

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

Complaint no.	:	5790 of 2023
Date of filing complaint:		28.12.2023
Date of decision		16.08.2024

Vivek Khanna R/O: E-98, 1st Floor, Lajpat Nagar-2, New Delhi-110024	Complainant
Versus	
M/S Manglam Multiplex Pvt Ltd Regd. Office: LGF, F-22, Sushant Shopping Arcade, Sushant Lok-1, Gurugram-122002	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Dheeraj Kaushik (Advocate)	Complainant
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 (ins 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. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	M3M Heights, Sector 65, Gurugram
2.	Project area	14.4125 acres
3.	Nature of the project	Mixed land use colony
4.	DTCP license no. and validity status	15 of 2017 dated 02.05.2017
5.	Name of the Licensee	Manglam Multiplex Pvt. Ltd.
6.	RERA registered/ not registered and validity status	GGM/688/420/2023/32 dated 02.02.2023 valid up to 01.05.2024
7.	Unit no.	MH TW-01-2005, 20 th floor, Tower-1 [pg. 72 of the Complaint]
8.	Unit admeasuring	1261 sq. ft. [pg. 72 of the complaint]
9.	Date of flat buyer's agreement (registered)	11.08.2021 [pg. 69 of complaint]
10.	Allotment Letter	22.06.2021 [pg. 54 of complaint]
11.	Possession Clause	<i>Definition: (m) Committed period</i> 30.06.2024

		<i>At page 74 of complaint</i>
12.	Due date of Possession	30.06.2024
13.	Assured return	<p>Clause 4 of acknowledgment letter dated 05.10.2021</p> <p>Company shall allow an accumulated Pre handover amount of 39,469/- Per month to you, the Allottee, with effect from completion of payment of 13,05,580/- Plus GST till the date of Filing of application for grant of occupancy certificate of the unit.</p> <p><i>(page 140 of reply)</i></p>
14.	Total consideration	₹ 1,26,53,106/- [pg. 78 of complaint]
15.	Total amount paid by the complainant	1,25,16,078/- [As per customer ledger dated 19.03.2024 at pg 161 of reply]
16.	Demand and Pre cancellation letter	05.11.2022 08.11.2022 <i>(Page 145 of reply).</i>
17.	Cancellation letter	24.11.2022 [pg. 146-147 of reply]
18.	Complainant's unit was restored on the request of the complainant.	
19.	Occupation certificate	16.10.2023
20.	Offer of possession	19.10.2023 <i>(Page 151-152 of reply)</i>
21.	Pre cancellation	27.11.2023 <i>(Page 159 of reply)</i>

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- a. That the complainant had initially booked a unit bearing no. 208 in the project of the respondent, namely, Emporis Tower (Indo World Infrastructure Pvt. Ltd) in the year 2017, being developed at Sec-140, Noida, for which the complainant had duly paid part sale consideration amount. The said unit was later cancelled and it was agreed between the parties that the said paid amount would be equally adjusted in the 4 current/ fresh bookings made by the complainant in the project "M3M Heights".
 - b. That in and around February 2021, vide advertisements, publications and physical representations made by the respondent, the respondent had enticed and invited applications from buyers and investors in its project. It is submitted that Ms/. Investor Clinic was agent/property dealer involved in the booking of the subject unit as well as the other 3 units booked in the subject project. The complainant had invested his hard earned money and booked 4 units, i.e. unit no. 508 tower - 6, unit no. 1105 tower - 1, unit no. 2005 tower - 1, and unit no. 705 tower - 1, in the project of the respondent based on the representation and assurances of the respondent, which have later on proved to be false. Out of the four units booked, the complainant was allotted the present subject unit being, mh tw-01-2005, having carpet area of 725.28 sq. ft. (67.38 sq. mtrs.) and corresponding super area admeasuring 1261 sq. ft./ 117.15 sq. mtrs., on the 11th floor, of tower no. 1, along with exclusive usage of 1 number of car parking spaces.

