



BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of Decision:

06.12.2023

Saurabh Nakra

Address: - 606, Mariners Home, Society No.-36D,

Sector- 56, Gurgaon-122003.

Complainant

Versus

M/s. Dreamhome Infrastructure Private Limited Registered office at: K-1, Green Park Main, New Delhi- 110016.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Khush Kakra Shri Shayom Chakarverti Advocate for the complainant Advocate for the respondent

ORDER

The present complaint dated 26.10.2022 has been filed by the complainant under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

The particulars of the project, the details of 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:

ir. No.	Particulars	Details
1.	Name of the project	"Heritage Max", Sector 102, Gurugram Haryana
2.	Project Area	1.579 acres
3.	Nature of the project	Group housing colony
4.	DTCP License no. & validity status	104 of 2011 dated 11.12.2011 valid upto10.12.2019
5.	Name of Licensee	Mahagori Estates Pvt Ltd
7.	RERA Registered / not registered	GGM/276/2018/08 Dated 23.07.2018 upto December 2020
8.	Unit no.	A 2502 24 th floor Tower A (Page no. 42 of complaint)
9.	Unit admeasuring	1880 sq. ft. (Page no. 42 of complaint)
10.	Date of allotment	15.09.2012 (Annexure D page 38 of the compliant)
11.	Tripartite Agreement	26.12.2013 (Page 89 of the complaint)
12.	Date of execution of buyer's agreement	18.01.2013
13	Start of excavation	12.07.2013 (Taken from the project details)
13	. Possession clause	a)That the construction of the Building / Tower where the said Apartment is





		42 months from the date of the start of the construction of the Building in which the said Apartment is located or from the date of execution of this Agreement whichever is later, followed by a grace period of six months, subject to force majeure circumstances & on receipt of all payments punctually as per agreed terms and on receipt of complete payment of the basic sale price and other charges due and payable up to last payments applicable to him as per Annexure V attached herewith the agreement (Emphasis supplied).
14.	Due date of possession	12.07.2017 (Calculated from the date of excavation i.e. 12.07.2013 being later plus 6 months) Note: Grace period of 6 months allowed, it being unqualified and unconditional
15.	Total sale consideration	Rs. 1,18,86,388/- (As per schedule, page 39 of the complaint)
16.	Total amount paid by the complainant	Rs. 1,04,57,091 /- (As per statement of account dated 14.10.2022 on page no. 75 of reply)
17.	Occupation certificate	03.04.2017 (Page 71 of reply)
18.	Offer of possession	15.04.2017 (Final call letter for taking possession by clearing the dues) (Page 94 of complaint)



19.	Reminder for physical possession	27.07.2017, 28.09.2018, 04.07.2018, 29.07.2021, 04.01.2020 (Annexure J page 100, 102, 104, 105, 106 of the complaint)
20.	Cancellation Letter	31.01.2022, 14. 07.2022 (Annexure K page 107, 109 of reply)

B. Facts of the complaint

- The complainant made the following submissions in the complaint:
 - residential unit for himself and his family's residential requirements, and the Complainant was approached by the Respondent for purchasing a Unit in the Residential Project being developed by the Respondent named "Heritage Max" situated at Sector-102, Gurgaon, Haryana (hereinafter referred to as the "Project"). Based on the various representations made by the Respondent, the Complainant booked a Unit in the Project of the Respondent on 07.05.2012 by filling out an Advance Payment Form and paying an advance booking amount of Rs. 6,00,000/-.
 - ii. The Respondent executed the Buyer's Agreement dated 18.01.2013 with the complainant. That the Agreement contained various one-sided, unilateral and arbitrary clauses however the Complainant could not negotiate any of them since the Respondent had by then collected a substantial amount in lieu of consideration of the Unit from the Complainant and any disagreement would have led to cancellation of the Unit and



forfeiture of the earnest money i.e., 15 % of the Basic Sale Price of the Unit as per Clause 6. (a) of the Agreement.

