

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

<b>Complaint no.</b> :	<b>634 of 2024</b>
<b>Date of filing complaint:</b>	<b>22.02.2024</b>
<b>First date of hearing:</b>	<b>18.04.2024</b>
<b>Date of decision</b> :	<b>04.07.2024</b>

Prashant Verma

**Complainant**

**R/o:** Flat No.-201, Tower H, Emerald  
Estate, Sector-65, Gurugram -122018

**Versus**

Loon Land Development Limited

**Respondent**

**Regd. office:** 1221-A, Devika Tower,  
12<sup>th</sup> Floor, 6, Nehru Place, New Delhi-  
110019

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Ms. Yasodhana Burmon Roy, Proxy Counsel

**Complainant**

Ms. Shriya Takkar (Advocate)

**Respondent**

**ORDER**

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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.

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**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. No.	Particulars	Details
1.	Name of the project	"M3M Antalya Hills Phase II, Sector-79 & 79 B, Gurugram.
2.	Project area	45.1625 acres
3.	Nature of the project	Independent Residential floors
4.	DTCP license no. and validity status	<b>195 of 2022 dated 29.11.2022 valid till 28.11.2027</b>
5.	Name of licensee	Loon Land Development Limited and others
6.	RERA Registered/ not registered	Registered vide no. 06 of 2023 dated 12.01.2023 valid up to 30.06.2026
7.	Unit no.	AHII/E-191-02, Plot no. G-19, Second Floor, Tower/Block-Ebony (As per page no. 26 of the complaint)
8.	Area admeasuring	928.57 sq. ft. (Carpet area) and 1642 sq. ft. (Super Area) (As per page no. 26 of the complaint)
9.	Allotment letter	03.04.2023 (As per page no. 17 of the complaint)
10.	Date of execution of agreement for sale	05.06.2023 (As per page no. 23 of the complaint)
11.	Possession clause	<b>7. POSSESSION OF THE INDEPENDENT FLOOR</b>

**RESIDENCE**

**7.1 Schedule for possession of the said Independent Floor Residence:** - The Developer agrees and understands that timely delivery of possession of the Independent Floor Residence along with undivided demarcated proportionate right to use terrace and basement area along with right to use car parking (if applicable) to the allottee(s) along with undivided proportionate share/interest in the land underneath the subject plot and the Common Areas to the Association of Allottee or the competent Authority, as the case may be, as provided under the Act and Rules 2(1)(f) of the Rules, 2017, is the essence of the Agreement.

(As per page no. 39 of the complaint)

12.	Due date of possession	30.06.2026 <b>[As mentioned in the RERA registration]</b>
13.	Payment Plan	Construction linked plan
14.	Total sale consideration	Rs.1,82,74,157/- (As per payment plan on page no. 72 of the complaint)
15.	Amount paid by the complainant	Rs.9,12,222/- (As per page no. 32 of the complaint)
16.	Occupation certificate /Completion certificate	Not obtained
17.	Offer of possession	Not offered

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18.	Demand letter	03.04.2023 & 06.04.2023 (As per page no. 56 & 59 of the reply)
19.	Pre cancellation notice	03.05.2023 & 16.05.2023 (As per page no. 61-62 of the reply)
20.	Cancellation letter	04.12.2023 (As per page no. 123 of the reply)
21.	Creation of third-party rights	01.03.2024 (As per page no. 129 of the reply)
22.	Refund of the amount paid by the complainant through NEFT	23.04.2024 (As per page no. 127 of the reply)

**B. Facts of the complaint:**

3. The complainants have made the following submissions in the complaint:
- I. That the respondent through its representative had approached the complainant with a proposal of investing in a residential unit in an upcoming project to be developed in Haryana namely "M3M Antalya Hills-Phase II". The respondent further represented themselves as an ethical and promising business group that lives onto its commitments in delivering its real estate projects as per promised quality standards and agreed timelines and agreed commitments. The respondent also assured to the complainant that the respondent has secured all the necessary sanctions and approvals from the appropriate authorities.
  - II. The respondent specifically represented and assured the complainant that for the purchase of the said unit, they will be provided with financial assistance through the banks that are tied up with the respondent and the complainant will not have to make any

substantial payments except the booking amount and further the EMI's will be paid by the developer till the offer of possession. That the payment plan as represented by the complainant was of the ratio (5:95) meaning thereby the complainant had to make only 5% payment of the total sale consideration.

