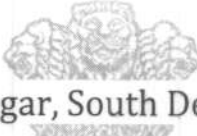


**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no.	5150 of 2021
Date of filing of complaint	04.01.2022
Date of decision	09.04.2024

1. Manav Berry 2. Abhishek Kashyap Both R/O: B-12, Swami Nagar, South Delhi, New Delhi	 Versus	Complainants
Manglam Multiplex Private Limited Regd. Office: LGF, F-22, Sushant Shopping Arcade, Sushant Lok-1, Gurugram-122002.		Respondent

CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Hitesh Manjar & Johrawat Singh (Advocates)	Complainants
Ms. Shriya Takkar (Advocate)	Respondent

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 allottee 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 complainant, 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 and location of the project	"M3M 65 th Avenue", a part of mixed land development project, Sector 65, Gurugram
2.	Nature of the project	Commercial
3.	Project area	14.4125 acres
4.	DTCP license no.	15 of 2017 dated 02.05.2017 valid up to 01.05.2022
5.	Name of licensee	Manglam Multiplex Pvt. Ltd.
6.	RERA Registered/ not registered	01 of 2017 dated 14.06.2017 valid up to 01.05.2024
7.	Allotment Letter	01.11.2017 (At page 19 of the complaint)
8.	Unit no.	R5 LG 35, Lower Ground Floor, Block 1 (Page 19 of the complaint)
9.	Unit area admeasuring (Super area) Carpet area	1035.69 sq. ft. 528.89 sq.ft.

		(Page 19 of the complaint)
10.	Date of builder buyer agreement	18.07.2019 (Page 35 of the complaint)
11.	Possession clause	In clause 7.1 of the agreement, the builder agrees that the possession of the unit will be delivered before commitment period. (m) "Commitment Period" shall mean June 2022 notified by the promoter to the Authority, at the time of registration of the project under the Act, for completion of the Project, or as may be further revised/ approved by the authorities.
12.	Due date of possession	June 2022
13.	Total sale consideration	Rs. 3,60,04,870/- (As per BBA on page 43 of complaint)
14.	Amount paid by the complainant	Rs. 1,75,49,420/- (As alleged by the complainant)
15.	Occupation certificate	30.09.2021 (Page 115 of reply)
16.	Offer of possession	25.10.2021 (Annexure R/7 at page 118 of reply)
17	Pre cancellation letter	25.11.2021 (as per page no. 108 of complaint)

18.	Cancellation of provisional allotment	10.12.2021 (Page 116 of complaint)
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B. Facts of the complaint:

3. That initially the respondent had intimated that the complainants would be allotted a commercial unit in the project "**Orange**" at Village-Maidawas and Badshahpur, Sector-65, Tehsil and District- Gurugram having super area 1035.69 sq. ft., type - retail shop on lower ground floor block-87. The complainants applied for the booking in the respondent's project "Orange". The respondent took the booking amount and issued a receipt for the allotment of the unit in the project "Orange". However, later on, the respondent unilaterally transferred the project "Orange" in another project named as "**M3M 65th Avenue**" (hereinafter referred to as "**Project**") having commercial unit bearing no. R-5, LG-24, lower ground floor, at Village-Maidawas and Badshahpur, Sector-65, Tehsil and District- Gurugram having carpet area of 570.02 Sq. Ft. and corresponding super area 1135.43 sq. ft., type - retail shop on lower ground floor block . Thereafter, the respondent issued a format of "consent letter" to the complainants with the subject "consent to acceptance of variation/alteration in the allotment of commercial unit" for the complainants to sign and fill in the blank spaces. Such change was done unilaterally by the respondent. The complainants after receiving the consent letter, had no option but to fill in the spaces and sign the same, because they had already invested a considerable amount for the unit.

4. That an agreement for sale dated 18.07.2019 was executed between the parties. As per the said agreement, the total consideration for the built unit along with car parking spaces based on the carpet area was Rs.

3,60,04,870/- . The complainants have already paid Rs. 1,75,49,420/-. The total consideration was agreed to be escalation free. Thereafter, the complainants were intimated by the respondent vide letter dated 26.07.2019 that the said unit was registered vide document no.5052 dated 18.07.2019 before the Registrar, Badshahpur.