- iii. The total consideration of the Unit was Rs. 98,68,120/-. It is submitted that the Agreement was filled with one-sided and arbitrary terms and conditions. For instance, as per Clause 5 (e) of the Agreement, for each delayed payment by the Complainant, the Respondent was entitled to charge interest at an enormous rate of 18% per annum from the demand notice, whereas, as per Clause 18. (a) of the Agreement, in the event the Respondent was unable to offer possession within the time promised, it was liable to compensate the Complainant merely at the rate of Rs. 10/-per sq. ft. of the Super Area of the said Unit per month. However, the Complainant could not negotiate or dispute any of them since any dispute or disagreement thereof would have led to cancellation of the Unit and forfeiture of the earnest money i.e. 15% of the basic selling price as per clause 6 (a) of the Agreement.
 - payment demands as and when raised by the Respondent the Complainant had also availed a Home Loan of Rs. 80,00,000/(Rupees Eighty Lakh Only) from HDFC Ltd. which was approved on 17.12.2013 and subsequently a Tripartite Agreement dated 26.12.2013 was executed between the Respondent, HDFC Ltd. and the Complainant.
 - v. The Complainant complied with each payment demand as was raised by the Respondent. By December 2015, the Respondent had collected an amount of Rs. 1,05,27,471/- against the Unit from the Complainant. That the Respondent offered the



possession of the Unit to the Complainant vide Letter of Possession dated 15.04.2017 and raised the payment of outstanding due in lieu of the Unit booked.

- vi. That thereafter the Respondent raised demands *vide* various Reminders Letters and Final Notices sent to the Complainant on various dates, however the same could not be paid by the Complainant as the Complainant was fighting a divorce case and the financial loss faced by the Complainant due to the ongoing divorce case clubbed with the fact that country went into lockdown due to the Covid-19 pandemic.
- That the Respondent vide letters dated 31.01.2022 and vii. 14.06.2022 had intimated the Complainant that the allotment of the Unit of the Complainant has been cancelled. The grievance of the Complainant is that the Complainant was not able to take the possession of the Unit and the said Unit was cancelled by the Respondent without considering the fact that the delay in making payment towards the outstanding dues is because of the fact that the Complainant was fighting a divorce case and the financial stress faced by the Complainant as the country was in lockdown due to Covid-19 pandemic prevailing in the country. That the Respondent completely failed to take regard of the fact that the Complainant had even taken a loan from the HDFC Ltd. to ensure timely payments to the Respondent and till December 2015 had paid an amount of Rs. 1,05,27,471/-. However, the Respondent without giving due regard to the said reasons, the Respondent continued to send reminder letters and final notices and eventually cancelled the Unit without taking any accountability.



viii. That till date the Complainant has paid an amount of Rs. 1,05,27,471/- against the Unit to the Respondent. That the Complainant is willing to take possession of the Unit after paying the outstanding justified dues as per the Agreement as the Complainant had been waiting for the possession of his Unit since 2012.

C. The complainant is seeking the following relief:

- The complainant has sought the relief(s):
 - Direct the respondent to Recall of cancellation letters dated 31.01.2022 and 14.06.2022 and re-allotment of Unit No. A-2502, in Tower- A, on 24th Floor, in the Project "Heritage Max" back to the Complainant.
 - ii. Direct the respondent to handover possession of the Unit to the Complainant, complete in all respects and in conformity with the Buyer's Agreement and for the consideration mentioned therein, with all additional facilities with warranties and as per quality standards promised and execute all necessary and required documents in respect of the Unit in favor of the Complainant.

D. Reply filed by the respondent

- The respondent had contested the complaint on the following grounds:
 - i. That buyer's agreement dated 18.01.2013 executed between the parties, qua the said Unit in the said Complex for a total consideration of Rs. 1,18,86,388/-. It is pertinent to state that the said Agreement contained all the terms and conditions governing the contract between the Parties, including the Schedule of



Payments to be adhered to by the Complainant while making the payment towards the said Unit.

