

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

**Complaint no.:** 1150 of 2022  
**Date of complaint:** 24.03.2022  
**Order pronounced on:** 12.12.2024

Ms. Purva Kapoor  
R/o:- R/o A-29/16, DLF Phase-I, Gurugram,  
Haryana-122002

**Complainant**

Versus

M/S SPLENDOR LANDBASE LIMITED  
**Regd. Office at:** - Unit No.501-511, 5<sup>th</sup> floor,  
Splendor Forum, Plot No.3,  
District Centre Jasola,  
New Delhi-110025

**Respondent**

**CORAM:**

Sh. Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Garvit Gupta (Advocate)

Sh. Ravi Agarwal (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

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**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:

Sr. No.	Particulars	Details
1.	Name of the project	Splendor Epitome, Sector-62, Gurugram
2.	Nature of project	Commercial
3.	Rera registration	22 of 2019 dated 26.03.2019 valid up to 31.12.2023
4.	Unit no.	SE-52-A
5.	Unit admeasuring	600 sq. ft. (carpet area) (as per page no. 19 of reply)
6.	Application for provisional registration of unit	05.10.2011 (page no. 30 of complaint)
7.	Date of execution of Builder buyer agreement	Not executed
8.	Due date of delivery of possession	Cannot be ascertained as no agreement was executed between the parties
9.	Basic sale price	Rs.65,55,000/- (as confirmed by parties during proceedings dated 12.12.2024)
10.	Total amount paid by the complainant	Rs. 20,17,138/- (as alleged by respondent page 20 of reply, as per the demand letter dated 20.05.2019 page 56 reply and relief of refund sought by the complainant of Rs.20,17,138/-)
11.	Demand/Reminder letters	10.12.2013, 18.01.2014, 25.04.2014, 20.05.2019 and 11.07.2019 (page 55-60 of reply)
12.	Final reminder letter	15.07.2019 (page 61 of reply)
13.	Cancellation notice	02.08.2019 (page no. 62 of reply)
14.	Legal notice by complainant for refund	09.11.2019 (page 38 of complaint)
15.	Refund Cheque issued by the respondent	02.08.2019 (Vide cheque Rs.6,31,194/- page 63 of reply)





16.	Amount paid back by the respondent to the complainant	Rs.6,31,194/- (as per page 63 of reply, on 28.12.2019 as confirmed by the complainant during proceedings dated 10.10.2024)
17.	Occupation Certificate	26.12.2018 (as recorded in CR/924/2019 disposed on 08.08.2022)

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -

- I. That the complainant is the allottee of the commercial unit bearing no. SE-52-A admeasuring super area 600 sq. ft. approximately in a commercial building project of the respondent known as "SPLENDOR EPITOME" Sector-62, Gurugram.
- II. That the respondent attracted the public by offering the project for sale and by inviting them through various means such as publishing various brochures, posters, advertisement etc. The complainant was lured by the fancy offers and advertisements, decided to purchase one of the unit in the respondent's project for her personal use.
- III. That based on the representations made by the respondent, the complainant made an application for booking a unit in the said project, which was offered at a total consideration of Rs.65,55,000/- through one of their agent M/s Neeraj & Company via agents Mr. Chetan Sachdev and Mr. Karan Pahwa.
- IV. That the complainant has made a payment of Rs. 5,00,000/- towards booking amount via cheque no. 485632 dated 10.10.2011, along with an additional amount of Rs. 4,00,000/- in cash towards allotment of the said unit. At the time of making the application, Agency i.e., M/s Neeraj & Company via agents Mr. Chetan Sachdev and Mr. Karan Pahwa, was in communication with the complainant and at the behest of Mr.Chetan an additional sum of Rs. 4,00,000/- was paid in cash as per the demand of the

respondent. At the time of accepting the application money, the respondent assured for the timely delivery of the commercial unit with specified specifications.

- V. Subsequently respondent verbally made another demand to the complainant for the payment of Rs.4,83,250/-, which was accordingly paid by the complainant by way of cheque no. 485637 on 15.10.2011.
- VI. Further, the respondent vide demand note dated 17.11.2011 demanded a sum of Rs.25,319/- which was in furtherance of the Service Tax at the rate of 2.75% of the previous payments.
- VII. That the complainant herein had made further payment of Rs.9,83,250/- to the respondent on 01.12.2011, which was duly acknowledged vide receipt dated 01.12.2011.
- VIII. That the complainant was served with an Invoice/Demand Letter Cum Service Letter number EPI/00051 dated 02.01.2012 for a net amount of Rs.50,638/- in order to clear the dues of the service tax of all the payments previously made. The complainant duly met with the aforesaid demand vide cheque dated 06.04.2012 for an amount of Rs.50,638/-, clearing all the dues of the service tax altogether. The respondent duly acknowledges the receipt of the said amount vide receipt dated 29.05.2012.
- IX. That the respondent did not send any further communication and completely disappeared after taking considerable portion of the unit consideration. There was no updates vis-a-vis the status of the project. In starting year 2011, complainant has always made timely payments as per schedule, however, respondent completely disappeared and as stated above, there was no updates etc.
- X. That the complainant has paid approximately Rs.24,17,138/- for the said unit, However, complainant after paying such a huge amount, the





respondent played clever dilatory tricks, false assurance and promises, leading to situation of uncertainty.

