs. 55,39,513/- (Page no. 121 of complaint)
15.	Demand letter (Rs. 55,39,428/-) Payable on or before 23.12.2022	08.12.2022 (Page no. 116 of complaint)
16.	Reminder letters	19.01.2023 (Page no. 118 of reply)
17.	Final opportunity/pre-cancellation	24.01.2023 <i>"We, therefore, hereby finally call upon you to make the payment of Rs. 55,39,428 (Rupees Fifty Five Lakh Thirty Nine Thousand Four Hundred Twenty Eight Only) along with interest thereon till the date of this letter as mentioned above within 7 days from the receipt of this letter.</i> <i>Please note that, if you fail to make the aforesaid payments, we shall presume that you are not interested in the booking/allotment of the aforementioned Unit and we shall be constrained to cancel/terminate the booking/allotment and initiate steps for forfeiture of the Booking Amount and other charges as per the terms agreed, and you shall forthwith execute and register the required Cancellation Deed/other documents in respect of the same against <b>refund of the balance amount, if any, after the aforesaid forfeiture.</b> In such event, we shall be entitled to deal with or sell</i>

		<i>the Unit to any third party without any recourse to you and you shall not have any claim, right or interest of any nature whatsoever in respect of the Unit.”</i> (Page no. 85 of reply)
18.	Cancellation letter	14.03.2023 (Page no. 86 of reply)
19.	Unit further sold to Mrs. Dhruvi Chaudhri and Mrs. Anuja Chaudhri	20.06.2023
20.	Amount refunded by the respondent to the complainant	Rs.36,93,023/- vide bank transfer on 12.07.2023 post deduction of earnest money in terms of buyer's agreement and HRERA Regulation dated 05.12.2018.
21.	Occupation certificate	Not obtained
22.	Offer of Possession	Not offered

**B. Facts of the complaint**

3. The complainant has made the following submissions: -

- I. That the complainant had fallen into the lure of the rosy picture of the project painted by the respondent in its advertisements making tall claims which included a dazzling company website announcing its residential housing project “Smart World Orchard”, Sector 61, Gurugram, Haryana, in the revenue estate of village Ullawas and Behrampur, Sub Tehsil Wazirabad, Gurugram. The respondent invited applications from prospective buyers for the purchase of unit in the said project. The respondent further confirmed that the project had got the building plan approval from the Authority.
- II. That the complainant made payment of Rs.12,00,000/-, Rs.33,00,000/- and Rs. 5,39,513/- on 12.11.2021, 26.04.2022 and 01.07.2022 respectively as demanded by the respondent.
- III. That from the beginning of first payment of Rs.5,00,000/- the respondent was reluctant to issue any payment receipts on one pretext or the other. The respondent took advance payments to the tune of Rs.55,39,513/-

equivalent to 30% of the total consideration amount of Rs.1,84,64,899/- much before the signing of the agreement for sale. However, the respondent did not issue receipts till pursued incessantly through phone calls and physical visits to his office.

- IV. That the respondent issued an allotment letter to the complainant on 26.09.2022, whereby he was allotted unit no. F-6D, 4<sup>th</sup> floor, Sector 61, Gurugram, Haryana, admeasuring 1549 sq. ft.
- V. That subsequently an agreement for sale was executed between the parties on 10.11.2022 for a total sale consideration of Rs. 1,84,64,899/-.
- VI. That as per the allotment letter and agreement, the promoter had to deliver the possession on or before 31.12.2024 as per clause 7.1 sub-clause (ii) of the said agreement.
- VII. That as per the demands raised by the respondent, the complainant has already paid a total sum of Rs.55,39,513/- towards the said unit against the total sale consideration of Rs.1,84,64,899/-.
- VIII. That respondent has arbitrarily, wilfully, and illegally cancelled the allotment of the complainant's unit, although the complainant has paid more than 30% of the amount against the subject unit.
- IX. That the purported reason for the cancellation of allotment by the respondent is the delay in payment of the most recent /latest demand raised by the respondent dated 08.12.2022.
- X. That while the respondent himself illegally coerced and extracted from the complainant an advance amount of Rs. 38,00,000/- about 6 to 7 months before execution of agreement for sale.
- XI. That after the receipt of the demand letter in question the complainant informed the respondent that his home loan for about Rs.2,00,00,000/- has been sanctioned from the Indian Overseas Bank on 30.12.2022 and that he may be allowed to make the payment that has got delayed along with

interest, however the respondent has been curtly and unfairly refusing to allow him any such opportunity to the utter dismay of the complainant.