- c. That the respondent vide its e-mail dated 03.03.2021, had shared the cost sheet for the said unit, wherein the total sale value of the unit was duly intimated as Rs. 1,53,84,200/- (which includes 1,50,68,950 as total cost value + ifms on possession as Rs 1,89,150/- + 1,26,100/- as power backup charges to be paid on possession), it is pertinent to note that the effective total sale value after deducting the old investment amount was finalised as Rs. 1,10,79,200/- only. Thus, the effective sale consideration to be paid was only Rs. 1,10,79,200/- against the said unit. The said e-mail also recorded the plan of two pre-handover amounts/ assured return amounts, amounting to Rs. 78,931/- which were to be paid by the respondent on a monthly basis.
- d. That in terms of the information provided and the representations offered by the staff of the respondent company, the scheme for investment offered to the complainant was an assured return scheme, wherein, an amount of Rs. 39,468/- per month, calculated at Rs. 31.30 per sq. ft. per month, stated to be pre-handover amount, was to be paid to the complainant from the date of completion of 40% till a valid application of occupation certificate. Furthermore, another amount of Rs. 39,463/- per month calculated at Rs. 31.29 per sq. ft. per month, stated to be pre-handover amount on old investment, which was to also start from completion of 40% till valid application of occupation certificate to be paid as interest @11% p.a. (Accumulation per month).
- e. That the respondent had issued a discount/ rebate/ credit letter dated 16.04.2021, whereby the respondent had assured for the adjustment

of an amount of Rs. 43,05,000/- from the total sale consideration of the subject unit. The said amount should have been adjusted at the get go as the same was duly paid and now being only transferred from the earlier unit of the complainant in the project, "Emporis Tower" to the subject unit in "m3m heights". The same was only a transfer of amounts already paid and not any discount or rebate granted by the respondent. Vide e-mail dated 28.05.2021 Mr. Hanish Kumar (Representative of M/s. Investors Clinic) had forwarded the statement of account of the said units, which was shared with him by the staff of the respondent vide their e-mail of the same day.

- f. That vide another e-mail dated 28.05.2021 shared by the respondent's staff, the complainant was conveyed another cost sheet, whereby now the total consideration value (including IFMS & PBC) was stated as Rs. 1,23,84,200/-. The payment plan presented was;

PAYMENT PLAN

Payment within 30 days (40% of TCV)	INR
Payment on Application of OC (50% of TCV)	INR 53,81,975/-
On offer of Possession (10% of TCV + 100% IFMS & PBC)	INR 13,91,645/-
Credit Note Pre-Handover	INR 43,05,000/-
Pre-handover to start from completion of 40% till Application of OC @ 11%PA (accumulation per month)	INR 39,468/-

Pre-handover on Old Investment to start from completion of 40% till Application of OC @ 11%PA (accumulation per month)	INR 39,463/-
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- g. Therefore, what was to be paid to the complainant was an assured return amount, for every preceding English calendar month, starting from 01.05.2021 onwards, which was a recurring payment of Rs. 78,936/- per month. However, despite repeated follow-ups, personal meetings and reminders over e-mail's and call, the respondent till date has wilfully neglected to make any payment towards the same, neither any adjustment of the outstanding AR amounts has been made in the ledger of the complainant as maintained by the respondent
- h. That at the time of initial booking of the subject unit, it was promised to the complainant that the assured return amounts will be paid till the obtaining of the occupation certificate, however later the said terms same were unilaterally changed by the respondent and the documents had only captured the payment of the AR amounts only till a valid application for occupation certificate. The complainant having already invested huge sums in the subject unit as well as 3 other booked units in the same project, was constrained to accept the said unilateral change under the threat and fear of cancellation and forfeiture of paid amounts by the respondent company.
- i. That vide an e-mail dated 18.06.2021 the respondent had sought to share a revised payment plan with the complainant, whereby now the payments were to be made as :

NEW PAYMENT PLAN:- MH TW- 01 - 2005	
Within 15 days of Booking	INR 13,05,580.00/- + GST
On Application of OC	90% of TCV + GST to be completed
On offer of notice of possession	Balance Amount

- j. That shortly thereafter the respondent shared a pre-set allotment letter/ tax invoice along with a letter dated 22.06.2021 for the subject unit. That in terms of the allotment letter the total consideration value of the unit was now presented as Rs. 1,26,53,103.00/- In terms of the allotment letter the payment plan now offered to the complainant was whereby the payments were to be made as;

Name of Instalment	Instalment Amount in INR (including Tax component)
Within 5 days of Booking	10,99,999.00/-
Within 15 days of Booking (subject to signing of BBA)	2,70,859.00/-
On Application of OC	1,00,16,938.00/-
On Notice of Offer of Possession	12,65,310.00/-
Total	Rs. 1,26,53,106.00/-

- k. That, as per the payment plan offered for other charges, the complainant was to pay Rs. 1,58,329.00/- as 100% power backup charges and Rs. 1,99,452.00/- as IFMS charges at the time of notice of

offer of possession (which shall be only after obtaining the requisite occupation certificate).

