

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

Complaint no. : 5152 of 2021
**Date of filing of
complaint:** 04.01.2022
Date of decision : 23.07.2024

1. Neeraj Bhagat

2. Vandana Bhagat

Both RR/o: R/o House No. B-2/2032,
Vasant Kunj, New Delhi-110070

Complainants

Versus

M/s Manglam Multiplex Pvt. Ltd.

Office: Cabin-1, LGF, F-22,
Sushant Shopping Arcade
Sushant Lok Phase-1
Gurugram - 122002, Haryana.

Also, at:

M3M Cosmopolitan
12th Floor, Golf Course Road (Extn.)
Sector - 66, Gurugram - 122002,
Haryana.

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Zohrawal Singh and Hitesh Mankant
Ms. Shriya Takkar

Counsels for Complainants
Counsel for Respondent

ORDER

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

A. Unit and project related details

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

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	08.02.2018 (At page 18 of the complaint)

8.	Unit no.	R5 LG 23, Lower Ground Floor Block-5 (Page 19 of the complaint)
9.	Unit area admeasuring (Super area) Carpet area	1120.36 sq. ft. 570.44 sq.ft. (Page 19 of the complaint)
10.	Date of builder buyer agreement	18.07.2019 (Page 36 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. (I) "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. 2,98,27,145/- (As per page no. 109 of reply)
14.	Amount paid by the complainant	Rs. 1,26,48,562/- (As alleged by the complainant)
15.	Occupation certificate	30.09.2021 (Page 105 of reply)
16.	Notice for offer of possession	25.10.2021 (Annexure R/6 at page 108 of reply)

17	Pre cancellation letter	25.11.2021 (as per page no. 111 of reply)
18.	Cancellation of provisional allotment	10.12.2021 (Page 122 of the complaint)
19	Remarks	Respondent has already refunded an amount of Rs. 99,97,342/- after forfeiting 10% of the total sale consideration.

B. Facts of the complaint

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

- I. That initially the respondent had intimated that the complainants will be allotted a commercial unit in the project "**Orange**" at Village-Maidawas and Badshahpur, Sector-65, Tehsil and District- Gurugram having super area 31035.69 Sq. Ft., Type - Retail Shop on lower ground floor Block-86. The complainants applied for the booking the unit with the respondent in their project "Orange". The respondent took the booking amount in their project "Orange" and receipt were also issued by the respondent 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-2, LG-23, Lower Ground Floor, at Village-Maidawas and Badshahpur, Sector-65, Tehsil and District- Gurugram having carpet area of 570.44 Sq. Ft. and corresponding super area 1120.36 Sq. Ft., Type - Retail Shop on lower

ground floor Block-5 (hereinafter referred to as "**Unit**"). 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 the complainants had already invested a considerable amount for the unit.

- II. That an agreement for sale dated 18.07.2019 was executed between the respondent and complainants. As per the said agreement, the total consideration for the built unit along with car parking spaces based on the carpet area was INR 2,99,28,065/-. The complainants have already paid Rs. 1,26,99,040/-. 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.5065 dated 18.07.2019 before the Registrar, Badshahpur.
- III. 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.
- IV. That the complainants received a notice dated 25.10.2021 offering possession of the commercial unit from the respondent. In the said notice it was stated that the development/construction of commercial project has been completed and the respondent has obtained occupancy

certificate (OC) for the same. As per the said notice, the complainants were advised by the respondent to clear all their dues on or before 24.11.2021 prior to taking over the possession of the unit.

- V. 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 pace 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. Thereafter the complainant(s) vide email dated 15.11.2021 raised various issues/queries, however no reply or response has been received by the complainant(s) from the respondents, except an intimidation in the form of email dated 21.11.2021 wherein it was again informed that the project has been mortgage to Piramal Housing and in the event payment is not made the respondent(s) would not be able to help in avoiding cancellation of unit and forfeiture of fund.
- VI. The complainants after failing to receive appropriate response from the respondent, got a legal notice dated 25.11.2021 issued for recall and withdrawal 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 that the offer of possession of unit was being offered without compliance of the terms of the agreement particularly that the unit was in uninhabitable condition. However, the same was left unanswered by the respondent.

- VII. 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 respondent, 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 have 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. It is vital to note here that 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 for their illegal and unjustifiable demands and usurp the hard-earned money of the complainants by malafidely threatening to cancel the allocation of the unit. Furthermore, it was for the first time informed by the respondent that they created a charge on the complainant's unit with Piramal Housing. The pre-cancellation letter indicated that if the payment is not made, they cannot help if Piramal Housing cancels the allotment. The creation of charge on the unit of the complainants is also against the terms of the agreement.
- VIII. That the complainants on receiving the pre-cancellation letter dated 25.11.2021, thereafter, 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 the complainants. Such cancellation is without following the procedure agreed between the parties as well as is against the Law.