- XII. That the main reason for the delay in paying payment against the demand raised by the respondent is that the complainant had got his home loan duly sanctioned well in time from the IOB but respondent's project was not on the bank's approved list.
- XIII. That clause 1.7 of the allotment letter issued by the respondent clearly provides for such situations and imposes a liability on the complainant to make good such delayed payments along with interest.
- XIV. That the complainant stands aggrieved because of the unfair trade practices of the respondent and his arbitrary refusal to accept/facilitate the payment due along with interest as prescribed under clause 1.7 of the allotment letter as also in the explanation.
- XV. That again on 19.01.2023 respondent sent reminder letter for balance payment of the said unit. Just after 5 days of this reminder letter, the respondent again sent the pre-cancellation letter cum demand letter with final opportunity to make the payment towards the outstanding dues against the said unit on 24.01.2023.
- XVI. That during January 2023 to February 2023, several correspondences took place between the complainant and the respondent regarding the payment due. In his mails, the complainant again reiterated his commitment to pay the outstanding amount with home loan along with delay interest.
- XVII. That while on one hand the respondent is refusing to take payment with interest and issue NOC for the bankers to facilitate the disbursement of the requisite amounts to the respondent, he on the other hand sent a reminder again on 11.03.2023 along with a copy of statement of accounts.
- XVIII. That further the complainant informed the respondent that two other banks have approved his home loan and he wants to clear his dues along with interest but to no avail.

- XIX. That from March 2023 to May 2023, complainant sent various emails to the respondent expressing his will to clear his due towards the unit but respondent till date has failed to provide any satisfactory response to the complainant. On 02.05.2023, respondent sent an email stating that, "this is to inform you that as confirmed by our CRM, Ms. Anterpreet Kaur, your unit has been cancelled your unit due to non-payment of dues".
- XX. That the complainant protested this cancellation and once again requested that he may be allowed to make good the outstanding dues along with the requisite interest through an email dated 20.05.2023 which was replied in the negative by the respondent within a couple of hours on the same day.
- XXI. That the above said acts of the opposite parties clearly reveal that the respondent has been indulging in unfair trade practices and has maintained a prejudicial attitude towards the complainant for reasons best known to him. Nevertheless, the arbitrary, illegal and unjust acts of the respondent has caused immeasurable mental stress and agony to the complainant.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
- i. Direct the respondent to revoke the cancellation of allotment of flat/unit no. F-6D, 4<sup>th</sup> floor, Sector 61, Gurugram- 122001, Haryana and thus revive the allotment in favour of the complainant.
  - ii. Direct the respondent to handover the possession of flat no. F-6D, 4<sup>th</sup> floor, Sector 61, Gurugram- 122001, Haryana to the complainant/allottee as and when it becomes due as per the terms of the agreement for sale dated 10.11.2022.
  - iii. Direct the respondent to issue NOC afresh for disbursement of the bank loan/amount due and allow the allottee to make the requisite balance payments as may be outstanding at the time of adjudication of the instant case.

- iv. To impose a penalty of upto 5% of the project cost on the respondent under section 61 of the Act for grossly manipulating the dates on the payment receipts violating the provisions mandated under section 13 of the Act.
- v. Direct the respondent to pay a sum of Rs.1,00,000/- towards litigation costs as mandated vide the provision u/s 11(g) of the Act.

5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

**D. Reply by respondent**

6. The respondent by way of written reply dated 29.11.2023 made following submissions: -

- I. That the complainant after conducting his own due diligence and independent enquiries and only after being fully satisfied about the projects of the respondent company, applied for allotment of an independent floor residence in the project "Smartworld Orchard" being developed by the respondent in Sector 61, Gurugram vide Application Form through his broker Oakfield Realty Private Limited. The complainant on his own free will and understanding and after having read and understood all the terms of the application form, signed the application form.
- II. The complainant requested that the amount that he paid towards expression of interest be transferred towards the unit in question i.e., unit no. F-6D without any deductions. The respondent being a customer-oriented company acceded to the request of the complainant and accordingly transferred the entire amount paid by the complainant towards unit F-6D in 'Smartworld Orchard', Sector 61, Gurugram.
- III. That in due consideration of the commitments by the complainant to comply with the terms of the booking/allotment and make timely