5. That the complainants made the payment, as per the terms of the agreement as and when demanded by the respondent. Such payments were inclusive of GST.
6. That the complainants received a notice dated 25.10.2021 offering possession of the subject unit from the respondent. In the said notice it is stated that the development/construction of commercial project has been completed and it have obtained occupancy certificate for the same. As per the said notice, the complainants have been advised by the respondent to clear all their dues on or before 24.11.2021 prior to taking over the possession of the unit.
7. That on receiving the notice dated 25.10.2021, the complainants along with other allottees in the project visited the site in the month of November, 2021 and December, 2021 on numerous occasions to see the place and quality of the construction. However, the complainants were shocked to observe that the construction of the unit was not completed as per the specifications and the amenities and facilities as mentioned in "**Schedule E**" of the agreement.
8. That the complainants sent a legal notice dated 25.11.2021 issued to recall and withdraw the notice of offer of possession dated 25.10.2021 on several grounds mentioned therein and categorically on the ground that there are calculation errors made in the demand and the offer of possession of unit

was being offered without compliance of the terms of the agreement particularly the unit was in uninhabitable condition. However the same was left unanswered by the respondent.

9. That the respondent instead of completing the construction milestones or giving any update regarding the queries made/issues raised through email and legal notice, the respondents, showing their high headedness, sent a pre-cancellation letter dated 25.11.2021. In the said pre-cancellation letter dated 25.11.2021 the respondent has demanded payment of due amount along with the condition that the respondent will cancel the allotment if the complainants fails to pay the outstanding amount. Instead of completing construction and giving possession as and in accordance with the agreement of the said unit to the complainants, the complainants were being threatened that their unit will be cancelled. By such acts and actions, the respondent was trying to coerce the complainants to pay towards their illegal and unjustifiable demands and usurp the hard earned money threatening to cancel the allocation of the unit. Furthermore, it was for the first time informed by the respondent that a charge was created on the unit of the complainants with piramal housing and pre-cancellation letter clearly indicated that in case the payment is not made, then they cannot help if piramal cancels the allotment. Such creation of charge on the unit of the complainants are also against the terms of the agreement.

10. That the complainants on receiving the pre-cancellation letter dated 25.11.2021 and immediately sent a reply dated 07.12.2021 to the respondent through email and courier on similar grounds as represented in the legal notice dated 25.11.2021 and again asked to withdraw the notice of offer of possession dated 25.10.2021 and requested to resolve the issues raised therein first. However, the respondent instead of addressing the

grievances raised in the notices and email, deliberately went on to cancel the said commercial unit vide letter dated 10.12.2021. The respondent in the said cancellation letter dated 10.12.2021 alleged that the unit has been cancelled due to the default in payment made by the complainants and that intentionally forfeited the entire amount paid by them. Such cancellation is without following the procedure agreed between the parties as well as is against the Law.

11. That the construction of the said commercial unit is still under full swing and the residential buildings is under construction and incomplete. The residential floors are on top of the retail shops/units and the construction work is still ongoing, due to which the place including the complainants unit is unsuitable for occupancy and is in uninhabitable condition as on date. The complainants had booked the said unit in the said project on the assurance and promise made by the respondent that at the time of handover of the possession of the unit, the project would be in a habitable condition with all the facilities/amenities up and running and the businesses from the retail shops can be carried out immediately on the handover of the unit. However, it is submitted that the condition of the site is unsafe and uninhabitable and no business can be operated from the said project. The offer of possession of the unit is being made in haste by the respondent without completing the construction of the project as per the specifications along with the amenities and facilities as assured and promised in the agreement.

C. Relief sought by the complainants:

12. The complainants have sought following relief(s):

- i. Declare the cancellation notice dated 10.12.2021 illegal, invalid and is bad in law and as the same is against the RERA provisions as well as against the terms of the agreement for sale.
- ii. Direct the respondent to restore the cancelled unit in the name of the complainants.
- iii. Direct the respondent to handover the possession of the unit in a habitable condition as represented at the time of the booking of the unit/captioned in "schedule e" of the agreement.
- iv. Direct the respondent to extinguish the charge created by the respondent in the allotted unit of complainants with Piramal Housing Pvt. Ltd.
- v. Grant liberty to the complainants to seek compensation/interest before the adjudicating officer in case of failure of grant of possession.

D. Reply by respondent:

13. That the booking form was received by the respondent for a commercial unit in 'M3M 65th Avenue', a commercial component of the mixed land use development project of the respondent. In due consideration of the booking amount paid by the complainants and their commitments to comply with the terms of the booking/allotment and make timely payments of demands, the complainants were allotted a commercial unit bearing No. R5 LG 35 in 'M3M 65th Avenue', a commercial component of the mixed land use development project of the respondent company, vide allotment letter dated 01.11.2017. The complainants being the allottees, on their own free will and after due understanding of the legal import and effect had opted for the specific payment plan. Vide letter dated

12.12.2017, the respondent intimated the complainants about the change in building plan as earlier approved building plan bearing DTCP memo no. ZP-1147/SD(BS)/2017/11857 dated 01.06.2017 has been revised to ZP-1147/SD(BS)/2017/31514 dated 08.12.2017 with reference to Unit no. R5 LG 35 and also requested the complainants to submit their objections if any. However, the complainants did not raise any objections with respect to the same. The respondent issued a revised allotment letter for the commercial unit no. R5 LG 24 in "M3M 65th Avenue" in lieu of or in substitution of the earlier provisional allotment letter for commercial unit no. R5 LG 35. It was further informed to the complainants that the allotment of their commercial unit in "M3M 65th Avenue" stands substituted / varied / revised / altered and henceforth the allotment of the complainants would be referred to as commercial unit no. R5 LG 24 on the same terms and conditions as per the schedule of payments to be made as earlier.

