



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

Complaint no.	4627 of 2022
Date of filing complaint	23.06.2022
First date of hearing	06.09.2022
Date of decision	01.12.2022

Yogesh Khanna R/o: 972, Skylark CGHS, Sector-6, Plot-35, Dwarka, Delhi-110075	<b>Complainant</b>
Versus	
1. Olive Realcon Pvt. Ltd. <b>Registered Office:</b> 6 <sup>th</sup> floor, M3M Tee Point, North block, Sector-65, Gurugram, Haryana-122101 2. Manglam Multiplex Pvt. Ltd. <b>Registered Office:</b> cabin-1, LGF, F-22, Sushant Shopping Arcade, Sushant Lok Phase-1, Gurugram, Haryana-122002 3. M3M India Ltd. <b>Registered office:</b> Paras Twin Towers, Tower-B, 6 <sup>th</sup> floor, Golf Course Road, Sector-54, Gurugram, Haryana-122002	<b>Respondents</b>

**CORAM:**

Shri Vijay Kumar Goyal	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>

**APPEARANCE:**

Shri Pawan Kumar Ray (Advocate)	Complainant
Ms Shriya Takkar and Ms. Syashu Pesswani (Advocates)	Respondents

**ORDER**

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 allottees as per the agreement for 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"Trump Towers", Sector 65, Gurugram
2.	Nature of project	Group Housing Colony
3.	Licensed area	56.05 acres
4.	DTPC License no.	234 of 2007 dated 16.10.2007 and valid up to 15.10.2017 52 of 2009 dated 28.08.2009 and valid up to 27.08.2024 35 of 2010 dated 06.05.2010 and valid up to 05.05.2025
	Name of licensee	Manglam Multiplex Pvt. Ltd.
5.	Developer	Olive Realcon Pvt. Ltd.
6.	HARERA Registration no.	Registered 375 of 2017 dated 28.11.2017 and valid up to 31.12.2024
7.	Apartment no.	25 B, 25 <sup>th</sup> Floor, Tower-1 [annexure C2 at page no. 30 of complaint]



8.	Carpet area	2840 sq. ft. [annexure C2 at page no. 30 of the complaint]
9.	Date of allotment	24.01.2019 [annexure C1 at page no. 21 of the complaint]
10.	Date of buyer's agreement	07.03.2019 [annexure C2 at page no. 24 of the complaint]
11.	Possession Clause	<b>8.1 Schedule for possession of the said apartment for residential use:</b> <i>ORPL agrees and understands that timely delivery of possession of the Apartment along with Car Parking Space to the Allottee(s) and the Common Areas &amp; Facilities to the Association of Apartment Owners or the Competent Authority, as the case may be, as provided under the Act and Rule 2(1)(f) of the Rules, 2017, is the essence of the Agreement.</i> (emphasis supplied)
12.	Due date of possession	Cannot be ascertained
13.	Total sale consideration	Rs. 8,28,12,576/- [page no. 48 of reply including GST @ 12%]
14.	Amount paid by the complainants	Rs. 25,00,000/- [page no. 37 of complaint]
15.	Pre cancellation notice	27.12.2021 [annexure R7 on page no. 154 of reply]
16.	Cancellation notice	24.03.2022 [Annexure C10 at page no. 70 of the complaint]

**B. Facts of the complaint:**

3. That the respondents launched a group housing residential project by the name of "Trump Towers Delhi NCR" in Sector 65, Gurgaon



comprising of various buildings, parking spaces and other utilities and landscaping (hereinafter referred to as the "Project"). That the complainant came in contact with the representatives of respondents who informed him about the project and boasted about the specification and grandeur and made various false and incorrect representations about the construction and delivery of possession. The representatives assured the complainant that respondents had obtained all the requisite sanctions and approvals from all competent authorities for starting constructions at the project site and the construction at the project site shall start soon and the possession will be delivered in promised time. The complainant was impressed by the highlights of the project and the representations made by the agents of the respondent and decided to book an apartment in the aforesaid project.