- payments of demands, the respondent allotted unit no. F-6D in the said project for a total consideration of Rs.1,84,64,899/- plus other charges vide allotment letter dated 26.09.2022. The complainant, on his own free will and understanding of the legal import and effect opted for a specific payment plan i.e., 30:30:40.
- IV. That the complainant collected the copies of the buyer's agreement for execution at his end. After constant follow ups with the complainant, the said agreement was duly executed on 10.11.2022 and the same was duly registered.
- V. That as per the allotment letter dated 26.09.2022, the due date of handing over possession of the independent floor residence is 31.12.2024. However, same was subject to force majeure conditions and any extension granted by the Authority on or before 31.12.2024.
- VI. Thereafter, the respondent, as per the payment plan opted by the complainant, raised a demand dated 08.12.2022 of Rs.55,39,428/- which was due on or before 23.12.2022. However, the complainant failed to make the payment as per the payment plan. Since the complainant failed to clear his outstanding dues, the respondent issued a reminder letter dated 19.01.2023 for payment of Rs.55,39,428/- immediately, to avoid further accrual of interest/penal consequences.
- VII. That despite issuance of reminder, the complainant did not come forward to clear his outstanding dues, therefore the respondent issued pre-cancellation letter dated 24.01.2023 to the complainant finally calling upon the complainant to make payment of Rs.55,39,428/- along with interest within 7 days of receipt of the said letter, failing which the allotment shall be cancelled.
- VIII. That the complainant even after the issuance of the abovementioned pre-cancellation letter failed to take advantage of this opportunity and continued to breach the terms of the buyer's agreement. As a consequence

of the same the respondent was constrained to terminate the allotment of the complainant vide cancellation letter dated 14.03.2023 and forfeit the amount as per terms of the buyer's agreement. Thereafter, vide email dated 15.03.2023 the respondent halted the operation of cancellation letter subject to receipt of outstanding dues. Since, the complainant failed to clear his dues, therefore, the cancellation letter dated 14.03.2023 stands in its operation and the unit in question stands cancelled. The complainant was informed about the same on 02.05.2023.

- IX. That the respondent was constrained to cancel the unit as per the buyer's agreement on account of non-payment. The complainant had paid the amount of Rs. 55,39,513/-. Further, the respondent is incurring losses on account of the breach of the terms of the allotment and application by the complainant, which the complainant is liable to pay to the respondent as per the terms of the allotment.
- X. That the default of the complainant in making timely payments is duly covered under the terms of buyer's agreement, and the cancellation and forfeiture of the earnest money and other non-refundable amounts has been done in accordance with the same. Thus, the complainant is not entitled to get any reliefs as sought from the Authority. The failure on part of the complainant to perform his contractual obligations disentitles him from any relief whatsoever.
- XI. That in furtherance of the cancellation of the subject unit, the respondent has allotted the unit to Mrs. Dhruvi Chaudhri and Mrs. Anuja Chaudhari vide allotment letter dated 20.06.2023. That the unit being cancelled there is no privity of contract between the parties and the complainant has no right, title, or interest in the unit in question and neither are allottees of the same and therefore the complaint is infructuous.
- XII. That the respondent in full and final settlement has also refunded the amount of Rs.36,93,023/- to the complainant vide bank transfer on

12.07.2023 post deduction of earnest money in accordance with terms of the buyer's agreement.

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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject-matter Jurisdiction:**

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)(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.

**F. Findings on the relief sought by the complainant.**

**F.I Direct the respondent to revoke the cancellation of allotment of flat/unit no. F-6D, 4th floor, Sector 61, Gurugram- 122001, Haryana and thus revive the allotment in favour of the complainant.**

**F.II Direct the respondent to handover the possession of flat no. F-6D, 4th floor, Sector 61, Gurugram- 122001, Haryana to the complainant/allottee as and when it becomes due as per the terms of the agreement for sale dated 10.11.2022.**

**F.III Direct the respondent issue NOC afresh for disbursement of the bank loan/amount due and allow the allottee to make the requisite balance payments as may be outstanding at the time of adjudication of the instant case.**

12. 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.