- XI. That the complainant has sent numerous mails as well as sent written communication, asking respondent to update the status of the construction and fate of the said project and its progress. However, the complainant did not receive any communication from the respondent company and all communications/requests/reminders fallen to deaf ears.
- XII. That the situation of uncertainty created by the respondent, complainant was compelled to issue a legal notice dated 09.11.2019 through their Advocate, demanding the amount of Rs. 24,17,138/- along with interest @ 18% p.a. from the date of payments along with a sum of Rs.12,00,000/- as damages towards, mental agony, harassment as well as loss of profits owing to the fact that the said property was bought for commercial purpose.
- XIII. That the respondent promptly responded to the aforesaid legal notice vide their reply dated 28.12.2019 alleging that they have been sending regular communications and after waiting for default of more than 5 years send demand letter dated 20.05.2019 requesting to make the payment of total outstanding amount of Rs. 29,32,206/- as per payment schedule. The abovesaid demand letter was followed by reminder letter dated 11.06.2019 and thereafter a final reminder letter dated 15.07.2019 giving last and final to make the payment of outstanding amount within a period of 15 days failing which consequential action in terms of the application/provisional allotment letter/agreement. The respondent further vide notice dated 02.08.2019 cancel the application for booking and earnest money amounting to Rs. 13,11,000/- and service tax amounting to Rs.74,944/- was adjusted forfeited against the total amount of Rs.20,17,138/- paid by the complainant and the balance amount of Rs.6,31,194/- was remitted vide cheque no. 000293 dated 02.08.2019 drawn of HDFC Bank.



- XIV. The respondent in their aforesaid reply further alleged that they are again enclosing herewith cheque no. 000368 dated 28.12.2019 for a refundable amount of Rs.6,31,194/-.
- XV. That the complainant on receiving the aforesaid reply notice, duly responded vide their rejoinder notice dated 16.01.2020, in which it was clearly stated that the respondent has sent a letter, Ref: SLL/Epitome/098 dated 5th October, 2016 on the new address of the complainant i.e., A-29/16, DLF Phase-1, Gurgaon, Haryana-122002, stating that they will keep complainant update about the progress of the project with images of the site development. The said aforementioned letter dated 05.10.2016 was duly annexed with the rejoinder reply. The complainant in the said rejoinder notice clearly stated that complainant had made sundry oral and written requests to the respondent as well as M/s Neeraj & Company" to duly inform and update complainant as to the fate of the said project and the respondent besides having the new address within their database, chose to send the various other letters including letters dated 09.10.2016, 12.10.2017 and 16.07.2018 at the old address of the complainant.
- XVI. That the complainant had no idea about the fate and future of the project and has lost a significant and considerable portion of her lifelong savings and had suffered a loss and damage in as much as they had deposited the money in the optimism of getting the said unit for commercial purposes, and complainant had not only be divested of her possession of the said unit but also deprived of the benefit of price escalation as well as the prospective return they might have received in the event they had not invested in the said project.
- XVII. The complainant in the said rejoinder reply submitted that due to non-compliance and breach of terms of the agreement by the respondent, the complainant is presenting the said cheque of Rs.6,31,194/- dated

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28.122019 for encashment without prejudice to the other claims and the same should be sternly considered as a part payment out of the originally claimed and liable amount of Rs.24,17,138/-, which amount the respondent legally responsible to pay.

- XVIII. That the complainant herein in the rejoinder legal notice called upon the respondent to refund the balance amount of Rs.17,85,944/- along with an interest @18% p.a. from the date of each payment to the actual date of realization on every installment paid along with a sum of Rs.12,00,000/- in furtherance of damages towards mental agony.
- XIX. That the complainant had subsequently came to know that the aforesaid illegal tricks and tactics by the respondent, was a ploy to deprive the original allottees of their allotted units by adopting dirty tricks so that they seek refund of their original booking amount, Whereas, fact of the matter is that the respondent has been re-selling the said allotted units to new buyers in the open market at a much higher escalated prices, which has risen to many folds in the recent past.
- XX. As per the statement of account prepared by the complainant, she has paid Rs.24,17,138/- minus the amount paid back via reply notice by the respondent as such the amount stand paid is Rs.17,85,944/-.
- XXI. That, since 2019 the complainant is contacting the respondent(s) telephonically and making efforts to get possession of the allotted commercial space but all went in vain. Despite several telephonic conversations and personal site visits by the complainant, the respondent failed to give the complete offer of possession of the commercial allotted unit/space. Also, requested to complete the project as per specifications and amenities as per BBA and Brochure, but all went in vain.
- XXII. That due to the acts of the above and the terms and conditions of the Builder Buyer 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.

