

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

<b>Date of Order:</b>	<b>27.02.2025</b>
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NAME OF THE BUILDER		MANISH BUILDWELL PRIVATE LIMITED	
PROJECT NAME		"GALLEXIE 91"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1163/2024	Ram Karan Chorasiya V/S Manish Buildwell Private Limited	Ms. Ankur Berry Advocate Ms. Priyanka Agarwal Advocate
2.	CR/1164/2024	Ambalika Chitkara & Saryu Chaudhary V/S Imperia Wishfield Private Limited	Ms. Ankur Berry Advocate Ms. Priyanka Agarwal Advocate
3.	CR/1165/2024	Bishambar Dayal V/S Manish Buildwell Private Limited	Ms. Ankur Berry Advocate Ms. Priyanka Agarwal Advocate
4.	CR/1167/2024	Pushpa Chorasiya V/S Manish Buildwell Private Limited	Ms. Ankur Berry Advocate Ms. Priyanka Agarwal Advocate
5.	CR/1173/2024	Ram Niwas V/S Manish Buildwell Private Limited	Ms. Ankur Berry Advocate Ms. Priyanka Agarwal Advocate

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**ORDER**

1. This order shall dispose of all the 5 complaints titled as above filed before this authority 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 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.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Gallexie 91" (Commercial colony) being developed by the same respondent/promoter i.e., Manish Buildwell Private Limited. The terms and conditions of the application for the provisional allotment, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the paid-up amount along with interest.
3. The details of the complaints, reply to status, unit no., date of agreement, due date of possession, total sale consideration, total paid amount, surrender request of the unit by email and relief sought are given in the table below:

Project Name and Location		Manish Buildwell Private Limited at "Gallexie 91" situated in Sector- 91, Gurugram.			
Occupation certificate: - Not received					
Complaint No. & Case Title	CR/1163/2024 Ram Karan Chorasiya V/S Manish Buildwell Private Limited	CR/1164/2024 Bishambar Dayal V/S Manish Buildwell Private Limited	CR/1165/2024 Pushpa Chorasiya V/S Manish Buildwell Private Limited	CR/1167/2024 Manju Devi V/S Manish Buildwell Private Limited	CR/1173/2024 Ram Niwas V/S Manish Buildwell Private Limited
Reply status	26.09.2024	26.09.2024	26.09.2024	26.09.2024	26.09.2024
Unit no.	F-222 A (As per page no. 23 of the	F-211 (As per page no. 23 of the	F-221 B (As per page no. 18 of the	F-184 (As per page no. 23 of the	F-189 (As per page no. 23 of the

	complaint)	complaint)	complaint)	complaint)	complaint)
<b>Area admeasuring</b>	327 sq. ft. (super area) & 163.5 sq. ft. (carpet area) (As per page no. 23 of the complaint)	324sq. ft. (super area) & 162 sq. ft. (carpet area) (As per page no. 23 of the complaint)	327 sq. ft. (super area) & 163.5 sq. ft. (carpet area) (As per page no. 18 of the complaint)	314 sq. ft. (super area) & 157 sq. ft. (carpet area) (As per page no. 23 of the complaint)	325 sq. ft. (super area) & 162.5 sq. ft. (carpet area) (As per page no. 23 of the complaint)
<b>Application for provisional allotment</b>	20.08.2023 (Page no. 16 of the complaint)	20.08.2023 (Page no. 16 of the complaint)	20.08.2023 (Page no. 16 of the complaint)	20.08.2023 (Page no. 16 of the complaint)	20.08.2023 (Page no. 16 of the complaint)
<b>Allotment letter</b>	Not issued	Not issued	Not issued	Not issued	Not issued
<b>Date of builder buyer's agreement</b>	Not executed	Not executed	Not executed	Not executed	Not executed
<b>Due date of handing over of possession</b>	Not specified	Not specified	Not specified	Not specified	Not specified
<b>Offer of possession</b>	Not offered	Not offered	Not offered	Not offered	Not offered
<b>Total Consideration / Total Amount paid by the complainant(s)</b>	TSC: Rs.51,86,200/- (As per page no. 23 of the complaint) AP: Rs.5,00,000/- (As per demand letter dated 12.03.2024 on page no. 47 of the complaint)	TSC: Rs.51,38,640/- (As per page no. 23 of the complaint) AP: Rs.5,00,000/- (As per bank details of the complainant dated 22.10.2022 on page no. 44 of the complaint)	TSC: Rs.51,86,200/- (As per page no. 18 of the complaint) AP: Rs.5,00,000/- (As per bank details of the complainant dated 13.02.2024 on page no. 40 of the complaint)	TSC: Rs.49,80,040/- (As per page no. 23 of the complaint) AP: Rs.5,00,000/- (As per bank details of the complainant dated 02.10.2022 on page no. 44 of the complaint)	TSC: Rs.51,54,500/- (As per page no. 23 of the complaint) AP: Rs.5,00,000/- (As per page no. 44 of the complaint)

