



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

Complaint no. : 429 of 2024
Date of complaint : 02.02.2024
Date of order : 05.02.2025

Manoj Jain, S/o Manohar Bhagwan Jain,
R/o: - Apartment no. 403, MQB-3, AI Rigga Deira,
Dubai, Dubai United Arab Emirates.

Complainants

Versus

1. M/s Manglam Multiplex Private Limited
Having Regd. Office at: - Cabin-1, LGF, F-22,
Sushant Shopping Arcade, Sushant Lok Phase-1,
Gurugram-122002.
2. ICICI Bank Limited
Regd. Office at: - E-3/1, Jhandewalan
Extension, Central Delhi, New Delhi-110055.

Respondents

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Manju Singhal (Advocate)
Shriya Takkar (Advocate)
Virender Singh (Advocate)

Complainant
Respondent no.1
Respondent no.2

ORDER

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



Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	M3M Heights, Sector- 65, Gurugram
2.	Project area	14.4125 acres
3.	Nature of the project	Mix land used colony
4.	DTCP license no. and validity status	15 of 2017 dated 02.05.2017 valid up to 01.05.2022
5.	RERA registration	01 of 2017 dated 14.06.2017 valid up to 01.05.2024
6.	Name of licensee	Manglam Multiplex Pvt. Ltd.
7.	Unit no.	MH TW-04/3004, Tower-4, 30 th Floor (page 78 of reply)
8.	Unit area admeasuring	1109.23 sq. ft. (carpet area) (page 78 of reply)
9.	Allotment letter	05.05.2018 (page 27 of reply)
10.	Date of execution of apartment buyer's agreement	16.05.2019 (page 72 of reply)
11.	Tri-partite agreement	05.04.2019 (page 53 of reply)
12.	Possession clause	<i>"Commitment Period" shall mean 30.11.2022 as notified by the Promoter to the Authority, at the time of registration of the Project under the Act, for completion of the Project, or as may be further revised/approved by the authorities."</i>
13.	Due date of possession	30.11.2022 (page 81 of reply)
14.	Total sale consideration	Rs.2,24,60,515/- (page 123 of reply)



15.	Amount paid by the complainant	Rs.78,61,181/- (page 140 of reply)
16.	Occupation certificate	09.09.2024
17.	Offer of possession	Not offered
18.	Demand/Reminder	20.10.2020, 09.11.2020 (page 132-133 of reply)
19.	Pre-cancellation letter	26.11.2020 (page 134 of reply)
20.	Cancellation notice	04.02.2021 (page 135 of reply)
21.	Amount refunded	Rs.7,09,706/- (page 140 of reply)

B. Facts of the complaint

3. The complainant vide complaint and written submissions dated 24.01.2025 has made the following submissions:

I. That the complainant vide application dated 04.05.2018, booked an apartment bearing no. MHTW-04/3004 having approximate super build up area admeasuring 2,004.00 sq.ft. on 30th Floor, Tower 4 in the project of the respondent named "M3M Heights" at Sector 65, Gurugram and deposited a sum of Rs.78,61,181/- as booking amount for the said apartment in multiple transactions and the same has been received by the respondents. In light of the same, the respondent issued an allotment letter dated 04.05.2018, vide which it officially allotted the said apartment to the complainant.

II. That for the period pertaining to February 2018 to 12.04.2019, the complainants had dutifully been depositing their monthly installments pertaining to the loan agreement. However, the complainant visits the project site and found that the project is not completed as per the plan and on enquiry no satisfactory answer had been given by the respondent and their authorized agents. Thereafter, the Covid 19



- started and the respondent has taken one or other plea for not completing the project.
- III. That the said flat in question was booked after taking confirmation from the respondent no.2 i.e., ICICI Bank Ltd., that the project is genuine and the builder shall handover the flat and project within the agreed period, hence, thereby the flat was booked.
- IV. That despite numerous visits to the offices of respondent to seek refund of their money, no response had been forthcoming. On 06.03.2021, the complainant had written an email to the officials of the respondent, wherein he has narrated his financial situation and the reasons for his inability to continue with the project, thereby requesting a refund of the money already deposited by him.
- V. That the respondent is neither handing over the premises nor refunding the amount alongwith the interest and harassing in various means the complainant. It is submitted that the complainant is presently residing in Dubai and he is approaching for the said project personally because no response has been given by the respondent on email and other mode.
- VI. That the respondent did not pay any heed towards the request of the complainant for refund of the amount. It is clear that the builder is using hard earned money of the complainant for their own purpose and also harassed the complainant.
- VII. That the complainant was not defaulter and paid a huge amount approx. 50% but the project was not complete till then about 25%. The payment plan as stated and admitted by the respondent was construction link therefore, there is no question to cancel the unit.
- VIII. That the respondent has shown that they have cancelled the unit in 2021 but after filing of the present petition just to harp their story, the