XXIII. That there are clear unfair trade practices and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainant and others and is prima facie clear on the part of the respondent.

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

4. The complainant initially sought the relief of delay possession interest. However, on 21.09.2023, the complainant moved an application for amendment of the relief to refund of the paid-up amount i.e. Rs.20,17,138/- along with interest. Vide proceedings dated 12.12.2024 said application was allowed and the complainant has sought following relief(s) through amendment application:

I. Direct the respondent to refund the total paid up amount of Rs.20,17,138/-.

II. Pass an order for setting aside cancellation letter dated 02.08.2019.

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 by filing reply on the following grounds: -

i. That admittedly the booking of unit made by the complainant in subject project under reference had already been cancelled vide cancellation notice dated 02.08.2019 due to continuous and blatant defaults of the complainant in making the due payments despite giving numerous opportunities to her to make good her default and the complainant had also encashed the cheque issued to her vide the said cancellation notice



again sent to her vide reply notice dated 28.12.2019 as such the complainant has been left with no right, interest, lien, claim or concern of any nature whatsoever in respect of the said unit and any of the documents issued by the respondent in respect thereof. As such the complainant is no longer the allottee as defined in the Act, 2016 and has no locus to file the present complaint. The present complaint is liable to be dismissed on this ground alone.

- ii. That the complainant has failed to bring to the notice of the Authority that it was in fact the complainant who has repeatedly defaulted in making payment as per agreed payment plan.
- iii. That the complainant at one hand has encashed the refund cheque sent to her upon cancellation of her booking and on other hand seeks restoration of her booking which is not permissible under the law and the rules made therein and also since the complainant has never sent the signed space buyer agreement despite receiving the letters sent by the respondent, admitted by the complainant, without any reason, there is no delay in the present case and without admission the legal notice sent by the complainant at the best can be said to be request for cancellation of her booking. Thus, the refund of the amount after deduction of earnest money by the respondent was as per the terms of the allotment and the provisions of the Act and rules made therein.
- iv. That admittedly the complainant in her rejoinder notice dated 16.01.2020 had admitted having encashing the cheque of Rs.6,31,194/- sent to her upon cancellation of her unit and called upon the respondent to make the remaining payment of the alleged amount alongwith interest @18% p.a. however in the present complaint the complainant is seeking restoration of the allotment of the unit in the project in reference. The complainant cannot sail in two boats at the same time. There is not a whisper or

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request regarding restoration of allotment of said unit in the rejoinder notice dated 16.01.2020 sent by the complainant and now after a period of more than two years the complainant is seeking restoration of the unit which is not permissible.

- v. That the complaint is barred by the law of limitation also. As per the provision of Act and Rules made therein only in the case if the promoter does not have clear title over the project land only then the law of limitation does not apply but the same intention of the legislature is not reflected in any other provisions of recovery and compensation clauses of the RERA Act and rules made therein. Therefore, in the present case when the complainant slept for more than nine years and despite repeated request admittedly received by her did not bother to send the signed space buyer agreement to the respondent for more than 5 years therefore, complainant cannot seek either compensation nor refund and the complainant cannot be said to be bonafide allottee or unit buyer and the claim of complainant for refund or compensation and possession of the flat after nine years of default and inaction is clearly barred by law of limitation and also the same is barred by law of estoppel.
- vi. That because of allottee like the complainant who did not adhere to the payment plan and continuously defaulted for years after years causing serious injury and hardship to the project of the respondent and the complainant cannot be allowed to allege that merely because of his non-payment and default the same could not have affected the construction because each and every time payment from each allottee is sine qua non for development of any such project and each and every default by the allottee/unit buyer need to be seen seriously and prejudicial to the entire project and such allottee/unit buyer need to be dealt strictly by the Authority for overall development and upkeeping of the project and to



- protect the honest homebuyer who pays their all dues in time. Therefore, such defaulted allottee/unit buyer cannot be treated at the par with the allottee/unit buyer who has not even defaulted once in their payment and has followed the law and terms and condition of the agreement strictly.
- vii. That the complainant in order to mislead the Authority has falsely stated in her complaint that the project is unregistered and has falsely sought relief against the respondent for non-compliance of the registration process and violation of the law/rules/notification etc. of the Authority related to the project and its development and compliance.
- viii. That the complainant has falsely mentioned in the complaint that the construction is at infant level. The complainant who has not even bothered to sign the space buyer agreement despite repeated reminders admittedly received by her, she cannot be allowed to make any comment upon the construction stage of the said project who is responsible for any slowdown in the said project because of her default and fraud played upon the respondent for more than nine years. Had complainant being bonafide, the complainant would have sent the signed space buyer agreement to the respondent promoter and would not have filed the false complaint and would not have remain silent for more than nine year and reacted through Legal Notice when a cancellation letter was sent to her at her purported old address.
- ix. That the complainant on the one hand had alleged in the present complaint that date of execution of BBA is 31.10.2015 and on the other hand has falsely mentioned in her complaint that the due date of possession as per BBA 28.09.2014. This in itself transpires the veracity of the tall claim mad by the complainant in the present complaint. Since the complainant did not ever sign and sent the said space buyer agreement to the respondent without any reason therefore, there is no delay

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whatsoever in the present case and the cancellation of the allotment of the said unit was as per the law and rules made therein and as per the terms of the allotment letter.