- ii. The Respondent, in terms of the said Agreement, duly completed the construction of the Tower within which the said Unit is located and consequently applied for the issuance of the Occupation Certificate for the said Tower, vide Application dated 03.10.2016. It is stated that the Respondent received the Occupation Certificate for the Tower on 03.04.2017 and in furtherance of the same and in accordance with the said Agreement, issued the Final Call Letter dated 15.04.2017 ("Final Call Letter") calling upon the Complainant to clear his outstanding dues amounting to Rs. 30,20,290/-alongwith all other charges as mentioned in the Final Call Letter and take possession of the said Unit.
- iii. It is stated that since the Complainant failed to make the requisite payment in terms of the said Agreement and the Final Call Letter, the Respondent was constrained to issue the Reminder Letter dated 27.07.2017, calling upon the Complainant to come forth, clear his outstanding dues and take possession of the said Unit. A copy of the Reminder Letter dated 27.07.2017. Since there was no response forthcoming from the Complainant and the Complainant failed to clear his dues and take possession of the said Unit, the Respondent was constrained to issue numerous reminder letters to the Complainant over a span of over 5 (five) years. Admittedly, the Complainant, despite such repeated reminders and requests from the Respondent to clear his dues and take possession of the said Unit, failed to come forth to clear his dues and abide by the terms of the said Agreement and the Final Call Letter, which was



issued way back on 15.04.2017. It is also pertinent to highlight that the Complainant, for a period of 5 (five) years since the issuance of the Final Call Letter, neither made any communication with the Respondent nor came forth to clear his dues and take possession of the said Unit and it was only after the lapse of 4 (four) years and after sending repeated reminders and requests to the Complainant, that the Respondent proceeded to issue the Cancelation Letters dated 31.01.2022 and 14.06.2022. It is stated that the Respondent, prior to cancelling the allotment of the Complainant in the said Unit, waited for a period of 5 (five) years, having admittedly received no payment and/or communication from the Complainant and having also sent repeated reminders to the Complainant, but to no avail. It is stated that the Complainant, at such a belated stage, with the Final Call Letter having been issued way back on 15.04.2017, with repeated reminders and requests from the Respondent, cannot proceed to make good his own default.

iv. Upon the cancelation of the said Unit by the Respondent and in terms of the Tripartite Agreement, the Respondent addressed a letter dated 23.08.2022 to HDFC, while marking a copy of the same to the Complainant, informing HDFC of the cancelation of the allotment of the Complainant in the said Unit and calling upon HDFC to provide the requisite details for the repayment of the loan amount to HDFC and releasing the said Unit from lien by HDFC. It is pertinent to highlight that the Complainant has conveniently failed to bring the above to the attention of this Authority. It is pertinent to state that out of the total sum of Rs. 1,05,27,471/- as



received by the Respondent towards the said Unit, a sum of Rs. 74,05,178/- was paid by HDFC and only a sum of Rs. 31,22,293/- was paid by the Complainant towards the said Unit. Since there was no response received from HDFC, the Respondent, also addressed an email dated 21.09.2022 to HDFC informing HDFC of the cancelation of the allotment of the Complainant in the said Unit and calling upon HDFC to provide the requisite details for the repayment to be undertaken by the Respondent in terms of the Tripartite Agreement.

In pursuance to the above, the Respondent was in receipt of an V. email dated 21.09.2022 from HDFC, informing the Respondent that in terms of the Tripartite Agreement, the Respondent shall be liable to refund the entire monies advanced by HDFC towards the said Unit. It is pertinent to highlight that the Complainant had also received a copy of the said email. In response to the said email received from HDFC, the Respondent vide email dated 26.09.2022 requested HDFC to provide the amount due to be paid by the Respondent to HDFC, in terms of the Tripartite Agreement alongwith the statement of account in support thereof. In response to the above, HDFC duly provided the Statement of Account as of 27.09.2022 to the Respondent, vide email dated 27.09.2022 and the Respondent, vide an email of even date, called upon HDFC to provide the Statement of Account upto 10.10.2022 and provide the formalities to be completed by the Respondent under the Tripartite Agreement. HDFC, on the same day, provided the Respondent with the Statement of Account upto 10.10.2022 and also provided the requisite details to the Respondent qua the