- III. That based on the representations and assurances above, the complainant on 26.02.2023, handed over a cheque of Rs.5,00,000/- to the respondent which was realised by the respondent on 07.03.2023.
- IV. That vide an email dated 12.03.2023, the sales manager of M3M sent the cost sheet to the complainant wherein the (5:95) plan was detailed and expressly stated that the bank would make a contribution of Rs.1,65,06,939/- which was agreed by the complainant vide its response.
- V. That the respondent issued an allotment letter dated 03.04.2023 to the complainant for the purchase of unit no. AHII/E-191-02, plot no. G-19 in block-Ebony, 2<sup>nd</sup> floor, having carpet area of 928.57 sq. ft. and corresponding super area 1642 sq. ft. being developed on plot admeasuring 144.51 sq. mt. for a consideration of Rs.1,82,74,157/-.
- VI. That the respondent through its finance partner i.e., Smart Loans Kart got the loan sanctioned for the complainant for the purchase of the said unit through IDFC Bank vide sanction letter dated 05.04.2023 wherein it was expressly mentioned that the facility was for an amount of Rs.1,65,00,000/- as mentioned in the cost sheet sent by respondent.
- VII. That despite the above agreed terms, the complainant received a demand letter dated 06.04.2023 wherein a demand was raised for an amount of Rs.49,73,329/- which was broken down as

(Rs.4,12,222/- i.e., balance of the 5% agreed to be paid vis-a-vis the 5:95 plan & Rs.45,61,107/- i.e., payment to be paid upon excavation of site).

- VIII. That when the complainant approached the representatives of the respondent with the aforementioned demand, the complainant was informed that the aforesaid demands are automated and have to be sent for compliance purposes and further asked the complainant to not worry and just make a payment of the balance of the agreed 5% i.e., Rs.4,12,222/-. Based upon the above stated assurances, the complainant made a payment of Rs.4,12,222/- on 20.04.2023.
- IX. That on 03.05.2023 and 16.05.2023, to the utter surprise and shock, the complainant received pre-cancellation notices whereby the complainant was called upon to make a payment of Rs.49,85,696/- within 7 days of the receipt of the notice or else the booking of the unit shall be cancelled.
- X. That the receipt of the aforementioned notices were also informed to the representatives of the respondent and the grievance of non-disbursal of the sanctioned amount was also brought to light repeatedly. The representatives of the respondent again reiterated that the notices are automated generated drafts and are only sent for compliance purposes and the complainant need not worry about them. They further assured the complainant that they would take up the issue of non-disbursement directly with the bank and shall resolve the issue at the earliest.
- XI. That further the representatives of the respondent asked the complainant to execute the agreement for sale and stated that upon execution of the agreement, the bank would disburse the entire amount and thus, on 05.06.2023, an agreement for sale was

executed between the complainant and the respondent for the purchase of the said unit.

- XII. That it came to the knowledge of the complainant that IDFC bank has restrained itself from being involved with M3M projects and will not further disburse any such amount. Upon receiving such information, the complainant raised multiple complaints to M3M regarding non-disbursement, and the respondent vide its email dated 28.08.2023 stated that the respondent is in the process of getting approvals of the specified payment plan i.e., 5:95 from the bank and shall keep the complainant informed about the progress. The respondent further stated that they will not levy any interest charges until the same is resolved. The complainant repeatedly followed up with the respondent with respect to the disbursal but the same was of no avail.
- XIII. That suddenly on 04.12.2023, the complainant received a cancellation notice whereby it was stated that due to non-payment of the dues as mentioned in the pre-cancellation notice dated 03.05.2023 and 16.05.2023, the allotment of unit stands cancelled and further the payment made by the complainant has been forfeited. Despite paying the entire amount of contribution as agreed in the 5:95 payment plan and being assured that the pre-cancellation notices and non-disbursal of the amount by banks would not affect the allotment, the respondent has fraudulently cancelled the allotment of the complainant and illegally forfeited the amount deposited.
- XIV. That being exasperated and shocked with the conduct of the respondent company, the complainant met with Mr. Ravi Singh i.e., CRM for M3M at the office of the respondent whereby it was

informed to the complainant that M3M deeply regrets the way the events have transpired and further requested the complainant to switch his payment plan to 10:90 deviating from the agreed terms and conditions and further make a payment of the extra 5% as per the 10:90 plan. The complainant had no other option or alternative but was forced to agree to paying the extra 5% as the complainant had desired of purchasing the said unit and further requested Mr. Ravi to give him time for the said payment to which he acceded and stated that he will get back to the complainant in that regard after confirmation from his seniors.