- x. That the affidavit filed by complainant is also false as the complainant has mentioned in her complaint that date of filing of the present complaint is 23.02.2022 and the verification is dated 06.02.2022 and affidavit is dated March, 2022 and the vakalatnama is dated 18.02.2022. Therefore, the complainant has signed the verification much before she had engaged her advocate and also much before she has signed her affidavit thus the averment in complainant and vakalatnama filed by the complaint is false and nothing but utter abuse of process of court and the present complaint ought to be dismissed on this ground alone.
- xi. That the Act of 2016 has been made fully operational with effect from 1st of May 2017. In State of Haryana, Haryana Real Estate (Regulation and Development) Rules, 2017 came into force with effect from 28.07.2017. At this stage it is pertinent to submit that any new enactment of Laws are to be applied prospectively as held by the Hon'ble Supreme Court in umpteen no of cases, in particular, in the matter of 'CIT vs. Vatika Township (P) Ltd', it has been held that the new legislation ought not to change the character of any past transactions carried out upon the faith of the then existing law.
- xii. That it is further respectfully submitted that recently in the matter of Neel Kamal Realtor Suburban (P) Ltd. Vs. UOI &Ors. the Hon'ble High Court of Judicature at Bombay, held that the provisions of RERA are prospective in nature and not retrospectively.
- xiii. That the complainant had made booking of unit no.052A admeasuring 600 sq. ft. of super area in the commercial project titled "SPLENDOR EPITOME" at Sector -62, Golf Course Extension Road, Gurugram, comprising. The total sale consideration of the unit booked by the complainant was



Rs.72,00,000/- which is inclusive of basic sale price of Rs.61,77,000/-, PLC of Rs.3,00,000/-, EDC/IDC of Rs.2,40,000/- and EEC of Rs.30,000/-, FFC of Rs.45,000/-ARF of Rs.30,000. Service tax / GST and other taxes, levies, charges as applicable from to time as per applicable laws was payable by the complainant additionally. Against the aforesaid total sale price of Rs.72,00,000/-, the complainant had deposited Rs.20,17,138/- including Service tax of Rs.74,944/-. The complainant has as such made a false statement before the Authority that it has paid approx. Rs.24,17,138/- of the total sale price. In fact, the complainant had defaulted in making payment of the outstanding amount as per agreed construction linked payment plan since December 2012 as is evident from the various demand letters annexed by the Complainant and as admitted by her in the complaint.

- xiv. That in pursuance to the application of the complainant, the respondent sent demand letter dated 10.12.2013 to the complainant on her address B-2/5, D.L.F. Phase-1, Gurgaon-122002 to make payment of the then outstanding amount of Rs.7,99,806/- as became due on start of excavation. Since, the complainant had not made any payment after receipt of the said demand letter, the respondent sent reminder letter dated 18.01.2014 and reminder letter dated 18.01.2014 to the complainant at her address B-2/5, D.L.F. Phase-1, Gurgaon-122002 to make payment of outstanding installment of Rs.7,99,806/- as per payment plan opted by them, but the complainant failed to make any payment. On 25.04.2014 the respondent further sent a reminder letter to the complainant on her address B-2/5, D.L.F. Phase-1, Gurgaon-122002 demanding the above said amount but went in deaf ear.
- xv. That the respondent vide letter dated 14.04.2014 sent the space buyer agreement on her address B-2/5, D.L.F. Phase-1, Gurgaon-122002 and

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requested her to execute and deliver the same to the respondent but the complainant did not execute the same without any reason.

- xvi. That after approval of building plans of the said project there had been abnormal delay in receipt of statutory environment clearances from the Ministry of Environment and Forest and Haryana State Pollution Control Board and after receipt of consent to establish with lots of persuasion, the Respondent had to revise the plans of the said project to improve the circulation of main tower of the said project, parking area and better aesthetics. Further, when the application for approval of revised building plans of the said project and change of developer in respect of licenses of the said project was pending for approval with the office of Director, Town & Country Planning, Haryana, Chandigarh, all approvals/sanctions, related with the projects falling in Sector-58 to Sector 67, Gurugram were put on hold because of some Administrative orders issued by Attorney General of Haryana in pursuance of which CBI had also ceased files of the various project falling in the said sectors. This embargo had caused delay of more than one year in release of aforesaid approvals. Owing to the delay caused by this embargo, the respondent could also not avail the term loan it had got sanctioned from SIDBI to part finance the construction of the said project.
- xvii. That though the construction of the said project was going on constantly, the respondent vide letter dated 05.10.2016 sent to complainant at her addressee A-29/16-A, Block A, DLF Phase-1, Gurgaon-122002 informed the complainant about the progress of the project and again requested her to execute the space buyer agreement but the complainant despite receiving this letter dated 05.10.2016 as per her own admission never executed the said space buyer agreement without any reason.



