

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

Complaint no. : 1556 of 2024
Complaint filed on : 08.05.2024
Date of decision : 21.03.2025

Mahesh Prasad

R/o- E-1004, Mahindra Aura, New Palam Vihar,
Sector 110A, Gurugram, Haryana.

Complainant

Versus

M/s Selene Construction Limited

Address: M-62 & 63, First Floor, Connaught Place,
New Delhi-110001.

Respondent

CORAM

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Aasma Sachdeva, (Advocate)

Shri Rahul Yadav, (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 08.05.2024 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 thereunder or to the allottees as per the agreement for sale executed *inter se* parties.

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	Indiabulls Centrum Park, Sector 103, Gurugram		
2.	Nature of the project	Residential complex		
3.	Area of Project	22.062 acres		
4.	RERA Registered/ not registered	Registered i. Centrum Park (Ph-I) vide Registration no. 11 of 2018 dated 08.01.2018 Registered area- 39108.8 sq. mtrs. part of 22.062 acres Valid upto- 31.07.2018 ii. Centrum Park (Ph-II) vide Registration no. 10 of 2018 dated 08.01.2018 Registered area- 56220 sq. mtrs. part of 22.062 acres Valid upto- 31.10.2018		
5.	DTCP License no.	252 of 2007 dated 02.11.2007	50 of 2011 dated 05.06.2011	63 of 2012 dated 19.06.2012
	Valid up to	01.11.2024	04.06.2024	18.06.2024
	Licensed area	17.08 acres	1.92 acres	3.03 acres
6.	Unit no.	R101, 10 th Floor, Tower R [As per space buyer's agreement at page 31 of complaint]		
7.	Unit area admeasuring	1423 sq. ft. (super area) 1089 sq. ft. (covered area) [As per space buyer's agreement at page 31 of complaint]		



8.	Date of booking	26.07.2014 [As mentioned in Applicant Ledger at page 23 of complaint]
9.	Date of buyer's agreement	29.10.2014 [Page 26 of complaint]
10.	Possession clause	21. The Developer shall endeavor to complete the construction of the said building/Unit within a period of three years, with an six months grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment by the Buyer(s) of the Total Sale Price payable according to the Payment Plan applicable to him or as demanded by the Developer.... [Page 36 of complaint]
11.	Due date of possession	29.04.2018 [Note: Grace period of 6 months is included being unqualified and unconditional]
12.	Basic Sale Consideration	Rs.80,76,500/- [As per Applicant Ledger dated 23.02.2018 at page 54 of complaint]
	Total sale consideration	Rs.87,67,435/- [As per Applicant Ledger dated 23.02.2018 at page 54 of complaint]
13.	Amount paid by the complainant	Rs.21,93,616/- [As per Applicant Ledger dated 23.02.2018 at page 54 of complaint]
14.	Occupation certificate	05.02.2018 [As per DTCP website]
15.	Letter of possession	23.02.2018 [Page 56 of complaint]
16.	Intimation of termination proceedings sent by the respondent to the complainant vide letter	18.04.2020 [Page 73 of complaint]



	dated	
17.	Cancellation letter dated	26.05.2020 [Page 74 of complaint] Note: Vide said letter, entire amount paid by the complainant i.e., Rs.21,93,616 was forfeited by the respondent.
18.	Legal Notice sent by the complainant on	30.06.2020
19.	Reply to the legal notice was sent by the respondent on	10.07.2020 [Page 89 of complaint]

B. Facts of the complaint

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

- i. That in the year 2014, the complainant and his son, namely Mr. Manish Kumar Gaurav approached the respondent as they were willing to purchase a ready to move in apartment for residential purpose. The official of the respondent company represented a rosy picture of the project to the complainant and his son and assured them that if they purchase 2 (two) units in the project, they would be eligible for great discounts.
- ii. That complainant and his son explicitly informed an official of the respondent company namely Mr. Satin Nagpal (hereinafter referred to as "Official No. 1") that they were doubtful about purchasing 2 units because of their financial condition. However, the Official No. 1 promised that in the event they faced any difficulties with respect to making payments, the respondent would adjust the total amount paid by them towards one (1) unit.
- iii. That lured by the promises, representations and personal guarantees made by the Official No. 1, the complainant and his son

agreed to purchase two (2) units in the project. Subsequently, the complainant paid the booking amount of Rs.1,00,000/- on 26.07.2014 towards the unit. On 11.10.2014, the Flat Buyer Agreement was executed between the respondent and complainant and he was allotted a unit bearing no. R 101 on 10th floor in Tower R having approx. 1,423 sq. ft. of super area in the project and the total projected cost of the unit was Rs. 80,76,500/-. In terms of the Agreement, the respondent company had to complete the construction of the project within 3 years from the date of execution of the Agreement, and subsequently offer the possession of the units. Therefore, the respondent company had to deliver the possession of the units by or before October 2017.