respondent showed that they have refunded the amount on 08.02.2024, which is vehemently opposed by the complainant and the applicant is still claiming the unit and the very same flat. Further, the respondent never intimated completion of the floor wise demand to the applicant. Hence, no question arose to make payment during covid period.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

I. Direct the respondent to handover possession and to pay delay possession charges as per the Act. (as clarified vide proceedings dated 08.01.2025)

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 no.1

6. The respondent no.1 has contested the complaint vide its reply and written submissions dated 28.01.2025 on the following grounds: -

i. That after making independent enquiries and only after being fully satisfied about the project, the complainant on his own free will approached the respondent no.1 vide an application form dated 12.02.2018 for booking of a residential apartment in "M3M Heights", the residential component and a part of the mixed land use development Project at Sector-65, Gurugram, Haryana.

ii. That the complainant was allotted an apartment bearing no. MH TW/04/3004 situated in Tower-4 vide allotment letter dated 04.05.2018. It is submitted that the cost of the apartment as stated in the allotment letter is Rs. 2,24,60,515/- plus other charges. It is submitted that the complainant on his own free will and



understanding of the legal import and effect had opted for a construction linked payment plan wherein the demands were to be raised as per stage of construction. It is pertinent to mention here that the complainant herein had also availed a loan from India Bulls Housing Finance Limited and later on from ICICI Bank Limited.

- iii. That the respondent no.1 vide cover letter dated 17.05.2018 sent the triplicate copies of the buyer's agreement for due execution at the complainant's end.
- iv. That the complainant requested M/s. IndiaBulls Housing Finance to close the loan for the reasons best known to the complainant. The complainant thereafter shifted his loan to ICICI Bank. Accordingly, a tripartite agreement dated 05.04.2019 was executed between the parties and a permission to mortgage dated 05.04.2019 was issued by the respondent no.1. Thereafter, the complainant had made a part payment of Rs.67,38,155/- on 12.04.2019 which was duly acknowledged by the respondent no.1.
- v. That the buyer's agreement was executed between the complainant and the respondent no.1 on 16.05.2019. Thereafter, the respondent no.1 as per the payment plan opted by the complainant, raised the demand due on completion of ground floor slab vide demand letter dated 20.10.2020 and requested the complainant to pay an amount of Rs.21,05,674/- on or before 08.11.2020.
- vi. That as the complainant failed to clear his outstanding dues raised vide demand letter dated 20.10.2020, the respondent no.1 issued a reminder letter dated 09.11.2020 requesting the complainant to come forward and clear his pending dues.
- vii. That despite issuance of reminder letter, the complainant did not come forward to clear its outstanding dues, therefore the respondent no.1



issued a pre-cancellation letter dated 26.11.2020 to the complainant finally calling upon him to make payment of the outstanding dues, failing which the allotment/booking shall be cancelled/terminated.

- viii. That despite the issuance of abovementioned pre-cancellation letter, the complainant failed to take advantage of this opportunity to come forward to clear its dues, as a consequence of which the respondent no.1 was constrained to terminate the allotment of the complainant vide cancellation letter dated 04.02.2021 and forfeit the amount deposited.
- ix. That the complainant in para 10 of the complaint has himself admitted that the complainant was unable to continue with his booking because of his financial situation and therefore requested for refund of the amount. The complainant was in default of his contractual obligations and further was unable to continue with the booking therefore, the respondent acting upon the request of the complainant, terminated the allotment vide cancellation letter dated 04.02.2021 and forfeited the amount deposited. Further, post cancellation of the allotment, the complainant vide his own email had requested for refund of the amount deposited vide his email dated 16.12.2021. Thus, it is clear that the complainant had no intent to take possession of the unit in question and now after a period of about 3 years at this stage is seeking possession of the unit because the price of the units has now escalated.
- x. That the complainant paid an amount of Rs.78,61,181/- against total sale consideration of Rs.2,24,60,515/- and due to the default of the complainant in making timely payments, the respondent no.1 has suffered huge losses. Despite the losses, the respondent has refunded an amount of Rs.7,09,706/- on 12.04.2024 vide RTGS bearing transaction details N/INDBN12045283943/UTIB/Manohar Jain to the



complainant along with an interest @10.85%. Thus, the complainant is not entitled to any relief from this Authority whatsoever.