Surrender request by e-mail	12.03.2024 (As per page no. 46 of the complaint)	12.03.2024 (As per page no. 45 of the complaint)	12.03.2024 (As per page no. 41 of the complaint)	12.03.2024 (As per page no. 45 of the complaint)	25.12.2023 (As per page no. 45 of the complaint)
<b>The complainant in the above complaint(s) has sought the following reliefs:</b>					
1. Direct the respondent company to refund the amount of Rs.5,00,000/- at the prescribed rate of interest.					
<b>Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:</b>					
<b>Abbreviation Full form</b>					
TSC Total Sale consideration					
AP Amount paid by the allottee(s)					

4. The aforesaid complaints were filed by the complainant against the promoter on account of violation of provisional allotment against the allotment of units in the project of the respondent/builder for not issuing any allotment letter nor executing any BBA and are seeking refund of the amount paid along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant/allottee are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1163/2024 titled as Ram Karan Chorasiya V/S Manish Buildwell Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua refund of the amount paid.

#### **A. Unit and project related details**

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

S. No.	Particulars	Details
1.	Name and location of the project	"Gallexie 91", Sector-91, Village Mewka, Gurugram
2.	Nature of the project	Commercial colony
3.	Project area	3.725 acres
4.	DTCP license no.	28 of 2009 dated 24.06.2009 valid up to 23.06.2017
5.	Name of licensee	Manish Buildwell Private Limited
6.	RERA Registered/ not registered (Lapsed Project)	382 of 2017 dated 12.12.2017 valid up to 11.12.2022
7.	Unit no.	F-222 A & First floor (As per page no. 23 of the complaint)
8.	Unit area admeasuring	327 sq. ft. (Super area) & 163.5 sq. ft. (carpet area) (As per page no. 23 of the complaint)
9.	Application for provisional allotment	20.08.2023 (As per page no. 16 of the complaint)
10.	Allotment letter	Not issued
11.	Date of buyer's agreement	Not executed
12.	Possession clause	N.A
13.	Due date of possession	<b>Not specified</b>
14.	Total sale consideration	Rs.51,86,200/- (As per page no. 23 of the complaint)
15.	Amount paid by the complainant	Rs.5,00,000/- (As per demand letter dated 12.03.2024 on page no. 47 of the complaint)
16.	Occupation Certificate	Not obtained
17.	Offer of possession	Not offered
18.	Surrender request by e-mail	12.03.2024 (As per page no. 46 of the complaint)