- l. That after the finalization of the allotment/ booking the parties executed the agreement for sale dated 11.08.2021 for the said unit. The commitment period for completion of the entire project is defined under the buyer's agreement as, "(m) commitment period - shall mean 30.06.2024 as 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". The total sale consideration is captured in the said buyer's agreement as, "1.2 The total sale consideration for the built up apartment along with car parking space(s) as stated herein based on the Carpet Area is Rs. 1,26,53,103.00/-.
- m. That subsequently the respondent had issued letter dated 05.10.2021 whereby the certain terms and conditions were penned down, with respect to the payment plan, assured return amounts and the allotment letter. The respondent in and around November, 2021 had raised a fresh demand on the complainant, now for an amount of Rs. 52,222/- for each unit booked stated to be towards GST amount. The complainant had raised several issues and had sought clarifications with respect to the new demands being raised as all payments as per the own calculation of the respondent company were duly made earlier.
- n. That on the persistent enquiries by the complainant, Mr. Hanish Kumar (from M/s. Investors Clinic) vide his e-mail dated 20.11.2021, addressed to the respondent company and M/s. Investors Clinic, had

duly raised the said issue on behalf of the complainant. It is pertinent to state that, the fact of starting of the assured return payments for two units from 31.03.2021 and for the other two units from 01.05.2021 was duly captured vide the said e-mail. The complainant owing to the wilful neglect on the part of the respondent, was constrained to send another e-mail dated 03.08.2022, whereby the respondent was requested to provide copy of statement of account showing the demand raised for the 4 units, after adding all the amounts of assured returns for all 4 units. The complainant vide his e-mail dated 01.11.2022 had sought to clarify to the respondent that, all payment with respect to the units were cleared from his end and the demand of Rs. 52,222/- was raised later on account of fault of M3M and not of the complainant. It was clarified that the assured return for the subject unit was to start from 01.05.2021.

- o. That the respondent thereafter shared another e-mail dated 03.11.2022, thereby sharing another statement of account with the complainant. The complainant in reply to the above mail issued his reply e-mail dated 05.11.2022, whereby it was clarified that what was sought by the complainant was an updated statement after adjusting the previous payment made under PYP Scheme. It was clarified that till the said date payment details after adjustment of the previous payment. The said clarification was required in order to arrange loan through the bank. Thereafter, in response the respondent issued another e-mail dated 08.11.2022, wherein surprisingly rather than providing the requested SOA, stated that the clarification was already clarified to Mr. Hanish Palta who confirmed that he would clarify the

same to the complainant. It was shocking to note that rather than providing the updated SOA as requested the respondent by a letter of the same day, i.e. 08.11.2023 sent a pre-cancellation letter for the subject unit. The complainant yet again vide his e-mail dated 11.11.2022 had raised the issue of unpaid assured return amounts with the respondent company. Vide another e-mail of the same date the complainant has further requested the respondent company to issue the demand which he could send to the bank for all units. It was also requested to revise the assured return calculation as per the details shared with the respondent.

- p. That whilst on the one hand, the respondent had failed to pay the assured return amounts, the complainant vide its e-mail of the same date, i.e. 16.11.2022, had even agreed to make part payment of an amount of Rs. 25,00,000/- each for three units, subject to receiving the statement of accounts for the said units and a confirmation from the respondent via e-mail. Thereafter the complainant in a follow up e-mail dated 17.11.2022 had shared with the respondent the payments receipts for calculation of the assured return amounts and had again requested for payment of the same.
- q. That the complainant was yet again constrained to send another e-mail dated 22.11.2022, whereby it was duly communicated that, the balance payments were duly available with the complainant through Bank (loan) and part by self-funding. However, it was duly contented that the same would only be released once the updated demand was received, wherein the credit amount of Rs. 43,05,000/- was duly adjusted against the sale consideration along with adjustment or

payment of the Assured Return amount till the said date. It was also duly informed that the Complainant had issued 3 cheques of Rs. 25,00,000/- each for three (3) units and the same were being handed over to Mr. Hanish Palta from Ms/ Investors clinic. Since the respondent had miserably failed to complete the requirements as raised on 20.10.2022 by the complainant, it was duly apprised that as the said requirements were not met, no penalty could be imposed upon the complainant for the delay caused owing to the wrongdoings on the part of the respondent.