- XV. That pursuant to the above, the complainant sent multiple reminders to Mr. Ravi Singh to confirm when the payment can be done and the allotment be restored but the same was of no avail. That on 26.12.2023, Mr. Ravi Singh sent a communication stating that due to non-submission of the sanction letter, the allotment has been cancelled and the unit stands released for sale.
- XVI. That sanction of the loan and its correspondences were the responsibility of the respondent as evidenced from the email dated 28.08.2023. Further, it is also relevant to state that the reasons for cancellation of allotment vide the cancellation letter dated 04.12.2023 and the communication dated 26.12.2023 are quite contradictory and verify the fact that the respondent has deviated from the agreed upon terms and conditions.
- XVII. That during the meeting on 28.12.2023, the complainant was informed that that the unit booked by the complainant has been sold to someone else and was further assured that the respondent would compensate the complainant by booking another unit with the same





specifications and asked the complainant to make a payment of 5% of the consideration.

- XVIII. That despite the illegal actions as undertaken by the respondent, on 29.12.2023 the complainant handed over a cheque dated 07.01.2024 for an amount of Rs.9,25,000/- to the respondent, however, the respondent derailed from its assurances and did not offer the same payment plan as offered before i.e., 5:95 plan and further stated that the subsequent unit can be offered only if the complainant would pay 30% of the sale consideration on its own without availing any financial assistance. That the aforesaid demand and change of payment plan is completely against the terms and conditions and the essence of the transaction between the parties. The complainant received an email dated 23.01.2024 from the respondent whereby it was stated that the respondent has advised the complainant to shift the payment plan to 'self-fund' and complete the 30% self-contribution and further stated that the respondent would not be able to revive the booked unit of the complainant.
- XIX. That the complainant on further inquiry has come to know that the said unit which is the subject matter of the present complaint has not been allotted or sold to anyone else and the respondent has made an incorrect and false statement thus liable to be punished for the offence and fraud.
- XX. That on 12.02.2024, the complainant received an email from the respondent whereby it was stated that after much deliberation, the respondent will not be able to revive the unit. It further stated that they would expedite the refund of the amount deposited by the complainant. It is pertinent to mention that despite forfeiting the amount deposited by the complainant, they are agreeing to refund



the amount which clearly demonstrates that there is a breach on the part of the respondent and are well aware of the illegal and fraudulent acts done that could have criminal consequences and are now frightened of any action that can be taken by the complainant.

XXI. That the conduct of the respondent clearly manifests that the respondent had no intention of selling the unit since the beginning. The respondent made false representations and promises which were never fulfilled and thereby fraudulently induced the complainant to purchase the subject property. The respondent has arbitrarily issued pre-cancellation notices and the cancellation notices while fraudulently representing that the same are for compliance purpose and would not affect the allotment. The respondent has criminally misappropriated the money deposited by the complainant as sale consideration/booking amount by illegally cancelling the allotment. The above acts are in direct contravention to various provisions of the RERA Act but not limited to Section 11(4)(a) of the Act.

XXII. That the cause of action accrued in favour of complainant and against the respondent in 2023 when the representatives of the respondent made false promises and fraudulently induced the complainant to purchase the said unit. It further arose when the complainant booked the said unit by paying the booking amount and when the respondent sent false pre-cancellation notices. The cause of action further arose when the respondent executed the agreement for sale dated 05.06.2023, when IDFC Bank did not disburse the sanctioned loan amount, when the respondent issued cancellation notice and forfeited the money deposited by the complainant is still

continuing and subsisting on a day-to-day basis. Hence, the humble prayers of the complainant to be allowed.