- xviii. That the respondent vide letter dated 16.07.2018 sent to complainant at her address B-2/5, D.L.F. Phase-1, Gurgaon-122002 informed her about the development of the said project.
- xix. That the respondent after receipt of registration certificate for the said project from the Authority had sent demand letter dated 20.05.2019 to the complainant apprising her about the then construction status of the said project and requesting her to make payment of outstanding amount of Rs.29,32,206/- as per construction linked payment plan out of total receivable amount of Rs.49,49,344/- after deducting Rs.20,17,138/- already received from the complainant. It may be added here that while raising the said demand the respondent had not added any interest on the delayed payment of the previous outstanding amount. Vide said letter, the respondent had also requested the complainant to execute the agreement for sale in respect of the unit booked by him and get the same registered at the earliest. The complainant had failed to make any payment or send any response to the said letter due to which the Respondent had sent reminder letter - 1 dated 11.06.2019 to the complainant to make the payment of the aforesaid outstanding instalment of Rs.29,32,206/-.
- xx. Since the complainant had again failed to make any payment or send any response to the said letters, the respondent had sent final reminder letter dated 15.07.2019 to the complainant giving him last and final opportunity to make payment of the aforesaid outstanding amount of Rs. 29,32,206/- within a period of 15 days from the receipt of the said letter falling which it was informed that the respondent shall be constrained to take consequential action in terms of application/provisional allotment letter. Since, the complainant continued with their default and again failed to make payment of the aforesaid outstanding amount of Rs.29,32,206/- even after receipt of final reminder letter dated, the Respondent was

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constrained to cancel the booking of the said unit made by the complainant and remit the cheque of the refundable amount after deduction of earnest money and the service tax vide cancellation notice dated 02.08.2019.

xxi. That after receipt of the said cancellation notice the complainant had sent a legal notice to the respondent to the complaint raising vague, sham and concocted allegations against the respondent. The respondent vide reply notice dated 28.12.2019 had duly replied to the said notice making it clear that the issuance of the said legal notice on the basis of false and fabricated assertions has been done in utter disregard of the admitted documents and correspondences between the parties and is without any factual or legal basis. Vide the said reply it was made clear that as a consequence of the said cancellation, earnest money amounting to Rs.13,11,000/- and service tax amounting to Rs.74,944/- was adjusted / forfeited against the total amount of Rs.20,17,138/- paid by the complainant and the balance amount of Rs.6,31,194/- was remitted vide cheque no.000293 dated 02.08.2019 drawn on HDFC Bank. Vide the said notice, it was again informed that the complainant left with no right, interest, lien, claim or concern of any nature whatsoever in respect of the unit booked by her in the said project under reference and in any of the documents issued by the respondent in respect of thereof. Vide the said reply notice the complainant again sent cheque no.000368 dated 28.12.2019 for refundable amount of Rs.6,31,194/- as mentioned above, which had been duly encased by the complainant.

xxii. That the complainant has never updated to the respondent company that A-29/16-A, Block-A, D.L.F. Phase-1, Gurugram, Haryana is the only address of the complainant and the address given to respondent company at the time of booking and thereafter is no more her correspondence address.



The complainant deliberately did not update her any such addressee with the respondent to be her sole address as she did not bother to even sign the space buyer agreement and return the same and she was never interested in adhering to the payment plan as per the terms and conditions of the allotment. It is only at this stage when after giving numerous opportunities to the complainant to make good her defaults and after waiting for a substantial period, complainant did not make a single payment and kept quiet and did not even bother to update the address and kept on receiving some notices at purported new addressee and some at purported old address, respondent cancelled the booking of the said unit. Thereafter, the complainant issued a concocted legal notice raising false allegation and then demanded the refund and when respondent resent the refund amount, the complainant encashed the same and filed the present case for possession.

- xxiii. That since the complainant did not make the payment for more than 9 years and continuously defaulted in it and deliberately did not sign the space buyer agreement despite repeated requested, therefore, the complainant is not liable for any relief from the Authority.
- xxiv. That the complainant has not filed any document to show that they have ever updated the respondent that complainant has changed her address and all further correspondence shall be done at their new address. Just because one letter has been sent to purported new address of the complainant cannot be sole evidence that the complainant intended to change her correspondent address and the purported new address is the only correspondence address of the complainant.
- xxv. That the complainant has alleged to have paid cash amount of Rs.4,00,000/- without producing any evidence to that effect and this kind of false allegation clearly shows that the complainant has not approached



the Authority with clean hand but has approached the Authority only to extort money from the respondent without any basis.