13. In the present complaint the complainant is seeking relief w.r.t setting aside the cancellation letter dated 14.03.2023. The complainant was allotted unit no. F-6D, plot no. F-6, Type 3BHK, 4<sup>th</sup> floor admeasuring 1549 sq. ft. super area and 939.37 sq. ft. carpet area in the project "Smart World Orchard", Sector - 61, Gurugram Manesar Complex, Gurugram by the respondent for a total consideration of Rs.1,84,64,899/- against which he paid a sum of Rs.55,39,513/-.

14. The respondent has sent demand letter dated 08.12.2022 asking the complainant to pay a sum of Rs.55,39,428/- towards "On Completion of Top Floor Roof Slab of Plot", payable on or before 23.12.2022. Thereafter, reminder letter dated 19.01.2023 was issued by the respondent promoter reminding the complainant to pay the outstanding amount. A pre-cancellation notice dated 24.01.2023 was also issued by the respondent asking the

complainant to make the requisite payment of Rs.55,39,428/- within a period of 7 days of the receipt of the said notice, failing which it shall be presumed by the respondent that the complainant is not interested in the subject unit and the respondent would be constrained to cancel the unit in question, thereby refunding the amount paid by the complainant after forfeiting the booking amount and other charges as per the terms agreed.

15. The complainant took a plea that he had got his home loan sanctioned well in time from the Indian Overseas Bank, but the respondent's project was not on the bank's approved list. The complainant has time and again communicated his commitment to pay the outstanding amount through home loan along with delay interest to the respondent. The complainant also protested the said cancellation by the respondent vide his e-mail dated 20.05.2023, but same was replied in negative by the respondent.
16. On the contrary, the respondent cancelled the allotted unit of the complainant vide cancellation letter dated 14.03.2023. Thereafter, third party rights were created against the said unit on 20.06.2023 by selling the unit in question to Mrs. Dhruti Chaudhri and Mrs. Anuja Chaudhri. Consequently, the respondent refunded an amount of Rs.36,93,023/- to the complainant through bank transfer on 12.07.2023, however, subject to deduction of earnest money in terms of buyer's agreement executed between the parties. Now, the question before the authority is whether the cancellation is valid or not?
17. The authority has gone through the payment plan (Schedule E) of the agreement executed between the parties, same is extracted below for ready reference: -

Name of Instalment	%	BSP	CGST	SGST	Total Amount
Booking Amount	10.0 0	17,58,562	43,964	43,964	18,46,490
On start of construction- Excavation of the Project Site (On signing of Agreement For Sale)	20.0 0	35,17,124	87,928	87,928	36,92,980

On Completion of Top Roof Slab of Plot	30.0 0	52,75,685	1,31,892	1,31,892	55,39,469
On Application of Occupation Certificate of the Plot	30.0 0	52,75,685	1,31,892	1,31,892	55,39,469
On offer of possession	10.0 0	17,58,562	43,964	43,964	18,46,490
<b>Total</b>		<b>1,75,85,618</b>	<b>4,39,640</b>	<b>4,39,640</b>	<b>1,84,64,899</b>

18. After, considering the documents available on record as well as submissions made by the parties, it can be ascertained that the complainant has paid only Rs.55,39,513/- towards the unit in question. Therefore, the authority is of considered view that the respondent is right in raising demands as per payment plan agreed between the parties, i.e., towards the stage "On Completion of Roof Slab of Plot".
19. The respondent sent demand letter dated 08.12.2022, reminder letter dated 19.01.2023, pre-cancellation notice dated 24.01.2023 to make payment of the outstanding amount. However, the complainant continued with his default and failed to make payment even after receipt of final reminder letter dated 24.01.2023 leading to cancellation of unit vide letter dated 14.03.2023.
20. As per clause 9 of the agreement to sell, the respondent has a right to cancel the unit and forfeit the earnest money where an allotment of the unit is cancelled due to default of complainant to make timely payments as per the agreed payment plan. Clause 9 of the buyer's agreement is reproduced under for ready reference:

9.3

- (i) In case the Allottee fails to make payments for demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate prescribed in the Rules;
- (ii) In case of Default by Allottee under the condition listed above continues for a period beyond ninety days after notice from the Promoter in this regard, the Promoter may cancel the allotment of the Unit for Residential usage along with parking in favor of the Allottee and refund the money paid to him by the allottee by forfeiting the booking amount paid for the allotment, taxes paid by the Allottee and interest component on delayed payment (payable by the customer for breach of agreement and non-payment of any due payable to the promoter). The rate of interest payable by the allottee to the promoter shall be the State