- IX. It is further submitted that the construction of the said commercial unit is still under full swing and the residential buildings are 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 complainant's 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. It is further submitted that 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.

- X. It has come to the knowledge of the complainants that the respondents are trying to re-allot the unit in question to other parties after cancellation and therefore, the complainants have no other remedy except to approach this Hon'ble authority for redressal of the grievances.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- I. Direct the respondent to 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
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.
- i. That the complainants neither any cause of action nor any locus standi to maintain the present complaint against the respondent, especially when the complainants actually defaulted in making payment and now seeking the complete amendment/medication/re-writing of the terms

and conditions of the agreement/understanding between the parties. This is evident from the averments as well as the prayers sought in the complaint.

- ii. At the very outset, the respondent wants to bring to the kind knowledge of the Authority that the complainants has not approached the Authority with clean hands and is guilty of suppression of material facts absolutely relevant for just and proper adjudication of this complaint. The booking Form was received by the respondent company 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 complainant was allotted a commercial unit bearing No. R5 LG 23 in 'M3M 65th Avenue', a commercial component of the mixed land use development project of the respondent company, vide allotment letter dated 08.02.2018. It is submitted that 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.
- iii. 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 is marked and annexed. It is pertinent to mention that the buyer's agreement duly covers all the liabilities and

rights of both the parties. The relevant clauses of the Buyers agreement are reproduced herein below for ready reference:

"Commitment Period shall mean June, 2022 notified by the promoter of 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."

- iv. It is submitted that the complainants are chronic defaulters as they failed to make payment to the demands raised by the respondent company at various occasions even after the issuance of reminders dated 19.11.2019 and 15.05.2020. It is submitted that all the demands were raised as per the payment plan opted by the Complainants. It is submitted that the complainants were very well aware that time was of essence in making payments.
- v. That since the complainants failed to make timely payments time and again, the respondent was constrained to issue pre-cancellation notice dated 21.04.2021. However, on the request of the complainants and post the receipt of the payment by the complainants, the said pre-cancellation notice was revoked by the respondent company.
- vi. That despite the non-fulfilment of, the obligation of making timely payment, and the respondent company fulfilled its promise and had constructed the said unit of the complainants, by investing its own funds. It is pertinent to mention that the respondent has completed the construction way before the agreed timeline and applied for the OC on 30.04.2021. That the respondent has received the OC from the

- competent authorities on 30.09.2021 after due verification and inspection.
- vii. That the unit was ready, and the respondent herein vide letter dated 25.10.2021 offered possession to the complainants herein and requested the complainants to remit outstanding amount towards the remaining basic sale price, service tax cess, stamp duty charges etc. Thus, the construction of the project was complete much before the prescribed commitment period i.e. June 2022 and there is no delay in offering possession of the unit to the complainants.
- viii. 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 sent a pre-cancellation notice dated 25.11.2021 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.
- ix. That the complainants after the issuance of pre-cancellation notice dated 25.11.2021, sent a frivolous reply to the said pre-cancellation notice dated 07.12.2021 to the respondent company in order to wriggle out of their obligations including the obligation of making timely payments.

- x. 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.
- xi. That the respondent raised the demands as per the payment plan opted by the complainant. It is submitted that complainants did not make the due payments. As per clause 1.14 of the agreement, it was the obligation of the complainants to make further payment for the consideration towards the apartments as per the demands raised from time to time.
- xii. That on account of the wilful breach of the terms of the allotment and the buyer's 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. 12,648,562/- as raised by the respondent company in accordance with the payment plan and the terms of the buyer's agreement.
- xiii. That the default of the complainants in making timely payments and complying with other obligations is duly covered under buyer's agreement and the cancellation and forfeiture of the earnest money has been in accordance with the same.
- xiv. That the respondent was constrained to cancel the unit an account of non-payment of demands raised by the respondent despite sending repeated reminders. It is submitted that the respondent has incurred various losses/damages on account of the breach of the terms of

allotment and application by the complainants which the complainants are liable to pay as per the terms of agreement.

- xv. It is stated that the loss suffered by the respondent is a follow:
- a. That respondent had allotted the unit to the complainant of the price prevalent in the market on the assurance that the complainant would make timely payments and conclude the transaction. However, the complainants defaulted in making payment. The respondent kept giving the complainants an opportunity to make the payment and thus could not allot the said unit to any third party who was willing to book the unit of a higher price. The complainants have thus caused the company to incur a loss of opportunity cost and are thus liable to indemnify the respondent towards the same.
 - b. It is submitted that the complainants herein had agreed to the forfeiture of the earnest money, in the event of failure to comply with the terms of the agreement and perform their obligations.
 - c. It is stated that the respondent company has already deposited the requisite amounts towards service tax, VAT and subsequently also towards GST. It is submitted that these taxes are to be deposited by the respondent the moment the demands are raised and thus an amount of Rs. 6,05,720/- towards service tax and GST has been paid by the respondent and a loss to the said amount is borne as the same is not refundable to the respondent.