- xxvi. That the complainant had chosen to remain silent about her change of address, if any, for more than nine years and only at the time when the allotment of complainant was cancelled, the complainant sent the legal notice to the respondent and when the respondent resent the refund amount of Rs.6,31,194/- through cheque along with reply notice, the complainant on one hand encashed admitting the cancellation of her booking of the said unit and now after a period of more than two years filed the present complaint for possession.
- xxvii. That the complainant has herself accepted that she has not made any payment after 2012-2013 but at same time complainant has not even uttered a word that when did she change her address and if she ever informed the company about the change of address. Merely because she has provided an alternate address for sending only one correspondence cannot be said to be communication for change of then correspondence address of the complainant for all further communication.
- xxviii. That the admission of the complainant that she was sent only one communication on her purported new address further shows that she was in continuous touch with the people of company and she knowing that all other communications are being sent to her purported old address remain kept quiet and only when the said unit was cancelled after waiting for 10 years, she sent a legal notice.
- xxix. That even for the sake of argument if the allegation of the complainant is admitted to be true then also, she after receiving such communication as admitted by her did not send the signed copy of space buyer agreement to the company and kept the same without any reason and to misguide the Authority mentioned execution of agreement on 30.10.2015. Thus, when





the complainant herself did not comply with the basic requirement of RERA Act to sign the said space buyer agreement despite number of communications admittedly received by her, she is not entitled for any relief from the Authority and the cancellation of the allotment of said unit of the complainant was justified and as per the law and rules made therein.

xxx. That the complainant has falsely mentioned that complainant has paid Rs.24,17,138/- to the respondent company and the complainant need to be put to the strict proof of the same. The question of any restoration of allotment of unit or payment of delay possession charges as sought by the complainant does not arise since the complainant himself is a defaulter and also not entitled to any relief in view of the provisions of Section 51 of the Indian Contract Act. It is clear that since the complainant was unable to continue with the allotment of the said unit and wanted to evade making payment towards the said unit, they have filed the present complaint. Therefore, the Authority ought to dismiss the present complaint on this ground alone.

7. All other averments made by the complainant were denied in toto.

**E. Written Submission filed by complainant.**

8. The complainant filed written submissions on 09.12.2024 and made following submissions:

- a) That the complainant booked a unit in the project of the Respondent namely 'Splendor Epitome' situated at Sector-62, Gurugram vide the booking application form dated 05.10.2011 and Unit no. SE-52-A was allotted in favour of the complainant.
- b) That the respondent failed to send the copy of the agreement and the same was never executed between the complainant and the respondent. Also, the respondent failed to send update on the status of the completion

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of the project despite the numerous reminders sent by the complainant requesting the respondent to do the needful.

- c) Furthermore, even if the unsigned agreement dated 11.04.2014 is to be taken into consideration, as per Clause 9.2 of the said unsigned agreement, the due date of handing over of possession lapsed on 11.04.2018, calculated as 48 months from the date of execution of agreement.
- d) That the complainant had made total payment of Rs.24,17,138/- (without cash component, the payment made was Rs.20,17,138/-).
- e) That the subject unit was cancelled vide cancellation letter dated 02.08.2019. The address of the complainant was changed in the year 2013, from B-2/5, DLF Phase-I, Gurugram to A-29/16, DLF Phase- 1, Gurugram.
- f) All demand notices and reminders have been sent to the earlier address and not at the new address. Hence, payment demands and reminders were never received by the complainant.
- g) That the respondent was aware of the new address is evident from the letter dated 17.12.2015, letter dated 05.10.2016 and reply to the legal notice dated 28.12.2019 issued by the respondent.
- h) Further, at the time of cancellation, the respondent paid the amount of Rs6,31,194/- and Cheque was sent to the new address. The respondent had itself admitted that there was a delay on its part vide its letter dated 17.12.2015. On account of delay, the complainant had vide legal notice dated 09.11.2019 had sought refund of the amount paid along with interest.
- i) That the said cancellation letter and the demands or the reminders were never received by the complainant. The complainant sent a letter 16.01.2020 and pointed out that the respondent had earlier sent letter



dated 05.10.2016 to the complainant on the old address and yet have failed to send the reminders and cancellation letter at the new address. The complainant had also sought refund of the balance amount. Amount of Rs.6,31,194/- encashed only as part-payment and the same was informed in Para 11 of the Legal notice sent by the complainant.