4. The complainant made an application dated 16.01.2019 for allotment of a residential apartment in the project and paid the requisite booking amount of Rs. 25,00,000/-. Pursuant to making the application, an allotment letter dated 24.01.2019 was issued to the complainant and following unit was allotted to him:

Unit no.	25B
Floor	25 <sup>th</sup>
Tower	1
Super Area	4550 sq. ft.
Carpet Area	2840 sq. ft.
Total Consideration	INR 8,28,12,576/- (including GST)

The total consideration was inclusive of development charges, EDC, IDC, electricity installation charges, taxes, water, gas and other utilities infrastructure and connection charges.

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5. At the time of booking, the complainant opted for construction linked payment plan for payment of total consideration under which the respondent was supposed to demand instalments from the complainant upon start/ completion of particular construction milestone/ stage as per the payment plan.
6. Thereafter, on 07.03.2019, an agreement for sale was executed by the respondent with the complainant with respect of the unit allotted in the allotment letter. The details of the unit as allotted in the Allotment Letter were confirmed in the buyer agreement. The construction linked payment plan opted by the complainants at the time of booking was confirmed in the buyer agreement.
7. It is submitted that the complainant realized that the respondents are charging higher GST rates than they were supposed to and therefore, contacted the respondents. The respondents vide email dated 03.05.2019 informed that they are charging GST @12% as Input Tax Credit was already factored by them while finalizing the cost of the property as the project was launched post GST.
8. That vide his email dated 05.05.2019, the complainant informed the respondents that at the time of booking he was informed that the GST will be applicable as per the prevailing rate and that it has come down to 5% from 01.04.2019 whereas they are still charging GST @12% and requested the respondents to get the GST rates corrected and send him the correct demand letter. However, no reply was received from the respondents. In absence of any reply, the complainant sent a reminder on 24.05.2019.
9. That the respondents failed to respond to the queries raised by the complainants with respect to applicable GST. Therefore, on 25.06.2019,



the complainant again sent an email to the respondents and provided them with relevant documents which proved that any demand raised by the developer post 01.04.2019 should have GST @5%, or if the developer has opted for 12% GST then the Input tax credit should be given to the buyer.

10. It is submitted that the complainant wanted to avail home loan for payment of consideration of the apartment. In this regard, the complainant applied for a home loan with Piramal Capital and Housing Finance Limited (PCHFL) and PCHFL sanctioned a loan of Rs. 2,50,00,000/- vide Sanction Letter dated 05.07.2019. However, since the respondents failed to resolve the issue pertaining to the GST applicable on real estate projects, the loan amount was not disbursed by the finance company.
11. That after much persuasion by the complainant, in January 2020, the respondents admitted their mistake and agreed to revise to GST charged to the complainant and agreed to charge GST as per prevailing market rates i.e. 5%. Accordingly, they sent a revised cost sheet to the complainant thereby reducing the GST rate from 12% to 5% and reducing the total cost of the apartment to Rs. 7,87,58,590/- (Rupees Seven Crores Eighty Seven Lakhs Fifty Eight Thousand Five Hundred Ninety Only). A copy of the revised cost sheet showing the updated consideration of the apartment along with the email dated 19.01.2020.
12. That thereafter, the COVID-19 pandemic situation started everywhere and the complainant had financial difficulties in payment of the consideration as per the agreement and thus approached the respondents that his payment plan be changed from the one mentioned in the agreement to 20:80% ratio plan wherein the complainant offered



to pay 20% of the total sale consideration initially and remaining 80% at the time of the possession. That even though the respondents agreed to change the plan over calls, no written confirmation was given to the complainant. And instead of replying to the requests of the complainant, the respondents kept sending reminders for payment of the instalments as per the payment plan mentioned in the agreement.

13. In the meantime, the complainant once again applied for a home loan with the ICICI Bank. The ICICI bank vide its sanction letter dated 19.01.2021, sanctioned a loan of Rs. 5,00,00,000/- (Rupees Five Crores) to the complainant against the apartment in question. That since there was confusion with respect to the final payment plan which was created by the respondents and because of the confusion created by the respondent with respect to the payment plan, the loan amount could not be disbursed by ICICI bank.
14. That despite repeated requests and even after agreeing to the change the payment plan to 20-80, the respondents did not change the payment plan and instead sent a cancellation letter dated 24.03.2022 informing the complainant that his allotment has been cancelled and the entire money paid by him is forfeited.
15. That the complainant replied to the email regarding cancellation of the unit from the respondent and informed that he was keen to continue the relationship and he home loan approved by banks a couple of times in past from ICICI in 2021 and Piramal Capital in July 2019. However due to delay in correcting the GST charges and change the payment plan, the sanctioned loan amount could not be disbursed. The complainant also informed that he is happy to apply for fresh home loan to continue with the allotment. However, under such circumstances, if the respondents



wish to cancel the allotment, then in such case the respondents should refund the entire amount paid to them.