14. It is submitted that in furtherance of the allotment, the respondent company had sent the agreement for sale to the complainants for due execution at his end and the agreement for sale was executed between the parties on 18.07.2019.

15. That the complainants are chronic defaulters as they failed to make payment to the demand dated 24.12.2020 raised by the respondent. All the demands were raised as per the payment plan opted by them. They were very well aware that time was of essence in making payments. Since the complainant failed to make the payment the respondent issued a pre-cancellation letter dated 18.01.2021.

16. That despite the non-fulfilment of the obligation of making timely payment, the respondent fulfilled its promise and had constructed the said unit of the complainants, by investing its own funds. The respondent has completed the construction way before the agreed timeline and applied for the OC on 30.04.2021. The respondent has received the OC from the competent authorities on 30.09.2021 after due verification and inspection.
17. That the unit was ready and the respondent herein vide letter dated 25.10.2021 offered possession to the complainants herein and requested them to remit outstanding amount towards the remaining basic sale price, service tax, and cess, stamp duty charges etc. Thus, the construction of the project was completed much before the prescribed commitment period i.e., June 2022 and there is no delay in offering possession of the unit to the complainants.
18. That the complainants in violation of their agreed obligations failed to remit any amount towards the dues communicated vide the offer of possession, therefore the respondent vide email dated 10.11.2021 sent a reminder to the complainants to remit the outstanding dues in respect of the unit, but to no avail. However, the complainants instead of fulfilling their agreed obligations, malafidely sent a frivolous legal notice dated 25.11.2021 to the respondent company in order to wriggle out of their obligations including the obligation of making timely payments.
19. That even after the issuance of the reminder the complainants failed to remit the outstanding dues therefore the respondent was constrained to issue a pre-cancellation notice dated 25.11.2021. However, the complainants instead of fulfilling their agreed obligations, malafidely sent a frivolous reply to the said pre-cancellation notice dated 07.12.2021 to

the respondent in order to wriggle out of their obligations including the obligation of making timely payments.

20. That despite the pre- cancellation letter the complainants herein failed to come forward to clear dues, constrained by which the respondent issued a cancellation letter dated 10.12.2021.
21. That on account of the wilful breach of the terms of the allotment and the buyers agreement by failing to clear the outstanding dues despite repeated requests, the respondent company was constrained to terminate the allotment of the unit. It is submitted that the complainants have till date made a payment of Rs. 17,699,116/- as raised by the respondent company in accordance with the payment plan and the terms of the buyer's agreement.
22. That the respondent was constrained to cancel the unit on account of non-payment of the demands raised by the respondent despite sending repeated reminders. The respondent has incurred various losses/damages on account of the breach of the terms of the allotment and application by the complainants, which the complainants are liable to pay as per the terms of the agreement.
23. All other averments were denied in total.
24. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

26. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of the Real Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes 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

27. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

28. 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. Finding on the relief sought by the complainants.

F.I Declare that the cancellation notice dated 10.12.2021 illegal, invalid and is bad in law and as the same is against the RERA provisions as well as against the terms of the agreement for sale.

F.II Direct the respondent(s) to restore the cancelled unit in the name of the complainant(s).

F.III Direct the respondent(s) to handover the possession of the unit in a habitable condition as represented at the time of the booking of the unit/captioned in "schedule e" of the agreement.

F.IV Direct the respondent(s) to extinguish the charge created by the respondent(s) in the allotted unit of complainant(s) with Piramal Housing Pvt. Ltd.

The above mentioned reliefs no. F.I, F.II , F.III & F.IV as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected

29. It is important to note that initially the respondent had intimated that the complainants would be allotted a commercial unit in the project "Orange" Sector-65, Tehsil and District- Gurugram having super area 1035.69 sq. ft., type - retail shop on lower ground floor block-87. The complainants applied for booking in the respondent's "Orange" project, paid the booking amount, and received a receipt confirming the unit's allotment". However, later on, the respondent unilaterally transferred the project "Orange" in another project named as "M3M 65th Avenue" having commercial unit bearing no. R-5, LG-24, lower ground floor Sector-65, Tehsil and District- Gurugram having carpet area of 570.02 Sq. Ft. and corresponding super



area 1135.43 sq. ft., type – retail shop on lower ground floor block . Following this transfer, the respondent issued a "consent letter" format to the complainants. They signed the consent letter because they had already invested a significant amount in the originally allocated unit.