**F. Written Submission filed by respondent.**

9. The respondent filed written submissions on 18.04.2024 and made following submissions:

- a) That the complainant paid an amount of Rs.20,17,138/- including service tax of Rs.74,944/- against the total sale price of Rs.72,90,000/- till December 2012 and thereafter did not make any further payment despite sending several reminders and demand letters with request to execute the buyer's agreement/agreement for sale and get the same registered.
- b) That the complainant despite above said several requests neither made the payment after December 2012 nor executed space buyer agreement/agreement for sale. Complainants had not made a single payment towards all such demands since the year 2013-2014 upto 2019.
- c) After issuance of final reminder letter dated 15.07.2019, the respondent cancelled the subject unit vide cancellation notice dated 02.08.2019 and further sent a cheque dated 02.08.2019 of Rs.6,31,194/- towards the refundable amount after forfeiture of earnest money and service tax in terms of the application for allotment read with letter dated 14.04.2014, which was duly received by the complainant.
- d) The complainant thereafter sent a legal notice to the respondent and letters dated 05.10.2016 and 16.07.2018 whereby the respondent has updated the status of the project in question to the complainant.
- e) That the respondent sent a reply dated 28.12.2019 along with a fresh cheque dated 28.12.2019 of Rs.6,31,194/- towards the balance amount

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after adjusting/forfeiting the earnest money and service tax vide above said cancellation letter dated 02.08.2019.

- f) That the complainant encashed the said cheque dated 28.12.2019 of Rs.6,31,194/- and filed the present complaint for restoration of allotment of the above said commercial space and later complainant instead of withdrawing the said complaint filed an application dated 21.09.2023 for amendment of relief sought claiming the refund of Rs.20,17,138/- with interest by setting aside cancellation letter dated 02.08.2019. Also, the complainant has encashed the balance amount sent to her after deducting earnest money in the year 2019 itself therefore nothing remains to be paid to the complainant.
- g) That the complainant has never updated to the respondent company that A-29/16-A, Block-A, D.L.F. Phase-1, Gurugram, Haryana is the only address of the complainant and the address given to respondent at the time of booking and thereafter is no more her correspondence address. The complainant deliberately did not update her any such address with the respondent to be her sole address. The complainant did not make a single payment and kept quiet and did not even bother to update the address and kept on receiving one letter at purported new address and some at old address therefore, the respondent cancelled the booking of the said unit.
- h) Moreover, the complainant has not filed any document to show that she had ever updated the respondent that complainant has changed her address and all further correspondence shall be done at their new address. Just because one letter has been sent to purported new address of the complainant cannot be sole evidence that the complainant intended to change her correspondent address.
- i) That the complainant had chosen to remain silent about her change of address, if any, for more than nine years and only at the time when the



allotment of complainant was cancelled, the complainant sent the legal notice to the respondent and when the respondent resent the refund amount of Rs.6,31,194/- through cheque along with reply notice, the complainant on one hand encashed admitting the cancellation of her booking of the said unit and after a period of more than two years filed the present complaint.

- j) That the complainant has herself accepted that she has not made any payment after 2012-2013 but at same time complainant has not even uttered a word that when did she change her address and if she ever informed the respondent about the change of address.
- k) That the admission of the complainant that she was sent only one communication on her purported new address further shows that she was in continuous touch with the people of company and she knowing that all other communications are being sent to her purported old address remain kept quiet and only when the said unit was cancelled after waiting for six year, she sent a legal notice.

10. 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 those undisputed documents and oral as well as written submissions made by the parties.

**G. Objection raised by respondent.**

**G.I Objection w.r.t signing of vakalatnama, affidavit and averments being false.**

11. The respondent submitted that the instant complaint was filed on 23.02.2022, while the verification is dated 06.02.2022, the affidavit is dated March 2022, and the vakalatnama is dated 18.02.2022. Based on these dates, the respondent contended that the complaint is false and constitutes an abuse of the process of the court, as the complainant signed the verification before engaging an advocate and also before signing the affidavit.

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12. Upon perusal of the documents on record, the Authority observes that the complaint was, in fact, filed on 24.03.2022. The affidavit filed alongside the complaint is dated March 2022, and the vakalatnama is dated 18.02.2022. Therefore, the Authority finds no inconsistency or error in the complainant's filings, as the complaint was filed after the execution of the vakalatnama by the complainant. Accordingly, the objection raised by the respondent is dismissed being devoid of merit, and the averments made by the respondent are found to be false.

**H. Jurisdiction of the authority.**

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

**H.I Territorial jurisdiction**

14. 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.

**H.II Subject matter jurisdiction**

15. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11.....(4) 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.*

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16. 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.

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

**I.I Direct the respondent to refund the amount paid by the complainants along with interest.**

**I.II Pass an order for setting aside cancellation letter dated 02.08.2019.**

17. The abovementioned reliefs are dealt together as being interconnected.

18. The complainant vide application for provisional registration of unit dated 05.10.2011 applied for a commercial space in the project of the respondent. Thereafter, a unit no. 52-A admeasuring 600 sq. ft. was allotted to the complainant in the project "Splendor Epitome" situated at Sector-62, Gurugram. Same is evident from the demand note dated 17.11.2011 issued by the respondent. The complainant has paid Rs.20,17,138/- against the subject unit.

19. The complainant through instant complaint submitted that she tried to contact the respondent through various means asking status update of the construction of the project. However, the respondent never gave any response to her. Therefore, the complainant sent a legal notice dated 09.11.2019 demanding the paid-up amount along with interest.