- r. That in response to the above E-mails the respondent thereafter vide its e-mail dated 24.11.2022, shared the fresh calculation from their end and demanded the alleged amount on immediate basis. The representative of the bank/ Financier, ICICI bank vide his E-Mail dated 01.12.2022 had requested the respondent to help in arranging certain document which were required for loan disbursal for the subject unit. The representative of the bank/ Financier, ICICI bank vide his e-mail dated 02.12.2022 had shared the sanction letter for loan allocation, and had clarified that the same was also sent through by the complainant on 23/11/2022, yet their was no action on the same by the Respondent company. It was contented the loan for the subject unit, i.e. 2005, could only be released upon receipt of certain documents by the bank, a list of which was duly shared vide the said e-mail. The said list was also communicated vide telephonic conversation and also vide e-mail dated 01.12.2022.
- s. That the complainant thereafter in response to the cancellation notice dated 24.11.2022, issued by the respondent had sent its reply to the



same vide e-mail 05.12.2022 and letter dated 05.12.2022 and intimated that, the payments were available through loan from ICICI Bank, however, the same could only be release once the updated demand was issued after mentioning/ adjusting the rebate/ discount of the amount of Rs. 43.05 Lakhs and the after updating the assured return amounts. It was further informed that three cheques of Rs. 25,00,000/- each were handed over to Mr. Hanish Palta, from Investors Clinic which was requested to handover the said cheques once the details as had been requested since 20.10.2022 was provided to the complainant. It was further clarified that in lieu of the said neither was the complainant liable to pay and delay charges nor the booking/ allotment could be cancelled.

- t. That the complainant, thereafter, vide his e-mail dated 06.12.2022 had requested the respondent company and its staff to help him in arranging certain documents in order for disbursal of the loan amount for the subject unit. The respondent thereafter issued another e-mail dated 07.12.2022, thereby arbitrarily rejecting to adjust the credit amount of Rs. 43.05 Lakhs from the current demand and to the utter shock of the complainant sent along with it a cancellation letter dated 24.11.2022 for the subject unit. It is submitted that owing to the inaction on the part of the respondent the bank officials, vide their e-mail dated 15.12.2022 and on 19.12.2022 had yet again sought confirmation from the respondent as to suggest a date for collection of the necessary documents. The Bank officials vide their another e-mail of the same date, i.e. 19.12.2022, requested the respondent to

share the copy of occupation certificate, for tower – 1 in subject project, i.e. “m3m heights”, if received.

- u. That on the same day the complainant vide another e-mail dated 19.12.2022, had yet again requested the respondent company and its staff to provide the copy of the occupation certificate application submitted by the respondent with the concerned govt. department, which was required by the complainant for the purpose of financing and re-financing of the units booked.
- v. Thus, the complainant has till date paid an amount of Rs. 1,10,72,496 against the total sale consideration as payable as on date, i.e. Rs. 13,70,858/-, which is till the stage of “Within 15 days of booking”. It is pertinent to mention that the respondent has till date despite repeated requests, abstained from sharing any application filed for occupation certificate/ completion certificate for the said tower/ unit.
- w. That to the utter shock of the complainant the respondent issued a letter dated 24.02.2023, titled as last and final opportunity, demanding a further payment of Rs. 45,58,452/-. To the utter shock and surprise of the complainant the respondent company had yet again issued a cancellation notice dated 24.02.2023. The said notice was duly replied to by the complainant through his e-mail dated 28.02.2023, whereby it was duly pointed out that the necessary documents were provide by the respondent for disbursal of loan amounts only on 24.11.2022. The payment of Rs. 10,68,000/- for the subject unit was done on 04.01.2023, thus there was no delay of the part of the complainant .It was reiterated that several requests were made for providing the copy of occupation certificate, if any, received

or copy of the application of occupation certificate if filed, however no reply was received on the said requests by the respondent company's staff.

- x. That the complainant thereafter vide his e-mail dated 14.07.2023 duly apprised the respondent that even though the respondent had raised the demand contingent to application of occupation certificate with the concerned govt. Department, however the said occupation certificate application was not visible on RERA Website, neither a copy of same was provided neither information was forthcoming whether occupation certificate, has been received or not.
- y. That despite numerous follow-ups, visits and telephonic calls the respondent and its staff has till date failed to address the issue of providing copy of occupation certificate or copy of occupation certificate if received, however the respondent and its staff has till date miserably failed to provide a copy of the same. Owing to the inaction on the part of the respondent, the complainant was constrained to write another e-mail dated 04.08.2023, raising several concerning issues with respect to his investment. It was also conveyed that the officials of ICICI bank had apprised the complainant that as the main promoter of the company was in jail they will not provide any further loans.
- z. That the respondent vide its e-mail dated 08.08.2023 had apprised the complainant that they had revoked the cancellation for the 3 units including the subject unit. The complainant thereafter vide his another e-mail dated 14.08.2023, yet raised the issue of difference in

assured return amounts with the respondent company. The respondent vide its e-mail of the same date, i.e. 14.08.2023 suggested the complainant to visit the respondent's office to look at the documents required. The respondent vide its letter dated 19.10.2023 issued its notice for offer of possession for the subject unit, i.e. 2005, tower - 1. That along with the said letter a fresh demand of Rs. 70,51,508/- was raised against the subject unit.