- xvi. Thus, the total loss calculated comes to Rs. 4,159,888/-(approx.) which includes earnest money deduction @10% to the tune of Rs. 31,28,439/-, taxes to the tune of Rs. 6,05,720/- and further sum of Rs. 4,25,729/- was the interest payable by the complainant for the delayed payments.
- xvii. That the present complaint has been filed with total disregard to the terms of agreement executed by the complainants. The default of the complainants in making the payments towards the amount due, amounts to default as per the agreement. The complainants, thus an attempt to avoid the consequences of the breach of the agreement have filed the present malafide complaint and thereby in essence, the quashing of the terms and conditions of the agreement. It is submitted that the respondent is acting as per the terms and conditions of the agreement executed between the parties.
- xviii. It is submitted that all the demands by the respondent is as per the schedule of payment opted by the complainant. Hence, being totally aware about the payment as per the payment plan, the complainant intentionally failed to make timely payments and therefore is a chronic defaulter and is liable to pay interest to the respondent for the delay in payment under Section 19(6) RERA which states that the complainants are responsible to make necessary payments in the manner and within time as specified in the agreement and in case of default the complainants are liable to pay interest for delay under Section 19(7) of RERA.

xix. It is submitted that vide the instant complaint, the complainants have sought for restoration of the unit. It is stated that the dispute and differences, if any, between the parties involves various questions of facts and law. The issues raised by the complainants cannot be addressed before this authority and the subject matter cannot be adjudicated without going into the facts of the case which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of this authority. The complaint is liable to be dismissed on this ground alone.

7. All other averments made in the complaint were denied in toto.
8. 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

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

11. 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.

12. 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 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.

13. 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
14. 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-86. 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-23, lower ground floor Sector-65, Tehsil and District- Gurugram having carpet area of 570.44 Sq. Ft. and corresponding super area 1120.36 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.
15. The complainants were allotted unit no R5 LG 23, Lower Ground floor in Block-5 in the project "M3M 65th Avenue" by the respondent builder for a total consideration of Rs. 2,98,27,145/- against which the complainants paid an amount of Rs. 1,26,48,562/-. 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

16. The contention of the respondent is that the complainants have defaulted in making payment with respect to allotted unit. The respondent has placed on record the reminder letters sent to complainants regarding payment of dues. The respondent issued pre-cancellation letter dated 10.12.2021 and finally cancelled the unit vide letter dated 10.12.2021.
17. On the contrary, the respondent 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. It further states that directions for non-creation of third party rights were given vide orders dated 2.3.2022 by the Authority but the same was vacated vide orders dated 31.5.2022. . The complainant preferred an appeal in the Appellate Tribunal against the orders of the authority dated 31.5.2022. The Hon'ble Tribunal vide order dated 22.7.2022 restrained it from creating third party rights quo the unit to the respondent. Later on the Ho'ble Tribunal vide its orders dated 18.1.2023 dismissed the appeal filed by the complainant being withdrawn. Further stated that the case was remanded back to the authority for fresh hearing on the directions of the Appellate Tribunal but now the complainant have filed a review application before the Appellate Tribunal but the counsel for the complainant states that the above review application is limited to the extent of review of the vacation order of the stay. Further stated that an amount of Rs. 99,97,342/- has been refunded to the complainant after forfeiting 10% of the total sale consideration.
18. 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. On the contrary, the respondent 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.

19. 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.
20. In the present complaint, the said unit was booked for a total consideration of Rs. 2,98,27,145/- against which the complainant paid an amount of Rs. 1,26,48,562/-. 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 important to note that an amount of Rs. 99,97,342/- has been refunded to the complainant after forfeiting 10% of the total sale consideration. 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.
21. The deductions from the amount refundable are to be made 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."

22. 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 @11% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) on such balance amount 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. 99,97,342/- already refunded by the respondent shall be deducted from the amount so assessed and balance amount of any shall be refunded to the complainant.

G. Directions of the authority

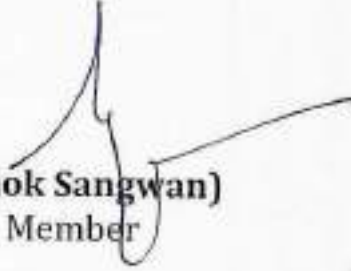
23. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the amount i.e., Rs. 1,26,48,562/- after deducting 10% of the sale consideration being earnest money along with an interest @11% 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. 99,97,342/- already refunded by the respondent shall be deducted from the amount so assessed and balance amount if any shall be refunded to the complainant.

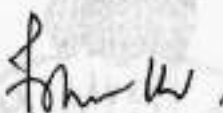
ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

24. Complaint stands disposed of.

25. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.07.2023

HARERA
GURUGRAM