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

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

- i. Set aside the cancellation letter 24.03.2022 and restore the allotment of Unit no. 25B in Tower 1 in the name of the complainant.
- ii. Direct the respondents to issue fresh allotment letter for unit no. 25B in tower 1 with the revised cost as sent by the respondents on 19.01.2020 after rectifying the GST errors.
- iii. Direct the respondents to give 3-4 months to avail fresh home loan.

**D. Reply by respondents:**

The respondent by way of written reply made following submissions:

17. At the outset, the respondents deny every statement, submissions and contentions set forth in the complaint to the extent the same are contrary to and/or inconsistent with the true and complete facts of the case and/or the submissions made on behalf of the respondent in the present reply.

18. That after making independent enquiries and only after being fully satisfied about the project the alleged complainant approached respondent no.1 company, for booking of a residential unit in the project 'Trump Towers Delhi NCR' in sector 65, Gurugram. Accordingly, an application form dated 16.01.2019 along with a booking amount of Rs. 25,00,000/- was submitted with respondent no.1.

19. That in consideration of the booking amount paid by the complainant and his commitments to comply with the terms of the booking/allotment





and make timely payments of demands the respondent no.1 company allotted a residential unit bearing no. 25-B in the project 'Trump Towers Delhi NCR' vide allotment letter dated 24.01.2019. As per the terms of the allotment letter the buyer's agreement was to be executed and registered in the furtherance of the allotment letter. It is submitted that the cost of the unit as per the allotment letter dated 24.01.2019 for an area admeasuring 2840 Sq. Ft. was Rs. 8,28,12,576/- plus other charges.

20. That thereafter the respondent no.1 sent copies of the buyers agreement to the complainant for execution at his end vide cover letter dated 25.01.2019. However, the complainant for the reasons best known to him failed to execute the buyer's agreement and therefore the respondent no.1 was constrained to issue a reminder letter dated 28.02.2019.
21. That after having read, understood, and agreed with all the terms therein, the buyer's agreement was executed between the parties on 07.03.2019. It is pertinent to mention that the buyer's agreement duly covers all the liabilities and rights of both the parties.
22. That the respondent company raised the demands as per the terms of the agreed payment plan and in terms of the buyer's agreement. However, the complainant failed to make the timely payments of the said demands despite the complainant's commitment to strictly adhere to the payment plan. It is submitted that the complainant failed to fulfil the contractual obligation of making timely payment, which was the essence of the buyer's agreement, therefore the respondent was constrained to issue various reminders dated 19.03.2021, 05.04.2021, 21.10.2021 and 08.12.2021, requesting the complainant to remit the outstanding dues. It



is submitted that despite the issuance of various reminders the complainant failed to clear the outstanding dues and therefore the respondent was constrained to issue a pre-cancellation letter dated 27.12.2021.

23. That the respondent company as a goodwill gesture offered the complainant, a last and final opportunity to correct the breach of the terms of the buyer's agreement, vide final notice dated 27.01.2022. However, the complainant failed to adhere to this opportunity and continued to breach the terms of the allotment.
24. That on account of the wilful breach of the terms of the allotment and the buyer's agreement by failing to clear the outstanding dues despite repeated requests, the respondent company was constrained to terminate the allotment of the unit vide cancellation letter dated 24.03.2022. It is submitted that the complainant has till date made a payment of Rs. 25,00,000/- out of the total dues of Rs. 8,28,12,576/- plus other charges as raised by the respondent company in accordance with the payment plan and the terms of the buyer's agreement.
25. That the default of the complainant in making timely payments and complying with other obligations is duly covered under the buyer's agreement, and the cancellation and forfeiture of the earnest money has been in accordance with the same.
26. That the respondent was constrained to cancel the unit on account of non-payment of the demands as raised by the respondent. It is submitted that the respondent has incurred various losses/damages on account of the breach of the terms of the allotment by the complainant, which the complainant is liable to pay as per the terms of the agreement.