aa. That being constrained by the wilful neglect on the part of the respondent or its staff to act upon the numerous issues raised and requests by the complainant asking the respondent to abide by its contractual obligations, the complainant had to get issued a legal notice dated 14.09.2023 through his lawyer. That vide the said legal notice the fact of total payments made with respect to all 4 units was brought to the attention of the respondent, which was Rs. 56,85,861/- for the subject unit, without adjustment of the outstanding assured return amounts. The complainant vide the said legal notice duly brought to the notice of the respondent the non-payment of outstanding assured return amounts which were due/ outstanding from 01.05.2021. It was reiterated vide the said legal notice that the complainant was always ready to pay the balance amounts, if had become due, in respect of all 4 units, which was already communicated vide complainants E-Mail dated 03.08.2023 and other numerous e-mails.

bb. Thereafter, the complainant vide his another e-mail dated 04.11.2023, had conveyed that as per earlier e-mail dated 24.11.2022, the balance amount along with GST for the subject unit

was 12,63,663/- . It was duly pointed out that neither any details/ pictures of proof was attached of achieving the said milestones for which demands were raised and amenities as promised were currently missing. It was duly pointed out that in the recent demand letter shared, neither the credit amount was adjusted neither any payment of adjustment of the assured return amounts were made.

- cc. That the respondent to the utter shock and dismay of the complainant had sent an alleged pre-cancellation letter dated 27.11.2023 for the subject unit. It is pertinent to point out that the said alleged cancellation letter was issued despite the fact that there was a credit amount of Rs. 43.05 Lakhs which was to be adjusted and also an hefty amount of assured return which has remained unpaid had to be adjusted in the said demand, as and when it became due.
- dd. That the respondent had offered the possession for one of the units being unit no. 705, tower - 1, vide e-mail dated 29.11.2023. The complainant vide his e-mail dated 04.12.2023 had agreed to take possession of the said unit after providing copy of occupation certificate received, if any. However, to the utter shock and surprise of the complainant, the respondent vide its follow up e-mail dated 06.12.2023 now refused to hand-over possession of the unit illegally demanding the complainant to first clear dues for all units, thereby integrating all 4 units in one block deal, further, to also withdraw all legal notices, which were got sent due to the arbitrary actions of the respondent. Thus, the complainant was clearly threatened that unless he abides by the wishes of the respondent, his booking of all units and hard-earned money was in jeopardy.

ee. That till date the respondent have not given the possession of the said unit after obtaining the requisite occupation certificate. Neither paid the assured return amounts to the complainant for any unit.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s)

- a. Direct the respondent to pay the outstanding assured return amounts from the date of inception i.e 01.05.2021 till the date of actual handover of possession or service of copy of occupation certificate / valid and legal application of occupation certificate to the complainant along with the applicable interest till the actual realization of the said amount.
- b. Direct the respondent to handover possession of the subject unit after obtaining and sharing the requisite occupation certificate/ completion certificate from the concerned Govt. department.
- c. Direct the respondent to set aside the alleged pre-cancellation letter dated 27.11.2023 issued by the respondent for the subject unit.
- d. Direct the respondent to pay a sum of Rs. 5,00,000/- towards legal cost and expenses incurred in pursuing legal recourse against the respondent.