formalities to be completed. It is pertinent to state that HDFC, vide the said email dated 27.09.2022 also stated that in case the Complainant responded to the email dated 21.09.2022, HDFC would have to consider the same. It is pertinent to state that the Complainant was well aware of the inter-se communication between HDFC and the Respondent, with the Complainant being privy to the said emails. The Complainant, vide email dated 29.09.2022, addressed to HDFC and the Respondent, alleged, inter alia, that the cancelation of the allotment of the Complainant by the Respondent was illegal. The said email as issued by the Complainant was duly replied to by HDFC vide email dated 17.10.2022, informing the Complainant that the cancelation of the allotment of the Complainant in the said Unit was owing to the inter-se dispute between the Respondent and the Complainant and in view of the cancelation undertaken by the Respondent in terms of the said Agreement, HDFC was bound to act in terms of the Tripartite Agreement. Copies of the emails dated 27.09.2022, 29.09.2022.

vi. The Respondent addressed a letter dated 17.10.2022 to HDFC, duly informing HDFC that in terms of the Tripartite Agreement and as informed, a sum of Rs. 63,22,873/- was liable to be paid by the Respondent to HDFC, which would be duly paid by the Respondent. The said letter further called upon HDFC to confirm that with the receipt of the said aforementioned sum, HDFC would proceed to issue the No Objection Certificate alongwith all the original documents qua the said Unit. It is stated that the Respondent, in compliance with the Tripartite Agreement duly paid a sum of Rs.

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63,22,873/- to HDFC vide cheque dated 30.09.2022 and consequently, HDFC issued a No Objection Certificate dated 28.10.2022 releasing the lien on the said Unit.

- vii. It is stated that the Cancellation Letter dated 14.06.2022, a sum of Rs. 42,74,388/- was liable to be refunded to the Complainant, in terms of the said Agreement. However, since the Respondent, in terms of the Tripartite Agreement and in order to free the said Unit from the lien of HDFC, has already paid a sum of Rs. 63,22,873/- to HDFC vide cheque dated 30.09.2022. Thus, the Complainant, in fact, in terms of Clause 6 (e) of the said Agreement, is in fact liable to pay a further sum of Rs. 20,48,485/- to the Respondent.
- It is stated that admittedly, there has been no default on the part of viii. the Respondent, with the Respondent having waited for a period of 5 (five) years from the issuance of the Final Call Letter and having issued numerous reminders to the Complainant to clear his outstanding dues, but to no avail. It was only thereafter, after according sufficient opportunities to the Complainant for 5 (five) years to clear his outstanding dues and calling upon the Complainant to take possession of the said Unit, that the Respondent proceeded to cancel the allotment of the Complainant vide Cancelation Letters dated 31.01.2022 and 14.06.2022. It is stated that the alleged divorce of the Complainant and the COVID-19 Pandemic (which was prevalent after 3 years from the issuance of the Final Call Letter) is not sufficient ground for the Complainant to seek the setting aside of the said Cancelation Letters, which letters were issued in strict compliance of the said Agreement. Admittedly, it is the Complainant, who has been in a blatant breach



of the said Agreement for 5 (five) years and thus, the cancelation of the allotment of the Complainant in the said Unit is not only in compliance with the said Agreement but is in accordance with law.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

7. 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

8. 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.

- 9. 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 complainant at a later stage.
- 10. 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." 2021-2022(1) RCR(Civil), 357 and reiterated in case of M/s Sana Realtors Pvt. Ltd. and other Vs. Union of India and other 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."



11. 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 the relief sought by the complainant/allottee.

