

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

<b>Complaint no.</b>	<b>:</b>	<b>5019 of 2023</b>
<b>Date of complaint</b>	<b>:</b>	<b>03.11.2023</b>
<b>Date of order</b>	<b>:</b>	<b>09.10.2024</b>

Jai Prakash, S/o Sh. Lal Singh, <b>R/o:</b> Village- Hayatpur, P.O Garhi Harsaru, Gurugram.	<b>Complainant</b>
Versus	
M/s Mascot Buildcon Private Limited, <b>Having Regd. Office at:</b> 294/1, Vishwakarma Colony, Opp. Lal Kuan, New Delhi-110044. <b>Also at:</b> - Oodles Residency, R-26, Nehru Enclave, Lalkaji, New Delhi.	<b>Respondent</b>
<b>CORAM:</b>	
Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Darshan Sharma (Advocate)	Complainant
Gulshan Sharma (Advocate)	Respondent

**HARERA**  
**ORDER**  
**GURUGRAM**

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.

**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 and location of the project	"Oodles Skywalk", Sector 83, Gurugram
2.	Project area	3.03 acres
3.	Nature of the project	Commercial Colony
	DTCP license no. and other details	8 of 2013 dated 05.03.2013 Valid up to- 04.03.2017 Licensee- Dharam Singh
4.	RERA Registered/ not registered	Registered vide no. 294 of 2017 dated 13.10.2017 Valid up to- 31.12.2019
5.	Unit no.	G-2, Ground floor (page 27 of complaint)
6.	Unit area admeasuring (super area)	403.65 sq. ft. (page 27 of complaint)
7.	Allotment Letter	28.03.2014 (Page 20 of complaint)
8.	Date of execution of buyer's agreement	02.09.2015 (page 25 of complaint)
9.	Possession Clause	<b>38. The "Company" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months (refer cl. 37 above) of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction.</b>

10.	Date of start of construction	Not on record
11.	Due date of possession	02.09.2018 (Calculated as 36 months from date of execution of BBA as date of start of construction is not available on record)  (Grace period of 3 months is disallowed as no substantial evidence/document has been placed on record to corroborate that any such event, circumstances, condition has occurred which may have hampered the construction work)
12.	Sale consideration	Rs.58,32,743/- (exclusive of taxes and applicable charges) (As per BBA on page 27 of complaint)
13.	Amount paid by the complainant	Rs. 60,27,678/- (as per demand letter dated 08.11.2023)
14.	Occupation certificate	26.10.2023 (page 19 of reply)
15.	Offer of possession	08.11.2023 (page 16 of reply)
16.	Reminder letter	18.12.2023 (page 17 of reply)
17.	Cancellation letter	11.01.2024 (page 18 of reply)

**B. Facts of the complaint:**

3. The complainant vide complaint as well as through written submission dated 30.07.2024 has made the following submissions: -

- I. That the complainant was allotted a retail unit bearing number G-2 on Ground Floor having super area 403.65 sq. ft in the project of the

respondent named "Oodles Skywalk" at Sector 83, Gurugram vide allotment letter dated 28.03.2014. Thereafter, a space buyer's agreement was executed between the parties on 02.09.2015 for a total sale consideration of Rs.58,32,743/- against which the complainant has already paid a sum of Rs.60,27,678/- in all.

- II. That the possession of the unit was to be handed over by the respondent on or before December 2018 including grace period in terms of clause 38 of the agreement.
- III. That till date neither the construction work of the building is complete nor offer the possession of the unit/shop has been made by the respondent to the complainant.
- IV. That due to the acts of the above and terms and conditions of the agreement, the complainant has been unnecessarily harassed mentally as well as financially. Therefore, the respondent is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
- V. That before filing the present complaint an advance copy of the complaint to the respondent delivered as per the rule of Real Estate Regulatory Authority and after receipt of the same, the respondent intentionally and deliberately in order to harass and humiliate the complainant cancel the unit of the complainant on account of non-compliance of the demand letter dated 08.11.2023, while the complainant neither receive the demand letter dated 08.11.2023 nor letter dated 18.12.2023 and nor letter dated 11.01.2024. The complainant came to know about all these letters and illegal action taken by the respondent against the complainant only after receipt of the reply filed by the respondent to the complaint of the complainant.
- VI. That the complainant never refused to the respondent for their legitimate demand of the remaining amount but only requested them to adjust the