**B. Facts of the complaint:**

8. The complainant has made the following submissions in the complaint:

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- I. That the complainant, Ram Karan Chorasiya is a peace loving and law-abiding citizen of India, who has been running from pillar to post since booking commercial unit in the project namely "Gallaxie 91" situated in Sector-91, Gurugram.
- II. That the complainant was approached by the representatives of the respondent and prompted to invest his hard-earned money in the commercial project of the respondent. The representatives of the respondent painted a rosy picture of the project and informed the complainant that the commercial project offered ultra-luxurious uniquely designed high street retail shops and spacious food court at reasonable prices. They informed the complainant that all licenses and approvals of the project were in place and the project was duly RERA registered. The complainant believing the words of the representatives of the respondent filled the application form and paid Rs.5,00,000/- vide cheque dated 17.08.2023.
- III. That thereafter the unit no. F-222A on first floor of super area 327 sq. ft. was allotted to the complainant and the respondent promised that buyer's agreement would be executed at the earliest.
- IV. That after waiting for many months the complainant seeing that respondent failed to proceed further with the booking, the complainant sent email dated 12.03.2024 for surrender of the unit and refund of booking amount. However, the respondent immediately sent a demand letter on account of installment due within 30 days of booking i.e., by 20.09.2023.
- V. That the complainant repeatedly visited the office of the respondent requesting for signing of the BBA or for refund as he could smell something fishy about the way the respondent company conducted its

affairs and by seeing that no construction activity is being done at the project site.

- VI. That the respondent intended to cheat from the very beginning since even at the time of booking and allotment of the complainant stated that the project had all the necessary approvals and plans however upon checking the RERA website the complainant became aware that the project's registration has lapsed and the RERA Registration no. 382 of 2017 was only valid till 11.12.2022.
- VII. That till date the complainant has paid an amount of Rs.5,00,000/- to the respondent however the fact that the whole project is a sham and scheme to cheat innocent buyers, the complainant has no option but to get refund of his hard earned money.
- VIII. That the complainant is being stone walled by the respondent and its representatives and hence have come before the Hon'ble Authority requesting and praying to get refund along with interest from the date of deposit till the date of realisation.
- IX. That the cause of action for filing the present complaint is a subsisting and continuing one as the respondent company has committed gross breach of their obligations.
- X. That no other complaint or legal proceedings are pending before any court of law or forum between the parties.

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

9. The complainant has sought following relief(s):
  - i. Direct the respondent company to refund the amount of Rs 5,00,000/- at the prescribed rate of interest.
10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been

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committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent:**

11. The respondent has contested the complaint on the following grounds:

- I. That the present complaint filed by the complainant is wholly misconceived, erroneous, unjustified and untenable in the eyes of law. Besides being hasty, ulterior and extraneous, the present complaint have been filed in order to unlawfully gain at the expense of the respondent. Furthermore, it is submitted that the averments surfaced in the present complaint are denied for being false and misleading except to the extent specifically admitted herein or are in consonance with the submissions made hereunder.
- II. That this Hon'ble Authority does not have jurisdiction to entertain the present matter as it arises out of the alleged breach of terms of the application form dated 20.08.2023, thus, the said application form constitutes the foremost basis of relationship between the parties, both the parties are bound by the terms and conditions of the same.
- III. That clause 46 & 47 of the said application form, specifically states that in case of any disputes arising out of the said agreement shall be resolved through the process of arbitration governed by the provisions of the Arbitration & Conciliation Act, barring the jurisdiction of this Hon'ble Authority. The Hon'ble Supreme Court through its plethora of judgments, has time and again reiterated that the existence of a valid arbitration clause in the agreement barres the interference of the civil courts in the disputes arising out of the said agreement. Thus, the present case is liable to be dismissed on this ground itself that it lacks jurisdiction.