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 by the respondent

6. The respondent has contested the complaint on the following grounds.

- a. That the complainant after conducting his own due diligence and market research applied for booking of four unit through his broker M/s. Investors Clinic Infratech Pvt. Ltd. in the Project "M3M Heights" which is residential component of the mixed land use development being undertaken by respondent company in Sec 65 Gurugram. The Complainant booked 4 apartments MH TW-06-508 , MH TW-01-2005 , MH TW-01-705 and MH TW-01-1105. The present complaint relates to apartment bearing no. MH TW-01-2005.
- b. That the complainant after conducting his own due diligence and market research applied for booking of an apartment through his broker M/s. Investors Clinic Infratech Pvt. Ltd. in the Project "M3M Heights" which is residential component of the mixed land use development being undertaken by Respondent Company in Sec 65 Gurugram and paid an amount of Rs. 5,00,000/- as part booking amount towards the same. The complainant on his own free will and understanding after reading all the clauses of the application form, signed the said application form. The respondent allotted unit bearing no. MH TW-01-2005 vide allotment letter dated 02.03.2021. The cost of the unit for an area admeasuring 725.28 sq. ft. carpet area was fixed at Rs. 1,58,03,099/- plus other applicable charges.
- c. That thereafter, the respondent as per the payment plan opted by the complainant, raised the demand due within 30 days of booking vide letter dated 06.03.2021 and requested the complainant to pay an amount of Rs. 40,20,860/- on or before 31.03.2021. Since the complainant failed to clear his balance outstanding dues, the respondent company issued a reminder vide reminder letter-1 dated

- 09.04.2021 for payment of the outstanding amount immediately, to avoid further accrual of interest/penal consequences.
- d. That the respondent company vide cover letter dated 15.04.2021 sent three copies of the buyer's agreement for due execution at the complainant's end. However, for the reasons best known to the complainant, the complainant failed to return the duly executed triplicate copies of the buyer's agreement and did not come forward for the registration process. The respondent company as a goodwill gesture offered the complainant a discount/rebate of Rs. 43,05,000/- against the total consideration amount of the said unit vide letter dated 16.04.2021. It was specifically stated in the said letter that the complainant shall be entitled for the above said discount at the time of issuing the final demand of the instalments, subject to making of the payment of the instalment of the said unit in a timely manner as per the agreed payment plan.
- e. That despite issuance of the reminder letter, the complainant did not come forward to clear his outstanding dues, therefore the respondent company issued a pre-cancellation letter dated 27.04.2021 to the complainant finally calling upon the complainant to make payment of the outstanding dues, failing which the allotment shall be cancelled/terminated. In lieu of the demand letter dated 06.03.2021, the complainant made partial payment of Rs. 8,05,580/- on 01.05.2021 which was duly acknowledged by the respondent company.
- f. That the complainant continued to breach the terms of the application form/allotment despite the issuance of above-mentioned pre-

cancellation letter, therefore the respondent company issued a last and final opportunity letter dated 26.05.2021 requesting the complainant to remit payment against the pending dues. Since, the complainant failed to clear his dues, therefore the respondent company was constrained to terminate the allotment of the complainant vide cancellation letter dated 11.06.2021. Thereafter, the complainant approached the respondent and requested it to reinstate the unit. The respondent company being a customer-oriented company agreed to request of the complainant, subject to clearing all his pending dues. The complainant requested to carry forward the paid amount of Rs. 13,05,580/- in order to revive the unit. The respondent company, on the assurance given by the complainant, acceded to the said request of the complainant.

- g. That thereafter on the request of the complainant, respondent company revised the payment plan of all the four units of the complainant vide email dated 17.06.2021 and requested the complainant to give confirmation/consent on the same. That vide email dated 18.06.2021, the complainant consented to the revised payment plan of the units of the complainant. Accordingly, the previous documentation issued by the respondent company was annulled.
- h. Thereafter vide fresh allotment letter dated 21.06.2021, the complainant was allotted unit no. MH TW-01-2005 in the said project. That as per the allotment letter the cost of the unit for carpet area admeasuring 725.28 sq. ft. was Rs. 1,26,53,103/- plus other charges. It is submitted that the total consideration value of the unit in

question was reduced after the revision in the payment plan. The respondent company as per the payment plan opted by the complainant, raised the demand due within 15 days of booking vide demand letter dated 22.06.2021 and requested the respondent to pay an amount of Rs. 65,278/- on or before 05.07.2021 after adjustment of the dues.

- i. That since the complainant failed to clear his outstanding dues, the respondent company issued a reminder vide reminder letter-1 dated 07.07.2021 for payment of the outstanding amount immediately, to avoid further accrual of interest/penal consequences. Thereafter, in due course of time, the buyer's agreement was executed between the parties on 11.08.2021 and the same was duly registered.
- j. That in view of the booking and commitment to make timely payments, the respondent company vide acknowledgment letter dated 05.10.2021 offered the complainant a monthly pre-handover amount to provide the complainant the comfort of the company's commitment to deliver the unit on time. It is submitted that as per the terms of the letter, the respondent company shall allow an accumulated pre-handover amount of Rs. 39,469/- per month with effect from completion of payment of Rs. 13,05,580/- plus GST till the date of filing of application for grant of occupancy certificate. Further, company shall allow an accumulated pre-handover amount of Rs. 39,457/- per month to you, the Allottee with effect from completion of payment of Rs. 13,05,580/- plus GST till the date of filing of application for grant of occupancy certificate of the unit. The accumulated pre-handover shall be adjusted from the demand