demanded amount from the amount of the delayed period amount, hence the act and conduct of the respondent towards the complainant is not good and now the respondent taking the advantage of their own wrongs.

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

4. The complainant has sought following relief(s):
  - a) Direct the respondent to handover possession of the unit after deducting the illegal charges and to pay delay possession charges as per the Act, 2016.
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 respondent:**

6. The respondents vide reply dated 20.03.2024 contested the complaint on the following grounds:
  - i. That the complainants, despite repeated notices for payment of due instalments/amount, has not deposited the same till date with the respondent and deliberately putting obstructions to the project.
  - ii. That due to defaults of the complainant by not paying the requisite dues on time, the respondent after sending various letters/reminders, sent a final reminder dated 18.12.2023 followed by cancellation letter dated 11.01.2024, whereby the tentative booked unit of the complainant was cancelled.
  - iii. That as per the SBA, the possession of the unit in question would be provided to the complainant 36 months from the date of signing of agreement or start of construction of the said building whichever is later + 3 months grace period subject to force majeure conditions.
  - iv. That the construction activity of the project got little delayed due to ban on construction due to orders passed by Hon'ble Supreme Court, Hon'ble

Punjab & Haryana High Court, National Green Tribunal and other authorities, non-availability of raw materials, nationwide lockdown due to COVID-19 pandemic, delay on part of government agencies in providing relevant permissions, licenses approvals and sanctions for project, non-payment of instalments by several allottees etc.

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 those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

8. 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's 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 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.

**F. Findings on the objections raised by the respondent:**

**F.I Objection regarding the project being delayed because of force majeure circumstances.**

12. The respondent-promoter has raised the contention that the construction of the project was delayed due to force majeure circumstances such as orders/restrictions of the NGT as well as competent authorities, High Court and Supreme Court orders, shortage in supply of raw material, non-payment of instalment by different allottee of the project and major spread of Covid-19 across worldwide. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 02.09.2018. Hence, events alleged by the respondent do not have any impact on the project being developed by it. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

**G. Findings on the relief sought by the complainant.**

- G.I Direct the respondent to handover possession of the unit after deducting the illegal charges and to pay delay possession charges as per the Act, 2016.**

13. The complainant was allotted a retail unit bearing number G-2 on Ground Floor having super area 403.65 sq. ft in the project of the respondent named "Oodles Skywalk" at Sector 83, Gurugram vide allotment letter dated 28.03.2014. Thereafter, a space buyer's agreement was executed between the parties on 02.09.2015 for a sale consideration of Rs.58,32,743/- (exclusive of applicable taxes and charges) against which the complainant has paid a sum of Rs.60,27,678/- in all. The respondent has submitted that it has completed the construction and development of the project and got the occupation certificate on 26.10.2023 and thereafter offered possession of the unit vide letter dated 08.11.2023, subject to payment of outstanding dues of Rs.6,52,697.95/- at the earliest. However, the complainant defaulted in making payments and the respondent has to issue reminder letter dated 18.12.2023 requesting the complainant to comply with his obligation and to clear all the dues before 31.12.2023. Despite repeated follow ups and communications, the complainant failed to act further and comply with his contractual obligations and therefore the allotment of the complainant was finally cancelled vide cancellation letter dated 11.01.2024. The counsel for the complainant has submitted that before filing the present complaint an advance copy of the complaint to the respondent delivered as per the rule of Real Estate Regulatory Authority and after receipt of the same, the respondent intentionally and deliberately in order to harass and humiliate the complainant cancel the unit of the complainant on account of non-compliance of the demand letter dated 08.11.2023, while the complainant neither receive the demand letter dated 08.11.2023 nor letter dated 18.12.2023 and nor letter dated 11.01.2024. The complainant came to know about all these letters and illegal action taken by the respondent against the complainant only after receipt of the reply filed by the respondent to the complaint of the complainant. However,