- IV. That the complainant approached the respondent and booked the unit in August, 2023 and received the allotment unit no. F-222A, in Tower "F", super area admeasuring 327 Sq. ft. in the project Manish Gallaxie 91, situated at revenue estate of Village Maneka, Sector 91, Manesar Urban Complex, Gurugram, Haryana. The complainant signed the application form on dated 17.08.2023 and as per the application form, the total sale consideration of the said unit was Rs. 51,86,200/- inclusive of BSP @27,000/sq. ft., EDC, IDC, IFMS and other charges, excluding taxes. The terms and conditions for the sale of the said unit and total sale consideration and payment mile stones were decided by the both parties as per application form.
- V. That the respondent company has duly renewed the license and has applied for further renewal of license and has also applied for extension of the project registration and has paid the requisite fee, which is pending before this Hon'ble Authority.
- VI. That the complainant has paid only a sum of Rs.5,00,000/- till date as admitted by the complainant in his complaint. Till date, the complainant has only paid a sum of Rs.5,00,000/- which is less than even 10% of the total sale consideration of the unit in question. It is submitted that the provisions of the Act of 2016 puts a bar on the promoter/developer, not to accept the payment of more than 10% of the total cost without executing any written agreement for sale.
- VII. That the respondent company has not violated any provisions of the Act, as the respondent company has only received a sum of Rs.5,00,000/- from the complainant till date, which is less than 10% of the total cost of the unit in question.

- VIII. That the respondent being a customer centric company, is still willing to retain the complainant as its allottee however, as per the complainant's own admission, in email dated 12.03.2024, it is the complainant's own wish to withdraw from the project, and thus, if the complainant still wished to withdraw from the project, then the respondent company is entitled to forfeit the booking amount (which is less than 10% of the total sale consideration) as earnest money, in accordance with terms of the application form clause 16 & 18, as per which, the respondent company is entitled to deduct 10% of the total sale consideration and any taxes, statutory fees, brokerage etc. if any paid by the respondent. It is clearly mentioned in clause 18 of the application form that in event of cancellation of the unit under any circumstance(s), by the applicant, the promoter shall have the right to forfeit the earnest money.
- IX. That the timelines for possession are based on date of statutory approvals. It was not in the contemplation of the respondent that the force majeure would occur and the construction was also affected on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority. It is submitted that vide its order Hon'ble NGT placed sudden ban on the entry of diesel trucks which were older than ten years and said that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban it took some time for mobilization of the work by various agencies employed with the respondent.

- X. Furthermore, the construction of project was halted on several times in direction of NGT and Environment Pollution (Prevention and Control) Authority, EPCA, expressing alarm on severe air pollution level in Delhi-NCR issued press note vide which the construction activities were banned within the Delhi-NCR region. The ban commenced from 08.11.2016 till 16.11.2016 and also from 09.11.2017 to 17.11.2017 & again from 31.10.2018 to 10.11.2018 whereas the same was further extended till 12.11.2018.
- XI. That thereafter, the Hon'ble Supreme Court of India on 04.11.2019, while deciding the matter of "**M.C. Mehta v. Union of India**" banned all the construction activities. The said ban was partially lifted by the Hon'ble Supreme Court on 09/12/2019 whereby relaxation was accorded to the builders for continuing the construction activities from 6:00 am to 6:00 pm. Thereafter, the complete ban was lifted by the Hon'ble Apex Court on 14.02.2020.
- XII. That the construction of the project was going on in full swing, however, the changed norms for water usage, not permitting construction after sunset, not allowing sand quarrying in Faridabad area, shortage of labour and construction material, liquidity etc., were the reasons for delay in construction. Furthermore, it is to be noted that due to the sudden outbreak of the COVID-19, the construction came to a halt in the past 2 years and it took some time to get the labour mobilized at the site.
12. 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 submissions made by the parties.



**E. Jurisdiction of the authority:**

13. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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**

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.*

14. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of

obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

15. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.* "SCC Online SC 1044 decided on 11.11.2021 and followed in *M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020* decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

16. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

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

- F.1 Objection regarding application for provisional allotment contains an arbitration clause which refers to the dispute resolution system mentioned in application.