20. On the other hand, respondent submitted that complainant has only paid an amount of Rs.20,17,138/- against the total sale consideration of Rs.72,00,000/- and several reminder and demand notices were sent by the respondent to the complainant on her address i.e. B-2/5, DLF Phase-1, Gurugram. Also, a letter dated 14.04.2014 was sent to the complainant for execution of space buyers' agreement but the complainant did not execute the said agreement. Subsequently, a final reminder letter dated 15.07.2019 was



sent to the complainant giving last opportunity to pay the outstanding dues amounting to Rs.29,32,206/-, following which a cancellation letter dated 02.08.2019 was sent to the complainant.

21. On consideration of documents available on record and submissions made by both the parties the Authority is of view that on the basis of provisions of the allotment, the complainants were allotted above mentioned unit for a sale consideration of Rs.72,90,000/- as apprised by the AR of the respondent during proceedings dated 12.12.2024. The complainant paid a sum of Rs.20,17,138/- to the respondent against the allotted unit. However, no BBA was executed in this regard.
22. The complainant, through her written submissions, has raised a contention regarding the demand letters and payment reminders being not sent to her updated address, i.e., A-29/16, DLF Phase-I, Gurugram. She submitted that she never received any payment reminders or demand letters at this new address. However, two letters dated 17.12.2015 and 05.10.2016 were sent by the respondent to her updated address, i.e., A-29/16, DLF Phase-I, Gurugram. On the other hand, respondent submitted that the complainant has never updated to the respondent that A-29/16-A, Block-A, D.L.F. Phase-1, Gurugram, Haryana is the only address of the complainant and the old address is no more her correspondence address.
23. Upon examining the documents submitted by both parties, the Authority observes that the complainant's application for provisional registration of the unit, dated 05.10.2011, mentioned her address as B-2/5, DLF Phase-I, Gurugram. All payment and demand letters were issued by the respondent to this address. Furthermore, after submitting the application for provisional registration on 05.10.2011, the complainant made payments up to 2012. However, she has failed to provide any evidence of communication informing the respondent about the change in her address or inquiring about the status

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- of the project before 09.11.2019, when she requested a refund of the amount paid after a gap of eight years from the date of the application.
24. As per the cancellation letter dated 02.08.2019 annexed on page 62 of reply, the earnest money deposit and service tax stand forfeited against the amount of Rs.20,17,138/- paid by the complainant. Upon perusal of documents on record, various reminders were sent by the respondent to the complainant before cancelling the unit to clear the outstanding dues and to execute the space buyer agreement but neither the complainant paid the outstanding dues nor, executed the buyer agreement. The respondent sent a cancellation letter on 02.08.2019 due to non-payment. It is observed that as per Section 19(6) & (7) of the Act, 2016, the allottee was under an obligation to make timely payment as per the payment plan towards consideration of the allotted unit. The respondent sent demand/reminder letters on 10.12.2013, 18.01.2014, 25.04.2014, 20.05.2019 and 11.07.2019 to the complainant regarding the outstanding dues for the subject unit. However, the complainant did not pay the outstanding dues.
25. In view of the above findings the Authority observes that the complainant is not entitled for setting aside of cancellation letter being the relief sought. As, the subject unit of the complainant was cancelled by the respondent after issuing proper reminders. Therefore, the cancellation letter dated 02.08.2019 is hereby held to be valid in the eyes of law.
26. It is also pertinent to note that an amount of Rs.6,31,194/- has already been refunded by the respondent to the complainant after cancellation of the subject unit and same has been confirmed by the both the parties through the written submissions filed by them respectively.
27. However, the issue with regard to deduction of earnest money on cancellation of a contract arose 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*

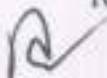


136, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, 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 a 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"*

28. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. Thus, keeping in view the aforesaid factual and legal provisions the respondent is directed to refund the paid-up amount of Rs.20,17,138/- after deducting the earnest money which shall not exceed the






10% of the sale consideration. The amount already refunded by the respondent shall be adjusted from the refundable amount and shall return the balance amount to the complainant along with interest at the rate of 11.10% (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 cancellation letter i.e. 02.08.2019 till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

**J. Directions of the Authority.**

29. 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 is directed to refund the paid-up amount i.e. Rs.20,17,138/- to the complainant after deducting 10% of the sale consideration being earnest money and after adjustment of amount already refunded along with interest at the rate of 11.10% p.a. on such balance amount from the date of cancellation i.e. 02.08.2019 till its realization.
  - II. A period of 90 days is given to the respondent to comply with the direction given in this order and failing which legal consequences would follow.
30. Complaint stands disposed of.  
31. File be consigned to registry.

**Dated: 12.12.2024**

  
**Vijay Kumar Goyal**  
**Member**  
(Haryana Real Estate Regulatory  
Authority, Gurugram)