the said claim of the complainant cannot be relied upon as copies of all the documents mentioned above alongwith delivery proof has been placed on record by the respondent vide written submission dated 24.09.2024. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 11.01.2024 is valid or not.

14. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainant has paid an amount of Rs.60,27,678/- against the sale consideration of Rs.58,32,743/- (exclusive of applicable taxes and charges) and as per the payment plan agreed between the parties, 5% of the BSP+ applicable taxes and charges were payable at the time of offer of possession. The respondent/builder has obtained occupation certificate on 26.10.2023 and thereafter offered possession of the unit vide letter dated 08.11.2023, subject to payment of outstanding dues of Rs.6,52,697.95/- as per the payment plan agreed between the parties. However, the complainant defaulted in making payments and the respondent issued reminder letter dated 18.12.2023, giving last and final opportunity to the complainant to comply with his obligation to make payment of the amount due, but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 11.01.2024. The Authority observes that Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner as per. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 02.09.2015 is held to be valid. Therefore, after considering the factual as well as legal circumstances of this case, only refund can be granted to the complainant after certain deductions as prescribed under the Haryana Real

Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides as under: -

**"5. AMOUNT OF EARNEST MONEY**

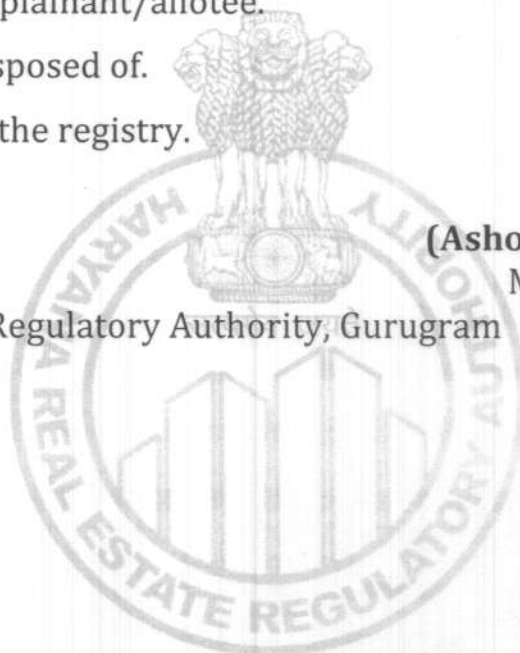
*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission 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."*

15. Keeping in view the aforesaid factual and legal provisions, the respondent is liable to refund the paid-up amount of Rs.60,27,678/- after deducting 10% of the sale consideration of Rs.58,32,743/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 11.01.2024 till actual refund of the amount. However, vide proceedings dated 09.10.2024, the counsel for the respondent/promoter along with AR Sh. B.N. Sahu stated at bar that the respondent is willing to refund of the entire amount deposited by the complainant along with interest from the date of receiving of occupation certificate i.e. 26.10.2023 till the date of order.
16. Accordingly, the respondent/promoter is directed to refund the entire amount received by it from the complainant i.e. Rs.60,27,678/- along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017

from the date of obtaining occupation certificate from the competent authority i.e. 26.10.2023 till the date of order within the timelines provided in rule 16 of the Rules, 2017.

17. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the refundable amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of complainant/allotee.
18. Complaint stands disposed of.
19. File be consigned to the registry.

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 09.10.2024



(Ashok Sangwan)  
Member

**HARERA**  
GURUGRAM