- F. I Direct the respondent to Recall of cancellation letters dated 31.01.2022 and 14.06.2022 and re-allotment of Unit No. A-2502, in Tower- A, on 24th Floor, in the Project "Heritage Max" back to the Complainant.
- F.II Direct the respondent to handover possession of the Unit to the Complainant, complete in all respects and in conformity with the Buyer's Agreement and for the consideration mentioned therein, with all additional facilities with warranties and as per quality standards promised and execute all necessary and required documents in respect of the Unit in favor of the Complainant.
- 12. The complainant was allotted unit no. A2502, 24th floor in tower A in the project "Heritage Max", Sector 102" by the respondent builder for a sale consideration of Rs. 1,18,86,388/- and he paid a sum of Rs. 1,04,57,091/- *which is approx. 87% of the sale consideration. A buyer's agreement dated 18.01.2013 was executed between parties with regard to the allotted unit and the due date for completion of the project and offer of possession was fixed on 12.07.2017. The complainant failed to pay amount due against the allotment unit.
- 13. Now the proposition before the authority is whether the cancellation made by the respondent vide letter dated 14.07.2022 is valid or not.



14. As per 17 the terms of the builder buyer agreement the complainant was liable to make the payment as per the payment plan and the relevant clauses of the builder buyer agreement are reproduced under for ready reference:

17. PUNCTUAL PAYMENTS

THAT the time of punctual payments of installments as stated in Schedule of Payments and applicable stamp duty, registration fee and other charges payable under the Agreement is the essence of this contract. It shall be incumbent on the Allottee(s) to comply with the terms of payment and other terms & conditions of sale. In the event, the Allottee(s) defaults on payments of any two instalments as per the agreed Schedule of Payments mentioned in Annexure- V attached alongwith this Agreement, the Company may at its own discretion upon giving 15 days cure notice to the Allottee(s), terminate the present Agreement, and forfeit the earnest money being 15% of Basic Sale Price alongwith processing fee, any interest paid, due or payable, any other amount of a non-refundable nature including brokerage paid by the Company to the broker (in case of booking done through a broker). The Company shall thereafter be free to deal with the said Apartment in any manner, whatsoever, at its sole discretion. Further, the exclusive right to use the car parking reserved to the defaulting Allottee(s) shall also stand transferred to the new buyer, if any. The amount(s), if any, other than the earnest money and other nonrefundable amounts such as the processing fees, any interest paid, due or payable, any other amount of a nonrefundable nature including brokerage paid by the Company to the broker (in case of booking done through a broker), shall be refunded to the Allottee(s) by the Company without any interest. The earnest money and other monies as stated above shall stand forfeited. In exceptional circumstances, the Company, may at its sole discretion, condone the delay in payments and default to cure the



delay by charging the minimum interest @18% per annum of the amount outstanding, but shall not be bound to do so.

- 15. The respondent issued many reminders for physical possession i.e., 27.07.2017, 28.09.2018, 04.07.2018, 29.07.2021 and 04.01.2020 thereafter, issued cancellation letter to the complainant on 14.07.2022 after a gap of 5 years of receiving occupation Certificate for the project i.e., 03.04.2017. The complainant has failed to adhere to the terms and conditions of the builder buyer agreement. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 03.04.2017. However, the respondent offered the possession of the unit in question to the complainant only on 15.04.2017. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation of unit is valid.
- The Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, 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."



17. Keeping in view, the aforesaid legal provision, the respondent/promotor directed to refund the paid-up amount after deducting 10% of the sale consideration and shall return the amount along with interest at the rate of 10.75% (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 cancellation i.e., 14.07.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. Directions of the authority

- 18. 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 of the unit is held to be valid. The respondent is directed to refund the paid-up amount of Rs. 1,04,57,091/- after deducting 10% of the sale consideration of Rs. 1,18,86,388/-with interest at the prescribed rate i.e., 10.75% on such balance amount , from the date of cancellation i.e., 14.07.2022 till the actual date of refund.
 - 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.





- 19. Complaint stands disposed of.
- 20. File be consigned to registry.

Ashok Sangwan (Member)

Haryana Real Estate Regulatory Authority, Gurugram Dated: 06.12.2023