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

4. The complainant has sought following relief(s):
  - i. Direct the respondent to set aside the cancellation notice dated 04.12.2023 and restore the allotment as per the initially agreed 5:95 payment plan.
  - ii. Direct the respondent to pay compensation for the harassment caused and the cost of litigation.

**D. Reply the respondent:**

5. The respondent has contested the complaint on the following grounds:
  - I. That the complainant has neither any cause of action nor any locus standi to maintain the present complaint against the respondent, especially when the complainant actually defaulted in making the payment and is now seeking the complete modification of the terms and conditions of the understanding between the parties. The complaint filed by the complainant is baseless, vexatious and is not tenable in the eyes of law therefore the complaint deserves to be dismissed at the very threshold.
  - II. That at the very outset, the respondent wants to bring to the kind knowledge of the Authority that the complainant has not approached the Authority with clean hands and is guilty of suppression of material facts absolutely relevant for just and proper adjudication of the present complaint. That after making independent enquiries and conducting market research and only after being fully satisfied about the project, the complainant approached the respondent for booking of a residential unit in 'M3M Antalya Hills Phase II', containing residential units with

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suitable infrastructure facilities being developed under DDJAY scheme in a planned and phased manner over a period of time vide application form and paid an amount of Rs.5,00,000/- as part booking amount towards the unit in question. It is submitted that the complainant on his own free will and understanding and after having read and understood all the terms of the application form, signed the application form.

- III. That in due consideration of the part booking amount paid by the complainant and his commitment to make timely payments, the respondent allotted the independent floor bearing No. "AHII/E-191-02" on 2<sup>nd</sup> floor in favour of the complainant vide allotment letter dated 03.04.2023. It is submitted that the cost of the independent floor residence admeasuring 928.57 sq. ft. carpet area was Rs.1,82,74,157/- plus other charges. The complainant opted for the construction linked payment plan.
- IV. That the respondent as per the payment plan opted by the complainant raised a demand vide letter dated 03.04.2023 which was due within 10 days of booking, i.e., 13.04.2023 for an amount of Rs.4,12,222/-.
- V. That the respondent vide cover letter dated 05.04.2023, sent triplicate copies of the buyer's agreement for due execution at the complainant's end. Thereafter vide demand letter dated 06.04.2023, the respondent raised the demand due on commencement of excavation for an amount of Rs.45,61,107/- and further included the previous outstanding dues to the tune of Rs.4,12,222/-. Therefore, the total demand raised by the respondent was for Rs.49,73,329/-.

- VI. That since the complainant failed to clear the dues raised vide demand letter, the respondent therefore issued pre-cancellation letter dated 03.05.2023 reminding the complainant to remit the outstanding dues. The complainant made payment of Rs.4,12,226/- on 20.04.2023 vide IMPS towards the first demand due within 10 days of booking. Thus, the complainant defaulted in making payments since the very inception.
- VII. That despite the issuance of the above-mentioned pre-cancellation notice, the complainant failed to clear the outstanding dues and continued to breach the terms of the application form/allotment. As a consequence of the same, the respondent left with no other alternative, again issued pre-cancellation notice dated 16.05.2023 calling the complainant to remit the overdue payments along with applicable tax within 7 days from the date of issuance of this notice.
- VIII. That after constant follow ups with the complainant, the buyer's agreement was duly executed between the complainant and the respondent on 05.06.2023. The buyer's agreement sets out the rights and liabilities of the both the parties.
- IX. That the complainant even after the issuance of the pre-cancellation notices dated 03.05.2023 and 16.05.2023 failed to adhere to the opportunity and continued to breach the terms of the buyer's agreement. As a consequence of the same the respondent was constrained to cancel the allotment of the complainant vide cancellation notice dated 04.12.2023. It is submitted that the complainant had deposited an amount of Rs.9,12,222/- towards the unit in question i.e., 4.9% of the cost of the unit.
- X. That the respondent was constrained to cancel the unit on account of non-payment of the demands despite reminders and follow ups.

It is submitted that the respondent is incurring various losses/damages on account of breach of the terms of the buyer's agreement which the complainant is liable to pay as per the terms of the buyer's agreement. Thus, the total loss calculated comes to Rs.20,53,893/- (approx.) which includes, earnest money deduction @10% to the tune of Rs.17,40,396/-, and further sum of Rs.3,13,497/- was the interest payable by the complainant for the delayed payments.