payable on application of grant of Occupation Certificate of the unit. However, in this letter, it was made clear that the said accumulated pre-handover given shall be given to the complainant only on making the payments of the remaining instalments in a timely manner as per the payment plan opted by the complainant. It is submitted that the pre requisite for availing accumulated pre-handover was timely payment of all demands in accordance with the agreed payment plan. Thereafter the complainant made part payment of Rs. 52,222/- on 30.11.2021 towards the unit which was duly acknowledged by the respondent company vide receipt.

- k. That the respondent completed the construction of the project much prior to the agreed timeline and thus applied for the grant of Occupation Certificate on 14.10.2022. The respondent company as per the payment plan opted by the complainant, raised the demand due on application of oc vide letter dated 17.10.2022 and requested the complainant to pay an amount of Rs. 1,00,16,935/- on or before 05.11.2022. The complainant did not come forward to clear his outstanding dues against the demand raised, therefore the respondent company issued a pre-cancellation letter dated 08.11.2022 to the complainant finally calling upon the complainant to make payment of the outstanding dues, failing which the allotment/booking shall be cancelled/terminated.
- l. That even after the issuance of the above-mentioned pre-cancellation letter, the complainant failed to clear his dues and continued to breach the terms of the buyer's agreement. As a consequence of the same, the respondent company was constrained to cancel the

allotment of the complainant vide cancellation letter dated 24.11.2022 and forfeit the amount deposited as per the terms of the buyers agreement. Thereafter the complainant again approached the respondent company and again requested for reinstatement of the unit and the respondent company being a customer-oriented company acceded to the request of the complainant on the condition that the complainant would clear his outstanding dues. Despite the complainant being a defaulter, the respondent company adjusted the amount of Rs. 14,43,582/- towards accumulated pre-handover amount in terms of acknowledgment letter vide credit note to the complainant. Thereafter the complainant made part payment of Rs. 10,70,000/- on 04.01.2023 and Rs. 32,00,000/- on 12.01.2023 towards his outstanding dues which was duly acknowledged by the respondent company vide receipts dated 04.01.2023 and 17.01.2023. Accordingly, the cancellation notice dated 24.11.2022 was withdrawn by the respondent company. Since the complainant failed to make the complete payment of the pending dues, therefore the respondent company issued a last and final opportunity letter dated 24.02.2023 requesting the complainant to come forward and clear the outstanding dues.

- m. That the occupation certificate for the unit in question was granted by the competent authorities on 16.10.2023 after due verification and inspection. It is submitted that the unit was ready and the respondent company herein vide letter dated 19.10.2023 offered possession to the complainant and requested the complainant to remit the outstanding amount towards the remaining basic sale price, taxes,

cess, stamp duty charges etc on or before 17.11.2023. It is submitted that the complainant was well aware of his obligation to take possession of the unit in accordance with Section 19(10) of RERA Act, 2016, however failed to clear his dues and take possession of the unit in question. The respondent company as a goodwill gesture further gave rebate of Rs.43,05,000/- to the complainant on 31.10.2023. Since, the complainant failed to clear his dues therefore, the respondent issued pre-cancellation letter dated 27.11.2023. It is submitted that the actual amount paid by the complainant towards the unit in question is Rs.67,67,496/-. Further, the Complainant is also liable to pay holding charges and maintenance charged as per Clause 7.7.1 and 12.3 of the Buyers Agreement respectively The respondent further has credited the following amounts towards pre-handover and rebate despite the complainant defaulting in making timely payments:

I)Pre-handover amount in accordance with Clause 4 of Acknowledgment letter dated 05.10.2021 - Rs. 14,43,582/-

II)Rebate/discount as per letter dated 16.04.2021- Rs.43,05,000/-.