*Bank of India highest marginal cost of lending rate plus two percent. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within ninety days of such cancellation. On such default, the Agreement and any liability of the promoter arising out of the same shall thereupon, stand terminated. Provided that, the promoter shall intimate the allottee about such termination at least thirty days prior to such termination.*

21. Further, Section 19(6) and Section 19(7) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. The respondent has given sufficient opportunities to the complainants and finally cancelled the allotted unit of the complainant vide letter dated 14.03.2023. Hence, cancellation of the unit in view of the terms and conditions of the buyer's agreement dated 10.11.2022 is held to be valid.
22. Now, the second issue for consideration arises as to whether after cancellation the balance amount after deduction of earnest money of the basic sale consideration of the unit has been sent to the claimants or not. An account statement dated 12.07.2023(Annexure R9 at page 102 of reply) clearly manifests that an amount of Rs.36,93,023/- has been refunded back to the complainant after deduction of 10% earnest money amounting to Rs.18,46,490/-. 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 framed 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."*

23. 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 can't retain more than 10% of sale consideration as earnest money on cancellation. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the basis sale consideration and return the remaining amount along with interest at the rate of 10.95% (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 termination/cancellation i.e., 14.03.2023 till the actual date of refund of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017 *ibid*.
24. It is important to note that the respondent-builder had already refunded an amount of Rs. 36,93,023/- to the complainant subject to deduction of 10% earnest money, vide bank transfer on 12.07.2023. Therefore, the amount already paid by the respondent to the complainant shall be adjusted accordingly.



**F.IV To impose a penalty of upto 5% of the project cost on the respondent under section 61 of the Act for grossly manipulating the dates on the payment receipts violating the provisions mandated under section 13 of the Act.**

25. Section 13(1) of the Act of 2016, provides the promoter shall not accept a sum of more than 10% of the sale consideration without executing the buyer's agreement which is reproduce as under for ready reference: -

**13. No deposit or advance to be taken by promoter without first entering into agreement for sale. —**

**(1)** A promoter shall not accept a sum more than ten per cent. of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

**(2)** The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot, or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.

26. Moreover, proviso to Section 13 (1) provides that the promoter cannot be accept a sum of more than 10% of the total sale consideration without executing the agreement to sell. Therefore, the subsequent demand can be raised from the respondent/promoter after execution of the buyer's agreement. The complainant needed to be vigilant before purchasing the unit and at this stage no other relief can be granted in their favour for their negligence. The due procedure of law cannot be allowed to be misused by the litigants. Therefore, after considering the above said facts, the cancellation is held valid.

27. Hence, in view of the above findings, no case is made w.r.t reinstating and handing over of possession of the unit on fault of the complainant to make timely payments as per the buyer's agreement.

**F.V Direct the respondent to pay a sum of Rs.1,00,000/- towards litigation costs as mandated vide the provision u/s 11(g) of the Act.**

28. The complainant in above-mentioned reliefs is seeking compensation. 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. 2021-2022 (1) RCR (c) 357*, has held that an allottee is entitled to claim compensation & litigation charges under Sections 12,14,18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is at liberty to approach the adjudicating officer for seeking the relief of compensation.

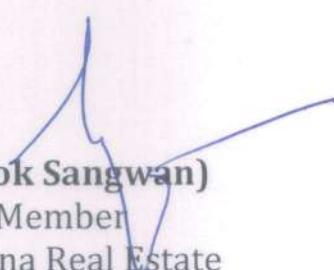
**G. Directions of the Authority:**

29. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- I. The respondent is directed to refund the paid-up amount of Rs.55,39,513/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration. The amount already paid by the respondent to the complainant may be adjusted from the refundable amount and shall return the balance amount to the complainant. The refund should have been made on the date of cancellation i.e., 14.03.2023. Accordingly, the interest at the prescribed rate i.e., 10.95% is allowed on the balance amount from the date of cancellation till the actual date of refund of the amount within the timelines provided in Rule 16 of the Rules, 2017, *ibid*.
- 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.

30. Complaint stands disposed of.
31. File be consigned to the registry.

**Dated: 03.07.2024**

  
**(Ashok Sangwan)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram



**HARERA**  
**GURUGRAM**