- XI. That post cancellation of allotment, the complainant has no right, title or interest in the unit in question nor has any privity of contract with the respondent. In furtherance of the termination of the subject independent floor vide cancellation letter dated 04.12.2023, the same has been re-allotted to one Ms. Kamlesh Verma vide allotment letter dated 01.03.2024.
- XII. That the respondent without prejudice to its rights to close the matter and subject to the orders passed in the present case, refunded the entire amount deposited by the complainant i.e., Rs.9,12,226/- on 18.04.2024 vide NEFT to the complainant without any deductions, even though the respondent was entitled to forfeit the amount deposited being less than 10% of the sale consideration in accordance with clause 9.3 of the buyer's agreement. The respondent informed the complainant about the same vide letter dated 23.04.2024.
- XIII. That the complainant is raising these issues as an afterthought in order to unjustly enrich itself. It is submitted that the respondent has complied with all its contractual obligations. The complainant is not entitled to any relief from the Hon'ble Authority whatsoever. Thus, the present complaint is infructuous.

XIV. That the captioned complaint is frivolous, vague and vexatious in nature. The captioned complaint has been made to injure and damage the interest, goodwill and reputation of the Respondent and the said project / complex and therefore, the instant complaint is liable to be dismissed in *limine*. That the complainant is not entitled to any reliefs as claimed herein since this Authority has no jurisdiction to entertain the present complaint.

6. Copies of all the relevant documents have been filed and placed on the record and 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:**

7. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction 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.I 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 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 allottees 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.*

8. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

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

**F.1 Direct the respondent to set aside the cancellation notice dated 04.12.2023 and restore the allotment as per the initially agreed 5:95 payment plan.**

9. The complainant was allotted a unit in the project of respondent "M3M Antalya Hills Phase II", in Sector 79, Gurugram vide allotment letter dated 03.04.2023 for a total sum of Rs.1,82,74,157/-. An agreement for sale was executed between the parties on 05.06.2023 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.9,12,222/-.
10. The complainant in the facts of the complaint has mentioned that the payment plan agreed between the complainant and the respondent is 5:95 payment plan but no document regarding the same has been placed on record. However, as per the documents annexed with the complaint,



the complainant has opted for construction linked payment plan. As per the payment plan, the respondent has raised a demand vide letter dated 06.04.2023 on commencement of excavation but the complainant has not paid the outstanding amount. The respondent issued pre-cancellation letter dated 03.05.2023 and 16.05.2023 on account of non-payment of outstanding dues. Despite being given ample time to pay the outstanding amount the complainant has not paid the said amount. On 04.12.2023, the respondent cancelled the allotted unit and in consonance to the cancellation of the allotment, the respondent has created third-party rights and issued an allotment letter to Ms. Kamlesh Verma on 01.03.2024 and refund of the paid-up amount by the complainant has been made on 23.04.2024.

11. The complainant vide proceedings of the day dated 04.07.2024 brought to the notice of the authority that an amount of Rs.9,25,000/- has been paid to the respondent on 07.01.2024 i.e., post cancellation adapting new payment plan of 10:90. The payment plan annexed with the agreement for sale dated 05.06.2023 signed between both the parties is construction linked payment plan. The respondent in its written submissions submitted that the amount paid by the complainant post-cancellation was never encashed by the respondent. In view of the afore-mentioned facts, the authority is of the view that respondent is required to refund the outstanding amount to the complainant, if any paid and received after the cancellation of the unit..
12. Keeping in view the aforementioned facts and documents placed on record, the cancellation of the allotted unit is valid. And as the paid-up amount has already been transferred to the complainants post-cancellation, thus the relief sought by the complainant is not maintainable.

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**F.II Direct the respondent to pay compensation for the harassment caused and the cost of litigation.**

13. The complainant is seeking relief w.r.t compensation in the aforesaid relief, 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. Supra* 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.

**G. Directions of the Authority:**

14. Hence, in view of the findings recorded by the authority on the aforesaid issues, no case for revocation of the cancellation and restoration is made out. Hence, the complaint is dismissed and as such is rejected.
15. Complaint stands disposed of.
16. File be consigned to the registry.

  
**(Vijay Kumar Goyal)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 04.07.2024**