17. The application for provisional allotment dated 20.08.2023 contains clauses 46 & 47 relating to dispute resolution between the parties. The contents of clause 46 & 47 of the application form are reproduced herein under:

*"46. Any dispute arising out of or touching upon or in relation to the terms of this Application and/or the Agreement including the interpretation and validity of the terms and conditions thereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussion. In case the parties are unable to settle their disputes within 15 days, the same shall be settled through arbitration as per the Arbitration and Conciliation Act, 1996, or any statutory amendments/modifications thereof for the time being in force, by a sole arbitrator selected from the names of two arbitrators suggested by the Promoter. In case the first party delays/ neglects/refuses to select one of the names from the suggested names within 15 days of intimation, the Promoter shall be at liberty to appoint one of the proposed persons as a sole arbitrator, whose appointment shall be final and binding on the parties. Costs of arbitration shall be shared equally by the parties. The arbitration shall be held in English language at an appropriate location in Gurgaon, Haryana.*

*47. The District Courts at Gurgaon, Haryana and/or Punjab and Haryana High Court, to the exclusion of all other courts in India shall alone have exclusive jurisdiction in all matters arising out of, touching and/or concerning this Application and the arbitration proceedings thereunder."*

**(Emphasis Supplied)**

18. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the application for provisional allotment as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it

has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the any agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

19. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer.
20. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainant is well within his right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

**F.II Objection regarding delay due to force majeure conditions:**

21. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as certain environment restrictions, weather conditions in NCR region, shortage of labour, increase in cost of construction material and major spread of Covid-19 across worldwide. The respondent further raised the contention that other factors like govt. schemes and non-payment of instalment by different allottee of the project also contributed in delay in completion of project but

all the pleas advanced in this regard are devoid of merit as these above-mentioned events are 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 basis of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

22. Further, the respondent's claim regarding Covid-19 is also devoid of merit. The application for provisional allotment was made in 2023, while the pandemic happened in 2019 years before the application of provisional allotment. Consequently, any relief sought on the basis of Covid-19 cannot be considered.

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

**G.I Direct the respondent company to refund the amount of Rs. 5,00,000/- at the prescribed rate of interest.**

23. The complainant in his complaint has mentioned that he has applied for booking of a unit on 20.08.2023 and the same was allotted a unit no. F-222A for a total sale consideration of Rs.51,86,200/-. In furtherance of the provisional allotment, the complainant has paid an amount of Rs.5,00,000/-. Thereafter, till date neither any allotment letter has been provided to the complainant nor the buyer's agreement has been executed.
24. On 12.03.2024, the complainant wrote an e-mail to the respondent and mentioned that he cannot make further payments towards the total sale consideration and wants to surrender the unit and requested for refund of the paid-up amount. Thereafter, the complainant has filed the present complaint seeking refund of the paid-up amount.
25. While going through the application form for provisional allotment issued by the respondent, the Authority observed that the respondent-promoter is liable to refund the entire amount paid by the complainant towards booking





amount without any interest if the promoter is not in a position to allot the unit in terms of the application. The relevant clause of the application form is reproduced below for the ready reference:

*"I/We also agree that in the event, the promoter is not in a position to finally allot the unit in terms of this application, the promoter shall be liable to refund the entire amount paid by me/us towards the booking amount without any interest within 1 month (one month) from the occurrence of such contingency."*

*(Emphasis supplied)*

26. The counsel for the respondent vide proceeding dated 30.01.2025 submitted that the project was launched in 2017 and the payment plan opted by the complainant is flexi payment plan. According to the opted payment plan, 40% of the sale consideration is to be paid within 30 days from the date of booking but the complainant has paid 10% of the sale consideration. But as per the application form placed on record, there is a clause regarding timely payment of the instalments. The relevant portion of the same is reproduced below for ready reference:

*"In the event, the promoter agrees to allot a unit to me/us, I/we agree to make timely payment of all the instalments of the total consideration (as defined herein) along with all the dues, charges, duties and taxes including any fresh incidence/enhancement thereof, current or retrospective in effect, that may be levied by the government thereof, current or retrospective in effect, that may be levied by the government/any statutory/competent authority as well as in terms of the agreement to be executed, based upon the carpet area of the unit so allotted, as per the payment plan that I/we have opted for, and which has been duly explained in detail to me/us by the promoter to my/our satisfaction."*

27. In view of the above-mentioned clause of the application form, it can be said that the payments are to be made on issuance of allotment letter and as neither any allotment letter has been issued nor any draft of the buyer's



agreement had been sent by the respondent after taking the booking amount. Thus, in the absence of allotment of unit no further payment is required to be made by the complainant in terms of the application form dated 20.08.2023.