- xi. That as the allotment of unit was terminated vide notice of termination dated 04.02.2021, the respondent subject to the orders of this Authority in the present complaint and without prejudice to its rights and claims refunded an amount of Rs.67,38,155/- to the respondent no.2 bank on 08.02.2024 vide RTGS bearing transaction details R/INDBR32024020800249350. It is submitted that the respondent no.1 had refunded the aforesaid amount after deduction of 10% of TCV as EMD and refunded the balance amount along with interest from the date of cancellation i.e. 04.02.2021 till the date of refund i.e. 08.02.2024.
- xii. That post cancellation of the complainant's unit on 04.02.2021, the respondent has re-allotted the unit to subsequent allottee in the year 2022.
- xiii. That the complainant has willfully agreed to the terms and conditions of the buyer's agreement and now at this belated stage is attempting to wriggle out of his contractual obligations by filing the instant complaint before the Authority.
- xiv. That the complainant has approached this Authority with unclean hands as despite being in receipt of cancellation notice (refer page no. 79 of complaint) he has stated before this Authority that he is not in receipt of the said cancellation notice. It is further submitted that the unit in question was never booked by the complainant under buyback scheme. There is no documentary evidence attached by the complainant to substantiate his claim.
5. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be



decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

7. 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

8. 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.

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



F. Findings on the relief sought by the complainants.

F.I Direct the respondent to handover possession and to pay delay possession charges as per the Act.

10. The complainants were provisionally allotted a unit bearing no. MHTW-04/3004 in the project named "M3M Heights" at Sector-65, Gurugram vide allotment letter dated 05.05.2015. Thereafter, an apartment buyer's agreement dated 16.05.2019 was executed between the complainants and respondent no.1 against the said allotment for a total sale consideration of Rs.2,24,60,515/-. The complainants have submitted that despite numerous visits to the offices of respondent to seek refund of their money, no response had been forthcoming. On 06.03.2021, the complainants had written an email to the officials of the respondent, wherein they have narrated their financial situation and the reasons for their inability to continue with the project. However, the respondent is neither handing over the premises nor refunding the amount alongwith the interest and harassing in various means the complainants. The counsel for the complainants vide proceedings dated 08.01.2025 has submitted that the cancellation was never conveyed to the complainants and came as a shock to the them in 2024. The respondent no.1 has submitted that as per the payment plan opted by the complainant, the respondent had raised the demand due on completion of ground floor slab vide demand letter dated 20.10.2020 and requested the complainants to pay an amount of Rs.21,05,674/- on or before 08.11.2020, but as the complainants failed to clear their outstanding dues within the prescribed period, the respondent no.1 issued a reminder letter dated 09.11.2020 requesting the complainants to come forward and clear their pending dues. However, the complainants did not come forward to clear their outstanding dues, therefore the respondent no.1 issued a pre-cancellation letter dated



26.11.2020 to the complainants finally calling upon them to make payment of the outstanding dues, failing which the allotment/booking shall be cancelled/terminated. Despite the issuance of abovementioned pre-cancellation letter, the complainants failed to take advantage of this opportunity to come forward to clear its dues, as a consequence of which the respondent no.1 was constrained to terminate the allotment of the complainants vide cancellation letter dated 04.02.2021 and forfeit the amount deposited. The respondent no.1 has further submitted that the complainants have paid an amount of Rs.78,61,181/- against total sale consideration of Rs.2,24,60,515/- and due to the default of the complainant in making timely payments, the respondent no.1 has suffered huge losses. Despite the losses, the respondent has refunded an amount of Rs.7,09,706/- on 12.04.2024 vide RTGS bearing transaction details N/INDBN12045283943/UTIB/Manohar Jain to the complainant along with an interest @10.85%. Thus, the complainant is not entitled to any relief from this Authority whatsoever. Further, as the allotment of unit was terminated vide notice of termination dated 04.02.2021, the respondent subject to the orders of this Authority in the present complaint and without prejudice to its rights and claims refunded an amount of Rs.67,38,155/- to the respondent no.2 bank on 08.02.2024 vide RTGS bearing transaction details R/INDBR32024020800249350. Furthermore, the respondent no.1 had refunded the aforesaid amount after deduction of 10% of total consideration value as earnest money deposit and refunded the balance amount along with interest from the date of cancellation i.e. 04.02.2021 till the date of refund i.e. 08.02.2024. The counsel for the respondent vide proceedings dated 08.01.2025 has further submitted that the cancellation was duly conveyed to the complainants for which proof of



