

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

**Complaint no.:** 2350 of 2021  
**Complaint filed on:** 09.06.2021  
**Complaint restored on:** 28.03.2023  
**Date of decision:** 14.12.2023

1. Kuldeep Chabbra  
2. Seema Rani Chabbra  
**Both R/o:** - B-66, Sushant Lok-III, Gurugram

**Complainants**

Versus

Splendor Landbase Limited  
**Regd. Office at:** - 501-511, 5<sup>th</sup> floor, splendour forum, 03,  
Jasola district centre, Delhi

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Vinay Yadav (Advocate)  
Sh. Ravi Aggarwal (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

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A. Project and unit 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, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Splendor Epitome, Sector 62, Gurugram, Haryana
2.	Nature of project	Commercial
3.	RERA registration	22 of 2019 dated 26.03.2019
4.	Unit no.	03, ground floor (page 28 of complaint)
5.	Unit admeasuring.	765 sq. ft.(super area) (page 28 of complaint)
6.	Builder Buyer Agreement	<b>Not executed</b>
7.	Provisional Allotment letter	17.02.2012 (page 28 of complaint)
8.	Possession Clause	<b>XXIV</b> <i>The company shall endeavour to complete the construction of the said office/retail space(s) within a period of three years from the date of execution of space buyer agreement subject to timely payment by the intending allottees of sale price and other and charges due and payable according to the payment plan applicable to him or as demanded by the company and subject to force majeure.....(Emphasis supplied)</i>
	Due date of possession	Cannot be ascertained

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		(as no BBA executed)
9.	Basic sale consideration	Rs.55,08,000/- (as per allotment letter page 28 of complaint)
10.	Amount paid by the complainants	Rs.8,47,434/- (as per allotment letter page 28 of complaint)
11.	Reminder/Demand Letter	25.04.2014, 20.05.2019 and 11.06.2019 (page 23-31 of reply)
12.	Cancellation letter	01.08.2019 (page. 46 of complaint)

## B. Facts of the complaint

3. The complainants made the following submissions in the complaint:

- i. That on 03.02.2012 the complainants applied for allotment of commercial space in the project of respondent, named as 'Splendor Epitome" located at sector- 62, Gurugram, Haryana and paid a booking amount of Rs.8,47,434/-.
- ii. That the complainants were allotted retail space unit no. 03 by the respondent for a basic sale consideration of Rs.55,08,000/-, vide allotment letter dated 07.02.2012. According to the terms and conditions of the agreement, the respondent was obligated to complete the construction of the unit within three years from the date of execution of the space buyer agreement.

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- iii. That despite the complainants' repeated attempts to have the space buyer agreement executed, complainants were surprised to receive a final reminder demand notice from the respondent on 09.07.2019. This was distressing for them as the respondent had raised illegal demands without fulfilling their obligation to execute the agreement. Furthermore, the respondent cancelled the allotment of unit on 01.08.2019
- iv. That on 10.08.2019, the complainants submitted a detailed representation to the respondent, urging them to withdraw the cancellation and proceed with the execution of the space buyer agreement. The complainants highlighted that it would be unlawful for the respondent to raise any further demands without first executing the space buyer agreement. But, the complainants did not receive any response. Furthermore, on 25.09.2019, the complainants wrote another letter to the respondent, reiterating their concerns. The complainants expressed their readiness and willingness to fulfill their part of the agreement by paying the remaining balance amount. However, complainants emphasized that they could not proceed with the payment in the absence of an executed agreement to sale by the respondent.
- v. That the complainants discovered that the respondent had deliberately concealed the fact that they had registered the mentioned project under RERA. The respondent intended to evade their liabilities under RERA by illegally serving a notice of cancellation on the complainants. Consequently, on 22.03.2021, the complainants were left with no choice but to serve a legal notice on the respondent. The legal notice requested

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the respondent to withdraw the cancellation notice and proceed with the execution of the space buyer agreement.

- vi. That the complainants have made a payment of Rs.8,47,434/- for the unit, which exceeds 10% of the total sale consideration of the unit i.e. Rs.55,08,000/-. Despite more than 9 years having passed since the allotment of the commercial space to the complainants, the respondent has failed to provide physical possession of the subject unit. So, the complainants seek for compensation for the loss and inconvenience caused due to the delay in receiving possession of the allotted unit from the respondent.

### **C. Relief sought by the complainants**

4. The complainants are seeking the following relief:
- Direct the respondent to pay the delay possession charges.
  - Direct the respondent to execute space buyer agreement.
  - Direct the respondent to set aside the cancellation letter dated 01.08.2019.
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 filed by the respondent**

6. The respondent had contested the complaint on the following grounds:
- That the total consideration of the allotted unit was Rs.58,09,500/- which included the basic sale consideration, EDC, IDC, EEC, ARF. Service tax/GST, VAT, and any other applicable taxes and charges were payable by the complainants in addition to the above.