28. Moreover, section 13 of the Act of 2016 provides that a promoter-builder cannot take more than 10% of the cost of the unit without entering into an agreement. Section 13 of the Act of 2016 is reproduced below for ready reference:

*13. No deposit or advance to be taken by promoter without first entering into agreement for sale-*

*(1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.*

*(2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.*

29. As the application for provisional allotment was made on 20.08.2023 that is after the commencement of the Act of 2016 and being a post RERA allotment, the provisions of section 13 of the Act of 2016 requires to be complied by the respondent. And as per the submissions made by the counsel for the respondent during the proceedings dated 30.01.2025 and the demand letter dated 12.03.2024 placed on record, it is established that



the respondent-builder has demanded an amount of Rs.20,76,577/- which is 40% of the total sale consideration without issuing any allotment letter or executing any buyer's agreement in furtherance of application of provisional allotment. It clearly shows that the respondent/promoter has violated the provisions of section 13 of the Act of 2016.

30. The counsel for the complainant vide proceedings of the day dated 30.01.2025 also stated that no construction at the project site is taking place and it is the shell which is stand still from past one and a half years. Further, the registration of the project was expired in 2022 and the project of the respondent is a lapsed project. The counsel for the respondent clarifies the same and stated that the respondent has applied for extension of the project but the same is not yet granted by the Authority.
31. Also, the Maharashtra Real Estate Appellate Tribunal in the case titled as **Mr. Dinesh R. Humane and Anr. Versus Piramal Estate Pvt. Ltd. dated 17.03.2021**, the following has been observed:

*"..... Allottees merely booked the flat and paid some amount towards booking and executed letter for request of reservation of the flat in printed form. Thereafter there is no progress in the transaction and neither allotment letter nor confirmation letter is issued by Promoter. Agreement for sale is not executed between the parties. Parties never reached to the stage of executing agreement for sale. There was no attempt to execute agreement on the part of either party. In such circumstances, Allottees cannot claim refund on the basis of binding effect at clause (18) of "model agreement" for sale under rules of RERA. In fact, claim of Allottees for refund cannot be supported by clause 18 of model agreement for sale under RERA rules. Refund of amount paid to promoter can be demanded as per Section 18 of RERA on the ground that promoter fails to give possession on agreed date or fails to complete the project as per terms and conditions of agreement for sale. Transaction in the instant case is not governed by Section 18 of RERA. **In this peculiar matter, though the claim of refund is not governed by any specific provision of RERA, it cannot be ignored that object of***

*RERA is to protect interest of consumer. So, whatever amount is paid by home-buyer to the promoter should be refunded to the Allottee on his withdrawal from the project."*

32. In view of the facts and reasons stated above, the respondent was not within its right to retain amounts received from the complainant. Thus, the complainant is entitled for refund of the entire booking amount of Rs.5,00,000/- in terms of the clauses of the application form for provisional allotment and raising of demands beyond 10% amount is violation of section 13 of the Act of 2016. Thus, the Authority hereby directs the respondent/promoter to refund Rs.5,00,000/- paid by the complainant towards the booking amount in terms of the application form for provisional allotment dated 20.08.2023 issued by the respondent within 90 days from the date of this order.

**H. Directions of the Authority:**

33. 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.5,00,000/-** received by it from the complainant without interest in terms of the application form for provisional allotment dated 20.08.2023 issued by the respondent.
- 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.

34. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order along with details of amount paid by the complainants, due date of possession etc.

35. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
36. Files be consigned to registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.02.2025



**HARERA**  
GURUGRAM