30. The complainants were allotted unit no R5 LG 35, Lower Ground floor in Block-1 in the project "M3M 65th Avenue" by the respondent builder for a total consideration of Rs. 3,60,04,870/- against which the complainants paid an amount of Rs. 1,75,49,420/-. The complainants continued with their default and again failed to make payment even after receipt of final reminder letter. Buyer agreement between the parties was executed on 18.07.2019 and the unit of the complainants have been cancelled by the respondent on 10.12.2021 on the grounds of non-payment.
31. In the present case, the complainants are challenging the cancellation of the unit on the ground that the cancellation was effected in violation of clause 9 of the buyer agreement. It is also stated by the complainants that an amount of Rs. 1,45,05,605/- stands refunded by the respondent during the pendency of this case, out of which an amount of Rs.72,52,803/- was refunded to complainant no.1 vide bank transfer dated 17.06.2022 and an amount of Rs.72,52,802/- was refunded to complainant No.2 vide cheque dated 17.06.2022 which was re-issued on 20.12.2022 to the complainants on their request and has since been encashed.
32. The respondent further states that the complainants were made valid offer of possession on 25.10.2021 and after subsequent reminders to pay the pending instalments, the unit of the complainant was duly cancelled as per procedure on 10.12.2021. During the course of proceeding, the respondent invites the attention of the authority towards order dated

02.03.2022 vide which the authority had ordered the respondent not to create third party rights till the next date of hearing and the complainants were also directed to pay the undisputed amount within 15 days to the respondent. However, the stay was subsequently vacated during the proceedings dated 31.05.2022 wherein it was observed that the complainants have not paid even the undisputed amount to the respondent till date nor have come forward to take possession of the unit. It further states that appeal had been filed before the Hon'ble Appellate Tribunal against the order dated 31.05.2022 passed by this authority which was subsequently withdrawn by the complainant on 18.01.2023.

33. While discussing earlier it has been held that the complainants were in default in making timely payments leading to cancellation of the allotted unit by the respondent as per the term and conditions of allotment. Now, the issue for consideration arises as to whether the complainants are entitled for refund of the illegal deduction of earnest amount from the respondent.

34. As per cancellation letter dated 10.12.2021 annexed on page no. 116 of complaint, the earnest money deposit shall stand forfeited against the amount paid by the complainants. In the present complaint, the said unit was booked for a total consideration of Rs. 3,60,04,870/- against which the complainant paid an amount of Rs. 1,75,49,420/-. The respondent builder offered possession of the unit on 25.10.2021 after obtaining occupation certificate on 30.09.2021. The respondent-builder raised various demands letter as per the payment plan opted by the complainants. The complainants continued with their default and again failed to make payment even after receipt of pre-cancellation letter dated

25.11.2021 which led to cancellation of their unit. It is admitted by both the parties that an amount of Rs. 1,45,05,605/- stands refunded by the respondent during the pendency of this case, out of which an amount of Rs.72,52,803/- was refunded to complainant no.1 vide bank transfer dated 17.06.2022 and an amount of Rs.72,52,802/- was refunded to complainant No.2 vide cheque dated 17.06.2022 which was re-issued on 20.12.2022 to the complainants on their request and has since been uncashed.. The authority is of view that as per section 19 (6) and (7) of Act of 2016, the allottees are under obligation to make timely payment as per payment plan towards consideration of the allotted unit. The complainants continued with their default and making payment even after of various reminder letters, which led to cancellation of their unit. The Authority is of considered view that the cancellation done by respondent is valid in the eyes of law.

35. However, the deductions made from the paid up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land 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."

36. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainants against the allotted unit and respondent/builder is directed to refund the paid-up amount by the complainants after deducting 10% of the sale consideration being earnest money along with an interest @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 10.12.2021 till actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid.*

The amount of Rs. 1,45,05,605 /- already refunded by the respondent shall be deducted from the amount so assessed

F.V Compensation

37. The complainants in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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.

H. Directions of the Authority:

38. 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/promoter is directed to refund the amount i.e., Rs. 1,75,49,420/- after deducting 10% of the sale consideration being earnest money along with an interest @10.85% p.a. on the refundable amount, from the date cancellation i.e., 10.12.2021, till the actual date of refund of the deposited amount. The amount of Rs. 1,45,05,605/- already refunded by the respondent shall be deducted from the amount so assessed

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

39. Complaint stands disposed of.

40. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Arun Kumar)
Chairman


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.04.2024

HARERA
GURUGRAM