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27. That the respondent has fulfilled its contractual obligations under the buyer's agreement however despite that the complainant has failed to clear the outstanding dues. the complainant is in default of his contractual obligations and is raising these frivolous issues to escape his liability cast upon him by the virtue of the buyer's agreement and unjustly enrich himself. therefore, the complainant is not entitled to any relief whatsoever.

28. All other averments made in the complaint were denied in toto.

29. 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 written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

**E. Jurisdiction of the authority:**

30. The plea of respondent regarding lack of jurisdiction of Authority stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.1 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

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district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

#### **E. II Subject matter jurisdiction**

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.*

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 complainants at a later stage.

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. 2020-2021 (1) RCR (c) 357* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022* wherein it has been laid down as under:



*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

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

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

**F.I Set aside the cancellation letter 24.03.2022 and restore the allotment of unit no. 25B in Tower 1 in the name of the complainant.**

31. In the instant case, the complainant was allotted a unit vide letter dated 24.01.2019. The BBA for the subject unit was executed on 07.03.2019. Even though clause 8.1 of the BBA talks about possession of the unit but the due date cannot be ascertained from the given clause. According to the payment plan stipulated in the BBA, the complainant was liable to make payments according to possession linked plan. The payment plan stipulated for payment of the sale consideration in six installments. The complainant paid the booking amount of Rs. 25,00,000/- however, failed to make payments after that. The respondent sent payment request reminder 1 on 19.03.2021 i.e., after the third installment became due.



Thereafter, reminder letters dated 05.04.2021, 21.10.2021 and 08.12.2021 were sent before sending final notice dated 27.12.2021. Despite various reminders, the complainant failed to make payments and thus, the unit was cancelled vide letter dated 24.03.2022.

32. The complainant has pleaded that he could not make payments as the loan could not be disbursed due to confusion in payment plan. The complainant has pleaded that the respondent agreed to payment plan of 20:80 during oral communication but there is nothing on record to show the same. In fact, the respondents vide their email dated 11.01.2022 have clarified that they had already expressed their inability to make changes in the payment plan during the telephonic conversation between the parties. Hence, the plea of the complainant is devoid of merit. Further, the complainant has also specified that he was being charged excess amount of GST and hence, he refused to make payments. But the respondent sent an updated cost sheet after adjusting the excess amount charges in form of rebate way back on 24.01.2020. Hence, the same cannot be taken as ground for non-payment of dues.
33. It is thus to be noted that the respondent had sent various reminders to the complainant after the expiry of due date of payment and hence, as such the Authority is of the view that the cancellation is valid. Given the fact that the cancellation is valid, the allotment of the unit cannot be restored. The complainant, however, becomes entitled to refund of the balance amount after forfeiture of specific percentage of sale consideration.
34. The cancellation of any unit is after coming into force of the Act of 2016. So, the respondent at the most can deduct 10% of the basic sale price of

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the unit and not more than that. Even the Hon'ble Apex court of land in case 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*, 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 damage. The deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

**"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."*

35. Keeping in view the above-mentioned facts the promoter was to return the paid-up amount after retaining 10% of the basic sale consideration of and that amount should have been paid on the date of cancellation itself. However, in the present matter the complainants have paid only Rs. 25,00,000/- against the total sale consideration of Rs. 8,28,12,576/- which constitutes about only 3% of consideration money and hence, no case for refund of any amount is made out.

**F.II Direct the respondents to issue fresh allotment letter for unit no. 25B in tower 1 with the revised cost as sent by the respondents on 19.01.2020 after rectifying the GST errors.**

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**F.III Direct the respondents to give 3-4 months to avail fresh home loan.**

36. In view of the findings in relief F.I, both these prayers have become redundant.

37. Complaint stands disposed of.

38. File be consigned to the registry.

  
Sanjeev Kumar Arora  
Member

  
Vijay Kumar Goyal  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.12.2022

**HARERA**  
**GURUGRAM**