delivery has been attached. Further, the 2nd page of cancellation letter is also attached at page 79 of the complaint. After, considering the above, the Authority is satisfied that the cancellation letter dated 04.02.2021 has been duly conveyed to the complainants. Now, the question before the authority is whether the cancellation issued vide letter dated 04.02.2021 is valid or not.

11. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainants have paid an amount of Rs.78,61,181/- against the total sale consideration of Rs.2,24,60,515/-. As per the payment plan agreed between the parties vide buyer's agreement dated 16.05.2019, an amount of Rs.78,61,181/- was to be paid till 3rd stage of construction i.e. "on commencement of PCC", and the same has been duly paid by the complainants. Thereafter, as per the agreed terms of the payment plan, a demand amounting to Rs.21,05,674/- on account of 4th stage of construction i.e. "on completion of ground floor" was raised by the respondent no.1 vide demand note dated 21.10.2020, but the complainants defaulted in paying the same to the respondent. Accordingly, a reminder letter 09.11.2020 was issued to the complainants to clear the dues within 15 date days from the date of that reminder. However, the complainants did not come forward to clear their outstanding dues, therefore the respondent was constrained to issue pre-cancellation letter dated 26.11.2020, giving last and final opportunity to the complainants to comply with their obligation to make payment of the amount due, but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 04.02.2021. Further, Section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary



payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 16.05.2019 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides as under:

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

12. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondent no.1 was liable to refund the deposited amount of Rs.78,61,181/- after deducting 10% of the sale consideration i.e., Rs.2,24,60,515/- being earnest money along with an interest as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 04.02.2021 till actual refund of the amount.
13. In the instant case, it is observed that the respondent no.1 post cancellation on 04.02.2021, has refunded an amount of Rs.67,38,155/- to the respondent no.2 on 08.02.2024 and has refunded an amount of Rs.7,09,706/- to the complainants on 12.04.2024, based on the the calculations as provided by it in its reply in tabular form. The same is reproduced as under for ready reference:



<i>Sale Consideration:</i>	2,24,60,515/-
<i>Received Amount</i>	78,61,181/-
<i>Less 10% of Sale Consideration i.e., EMD:</i>	22,46,052/-
<i>Refundable after deduction of 10%:</i>	56,15,129/-
<i>Add Interest from 04.02.2021 till 07.02.2024 @ 10.85%</i>	18,32,732/-
<i>Total Payable</i>	74,47,861
<i>Less Amount Refunded to Bank on 08.02.2024</i>	67,38,155/-
<i>Balance Amount Refunded to Customer</i>	7,09,706/-

14. After considering the above, the Authority observes that the respondent no.1 after deducting the earnest money has calculated the interest at prescribed rate at that time on the refundable amount from the date of cancellation i.e. 04.02.2021 till 07.02.2024. However, the balance refundable amount has been refunded to the complainants on 12.04.2024 i.e. after a period of approx. 2 months. Therefore, in such eventuality, the respondent no.1 was also liable to pay interest on the refunded amount i.e. Rs.7,09,706/- for the delayed period i.e. from 08.02.2024 till 11.04.2024 to the complainants.
15. Accordingly, the respondent no.1 is directed to refund the interest amount to the complainants at prescribed rate i.e. @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 on the refunded amount i.e. Rs.7,09,706/- for the delayed period i.e. from 08.02.2024 till 11.04.2024 to the complainants, within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

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G. Directions of the Authority:

16. 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. Cancellation is upheld.
 - ii. The respondents/promoter is directed to refund the interest amount to the complainants at prescribed rate i.e. @11.10% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refunded amount i.e. Rs.7,09,706/- for the delayed period i.e. from 08.02.2024 till 11.04.2024 to the complainants.
 - iii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
17. Complaint stands disposed of.
18. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.02.2025