- n. That despite the complainant being in default of his contractual obligations, the respondent company adjusted the amount of Rs.14,43,582/- towards accumulated pre-handover amount in terms of Clause 4 of Acknowledgment letter vide credit note to the complainant. The said fact is evident from a perusal of the ledger

account statement and the relevant portion is reproduced herein below:

17/12/2022	Doc	No.:	CN		14,43,582.00
	AJCN/0005922-				
	23				

- o. That the respondent company vide letter dated 16.04.2021 offered the complainant a discount/rebate of Rs. 43,05,000/- against the total consideration amount of the said unit. It was specifically stated in the said letter that the complainant shall be entitled for the abovesaid discount at the time of issuing the final demand of the instalments, subject to making of the payment of the instalment of the said unit in a timely manner as per the agreed payment plan.
- p. That despite adverse circumstances like NGT orders, COVID 19 pandemic completed the construction of the residential component and applied for the grant of occupation certificate on 14.10.2022. The Occupation Certificate was granted by the Competent Authorities on 16.10.2023 after due verification and inspection.
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 submission made by the parties.

E. Jurisdiction of the authority

8. The application 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

9. 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

10. 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) 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.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to pay the outstanding assured return amounts from the date of inception i.e 01.05.2021 till the date of actual handover of possession or service of copy of occupation certificate / valid and legal application of occupation certificate to the complainant along with the applicable interest till the actual realization of the said amount.

12. In the present matter the complainant was allotted a unit no. MH TW-01-2005, on 20th floor, tower 1 vide allotment letter dated 22.06.2021 in the project namely M3M Heights located in sector 65, Gurugram for a total sale consideration of ₹ 1,26,53,106/-. The complainant through letter dated 05.10.2021 was promised by the respondent to pay assured return of ₹ 39,469/- Per month to you, the Allottee, with effect from completion of payment of ₹ 13,05,580/- plus GST till the date of filing of application for grant of occupancy certificate of the unit. As evident from the SOA dated 19.03.2024 the amount of ₹ 13,05,580/- was credited by the respondent on 01.06.2021 accordingly the complainant is entitled for pre handover charges of ₹ 39,469/- per month w.e.f 01.06.2021. Further the respondent raised the demand on application of occupation certificate for an amount of ₹ 1,00,16,935/- vide demand letter dated 17.10.2022. Vide proceedings dated 16.08.2024 the respondent stated at bar that the pre handover amount was to be paid till the date of filing of application of occupation certificate and they produced the copy of application of OC dated 14.10.2022. The respondent stated that the said amount of the pre-



handover of Rs. 14,43,582/- was credited to the complainant on 17.12.2022 as reflected in SOA dated 19.03.2024 at page 160 of reply. The acknowledgment of application of occupation certificate is also placed on record.

13. In the light of the aforesaid facts and reasons, the present relief stands redundant.

F.II Direct the respondent to handover possession of the subject unit after obtaining and sharing the requisite occupation certificate/ completion certificate from the concerned Govt. department.

F.III Direct the respondent to set aside the alleged pre-cancellation letter dated 27.11.2023 issued by the respondent for the subject unit.

14. In the present case the occupation certificate was obtained by the respondent on 16.10.2023 and the same is evident from the website of DTCP as well. The possession was offered by the respondent on 19.10.2023. The complainant in his complaint itself stated that he is ready to pay the balance amount. The counsel for the respondent vide proceeding dated 26.07.2024 stated that they are ready to give possession to the complainant provided the complainant clears the outstanding dues. The complainant is directed to clear the dues outstanding along with interest if any and to take possession in 60 days. Further the respondent is directed to handover peaceful possession in 60 days once dues are cleared by the complainant. The interest due if any shall be charged by respondent on equivalent rate as per section 2(za) of the Act of 2016. The respondent shall not charge anything beyond BBA. Moreover, credit rebate is already credited by respondent as per SOA filed and acknowledgement of application for OC dated 14.10.2022 and the OC was received on 16.10.2023

and the same were filed during proceedings dated 16.08.2024 hence no further directions to that effect is required.

15. As far as relief no. FIII is concerned the respondent is directed to set aside pre cancellation letter dated 27.11.2023 as the complainant has already paid an amount of ₹1,25,16,078/- out of the total sale consideration is ₹1,26,53,106/- and is willing to take possession of the subject unit.


F.IV Direct the respondent to pay a sum of Rs. 5,00,000/- towards legal cost and expenses incurred in pursuing legal recourse against the respondent.

16. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357 held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses.

G. Directions of the Authority

17. 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):
- a) The respondent is directed to handover peaceful possession in 60 days once dues are cleared by the complainant.

- b) The complainant is directed to clear the dues outstanding along with interest if any and to take possession in 60 days.
 - c) The interest due if any shall be charged by respondent on equivalent rate as per section 2(za) of the Act of 2016.
 - d) The respondent shall not charge anything beyond BBA.
18. Complaint stands disposed of.
19. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.08.2024


HARERA
GURUGRAM