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- ii. That the complainants were asked to sign and execute two sets of provisional allotment letters dated 17.02.2012 and return them to the respondent for execution. However, the complainants did not return them as requested.
- iii. The complainants had paid Rs.8,47,434/-, inclusive of service tax. However, despite demand letters and reminders sent by the respondent since 2014, the complainants failed to pay any further amount. Furthermore, due to the complainant's failure to sign and return the provisional allotment letter to the respondent, there was no occasion to execute a space buyer agreement with the complainants.
- iv. That the demand notice dated 28.01.2014 and 25.04.2014 was served to the complainants in accordance with the payment plan. However, the complainants failed to pay the outstanding amount despite receiving the said demand notice. The default continued from 2014 until the cancellation of the said unit on 01.08.2019.
- v. That the respondent had sent a demand letter dated 22.05.2019 to the complainants, informing about the construction status of the project and requesting payment of the outstanding amount of Rs.37,73,363/- as per the construction-linked payment plan, which included the previous outstanding amount of Rs.10,09,877/- exclusive of delay period interest on previous outstanding due and also requested the complainants to execute the space buyer agreement of the booked unit and get it registered. However, the complainants failed to make any payment or respond to the letter. Subsequently, the respondent sent a reminder letter-1 dated 11.06.2019 to the complainants, for the payment of the outstanding installment of Rs.37,73,363/- and to

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execute the space buyer agreement for the subject unit. Despite receiving reminder letters, the complainants neither paid the outstanding amount nor executed the space buyer agreement.

- vi. That due to failure of the complainants to make any payment or send any response to the said letters, the respondent had sent final reminder letter dated 09.07.2019 to the complainants giving final opportunity to make payment of the aforesaid outstanding amount of Rs.37,73,363/- within a period of 15 days from the receipt of the said letter falling which the respondent shall be constrained to take consequential action in terms of provisional allotment letter/ space buyer agreement. Since, the complainants continued with their default and failed to make payment of the aforesaid outstanding amount of Rs.37,73,363/- even after receipt of final reminder letter. The respondent was constrained to cancel the allotment of the said unit and forfeit the earnest money and non-refundable amount vide cancellation notice dated 01.08.2019.
- vii. That after the cancellation of the said unit on 01.08.2019, the respondent had created a third-party right in the said unit, which had previously been provisionally allotted to the complainants. The provisional allotment of the subject unit was cancelled through the cancellation notice dated 01.08.2019, after being given numerous opportunities to complainants to make good their defaults.
- viii. That the question of any damages/compensation on account of delay in giving possession, as sought by the complainants, does not arise. As, the complainants themselves are defaulters, which led to the

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cancellation of the allotment of the said unit. So, the complainants are not entitled to any relief.

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**

#### **E.I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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**

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

#### **Section 11**

.....

*(4) The promoter shall-*

- (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the*





*conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

10. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the reliefs sought by the complainants**

**F.I Direct the respondent to pay the delay possession charges.**

**F.II Direct the respondent to execute space buyer agreement.**

**F.III Direct the respondent to set aside cancellation letter dated 01.08.2019.**

11. The abovementioned reliefs are dealt together as being interconnected.
12. The complainants were allotted retail space unit no. 03 on ground floor vide allotment letter dated 07.02.2012 by the respondent for a sale consideration of Rs.55,08,000/-, against which the complainants had paid Rs.8,47,734/-. As per clause XXIV of the allotment letter, the respondent was under obligation to handover the possession to the complainants within the period of three years from the date of execution of the space buyer agreement. Though, no space buyer agreement was executed between the parties. Further, the respondent has cancelled the unit of the complainants

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vide cancellation letter dated 01.08.2019 due to non-payment of outstanding dues beside sending various reminder to the complainants.

13. In the present case, the complainants approached the Hon'ble Authority in year 2021 seeking delay possession charges, execution of space buyer agreement and to set aside cancellation letter dated 01.08.2019. The same was disposed off vide order dated 29.07.2021, wherein the Authority directed the respondent to refund the balance amount after deducting 10% of the paid-up amount. Thereafter, the complainants approached the Appellate Tribunal by filing an appeal no. 445 of 2021 against the said order dated 29.07.2021 passed by the Authority. The said appeal was allowed vide order dated 10.03.2023 and the order passed by the Authority dated 29.07.2021 was set aside, stating and the relevant portion of the order dated 10.03.2023 are reproduced below for ready reference:

5. *In our considered view, in case the prayer of the appellant is for execution of BBA and grant of possession, the reasoned order ought to have been passed. On the other hand, learned Authority has simply directed that since no BBA has been signed between the parties, direction needs to be given to the respondent to refund the balance amount after deducting 10% of the paid up amount. Even, in the eventuality of such direction, there is no mention of interest, if any, which was required to be paid as the amount was retained by the respondent-builder for a considerable period.*
6. *Under these circumstances, we find that the impugned order under challenge is unsustainable. Thus, the appeal is allowed and the impugned order is hereby set aside. The matter is remitted to the same Authority for decision afresh after giving due consideration to all the issues and affording opportunity of being heard to both the parties*
7. *Parties shall appear before the Authority on 28.03.2023*
14. While discussing earlier it has been held that the complainants were in default in making timely payments leading to the cancellation of the said

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unit by the respondent as per the terms and conditions of the allotment letter. Now there are two issues before the Authority to be decided. Firstly, the cancellation of the subject unit is valid or not and whether the complainants are entitled for the reliefs being sought.

15. As per the cancellation letter dated 01.08.2019 annexed on page 46 of the complaint, the earnest money deposit and service tax shall stand forfeited against the amount of Rs.8,47,434/- paid by the complainants. It is pertinent to mention here that the said unit was booked under time linked plan and till date an amount of Rs.8,47,434/- was paid against the sale consideration of Rs.55,08,000/-. Upon perusal of documents on record, various reminders were sent by the respondent to the complainants before cancelling the unit to clear the outstanding dues and to execute the space buyer agreement but neither the complainants paid the outstanding dues nor, executed the buyer agreement. The complainants received a cancellation letter on 01.08.2019 due to non-payment. It is observed that as per Section 19(6) & (7) of the Act, 2016, the allottees were under an obligation to make timely payment as per the payment plan towards consideration of the allotted unit. The respondent sent demand/reminder letters on 25.04.2014, 20.05.2019 and 11.06.2019 to the complainants regarding the outstanding dues for the subject unit. However, the complainants did not make timely payments as required. So, the cancellation letter dated 01.08.2019 of the said unit stands valid in the eyes of law.
16. The Authority observes that the complainants are not entitled for delay possession charges and setting aside of cancellation letter being the relief sought. The subject unit of the complainants was cancelled by the respondent after issuing proper reminders.

17. That the respondent states at bar that an amount of Rs.1,85,709/- was refunded back to the complainants' bank account in compliance of order dated 29.07.2021 passed by the Authority. The respondent also claimed to have sent an email dated 14.10.2021 to the complainant's providing information about the refund, which is annexed on page 07 of the short arguments on behalf of the respondent. Admittedly, during the proceedings dated 23.11.2023, the complainants placed a letter dated 14.10.2021 on record, stating that the amount of Rs.1,85,709/- was credited to their account wherein they expressed their non-acceptance towards the payment and asked the respondent for their bank account details to remit the money paid by the respondent. However, there is nothing on record which shows that the amount was remitted back to the respondent by the complainants.
18. The respondent/promoter issued demand letters and subsequently issued termination/cancellation letter to the complainant on account of non payment. The respondent cancelled the unit of the complainants after giving adequate demands notices. Thus, the cancellation of the unit is valid.
19. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of *Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136*, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 *Ramesh Malhotra VS. Emaar MGF Land Limited* (decided

on 29.06.2020) and *Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022)* and followed in CC/2766/2017 in case titled as *Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022*, held that 10% of basic sale price is a reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was 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"*

20. Thus, keeping in view the aforesaid factual and legal provisions the respondent is directed to refund the paid-up amount of Rs. 8,47,434/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration of Rs. 55,08,000/-. The amount paid in compliance of order dated 29.07.2021 passed by the Authority shall be adjusted from the refundable amount and shall return the balance amount to the complainants. The refund should have been made on the date of cancellation i.e. 01.08.2019. Accordingly, the interest at the prescribed rate i.e., 10.75% is allowed on the balance amount from the date of cancellation i.e. 01.08.2019 till the actual date of refund of the amount. The refundable amount to be paid at an interest of 10.75% p.a. (the State Bank of India


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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 refundable amount.

**G. Directions of the authority**

21. 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 respondent/builder is directed to refund the paid-up amount of Rs.8,47,434/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration of Rs. 55,08,000/-. The amount already paid to the complainants by the respondent in compliance of order dated 29.07.2021 passed by the Authority shall be adjusted from the refundable amount and shall return the balance amount to the complainants.
  - ii. The abovementioned amount would be paid by the respondent to the complainants along with interest at the rate of 10.75% p.a. from the date of cancellation i.e.01.08.2019 till 29.07.2021 and thereafter on balance amount after deducting already refunded amount of Rs.1,85,709/- from 29.07.2021 till its realization.
  - iii. 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.
22. Complaint stands disposed of.
23. File be consigned to the registry.

**Dated:14.12.2023**

V.I -   
**Vijay Kumar Goyal**  
Member  
(Haryana Real Estate Regulatory  
Authority, Gurugram)