- iv. It is pertinent to mention that as per the Agreement, the complainant timely paid 25% of the total consideration towards the unit and till date the complainant has paid the amount of Rs. 21,93,616/- towards the unit. The respondent had to deliver the possession of the unit to the complainant by or before October 2017, however, the respondent failed to provide the possession of the units to the complainant. Subsequently, the complainant approached the respondent to raise his concerns regarding the delay in providing the possession, to which the officials of the respondent company promised that the possession of the units would be provided to him at the earliest. After several follow-ups by the complainant regarding the delay in delivering the possession of the units, the respondent issued the notice of possession to the complainant in February 2018.
- v. That in March 2018, the complainant and his son informed an official of the respondent that they were facing certain financial



hardships and requested to arrange a meeting as they wished to cancel their booking, however, none of the officials of the respondent company reverted to the complainant and his son.

- vi. As there was no response from the respondent's side for almost a month, the complainant visited the project site in May and June 2018. Both times, when the complainant went to the site of the project, none of the officials of the respondent provided them with the keys to visit the units, despite several requests. Further, while the complainant and his son were at the site, they noticed that the internal roads in front of tower P and R were not ready, and the construction was still going on. The complainant was shocked to see the same as the respondent had offered the possession to the complainant and his son in February 2018. The complainant then conveyed to an official of the respondent that it was impossible for the complainant to take possession as the roads were not built and construction had not been completed. Further, the complainant again requested the official of the respondent to set up a meeting so that the complainant and his son could find a solution. However, the official of the respondent again told the him that someone would contact them with respect to the same. That vide email dated 27.08.2018, the Complainant and his son requested the management that belonging to middle class, they are incapable to complete the payment for both the units as stated by them since inception. Further, to add to the disappointment of the complainant, vide email dated 16.08.2018, an official of the respondent asked the complainant to pay Rs. 80,31,044/ which included the interest amount.

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- vii. That the Complainant and his son were let down again as vide email dated 27.08.2018, Ms. Vidhi, an official of the respondent (hereinafter referred to as "Official No. 2") completely disregarded and out rightly refused their requests. That the Official No. 2 informed in the email that the refund/merging of the booked units is not possible, thereby refusing to organize a meeting with the higher authorities to reach an amicable solution. Further, it was acknowledged in the email that the road in front of the P and R tower got completed after June 2018, even though the possession was offered to the Complainant and his son in February 2018.
- viii. That on 18.04.2020, the respondent company maliciously sent complainant, the Intimation of Termination Proceedings letters. On 26.05.2020, the Respondent maliciously issued the Termination and Forfeiture Letter to the complainant. It was quite apparent that respondent maliciously lured Complainant and his son into purchasing two units despite being well- aware of their financial constraints and took undue advantage of that.
- ix. That the complainant even issued a Legal Notice on 30.06.2020 to the respondent requesting it to refund the entire amount of Rs. 43,87,232/- paid by them towards the purchase of both the units and to withdraw the Termination and Forfeiture letter issued to the complainant. The respondent vide Reply dated 10.07.2020 to above Legal Notice, blatantly disregarded the requests of the complainant and refused to comply with any of the requests as mentioned in the legal notice.
- x. That aggrieved by the conduct of the respondent, the complainant approached the civil courts on 04.09.2020 vide suit bearing no. CS/1506/2020, however, the said suit was withdrawn by the

complainant so that they could approach RERA for seeking justice. Thereafter, in July, 2023 the complainant had approached this Hon'ble Authority with a complaint bearing no. 3378/2023 against the respondent for seeking refund, however, the same was dismissed by this Hon'ble Authority vide order dated 01.03.2024 on technical grounds and the complainant was granted the liberty to file a fresh complaint. Hence, this complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. Direct the respondent to refund the entire amount paid by the complainant i.e., Rs. 21,93,616/- along with RERA rate of interest per annum from the date of first payment i.e., July 2014.
 - ii. Any other relief which this Hon'ble Authority deems fit for deciding the present complaint.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds:
 - i. That the complainant has not come with clean hand before this Authority and has concealed the true and material facts supplying false and fabricated information in the complaint. As such the complainant is guilty of concealing the true and material facts, hence, the complainant is not entitled for any relief whatsoever claimed by him from this Authority.
 - ii. That the payment plan opted by the complainant was 25:75 Payment Plan i.e., 25 % was to be paid at the time of booking and

75% was to be paid at the time of offer of possession. The complainant failed to timely pay the 25% of the initial payment and never paid the balance 75% of the payment to the respondent.

- iii. That the complainant is alleging that the possession of the subject unit bearing No. R101 booked in said project was not offered in terms of the Flat Buyers Agreement dated 29.10.2014 and as such refund is claimed by the complainant by the present Complaint. However, the said allegations are wrong and denied. However, the respondent after obtaining Occupational Certificate for the tower wherein the unit was booked by the complainant, offered possession of the unit in question to the complainant vide letter dated 23.02.2018 well within the committed time period and was called upon to take the physical possession of the unit after remitting the balance sale consideration amount due towards the said unit. That it is incorrect that the possession was delayed as alleged in the complaint. Further the complainant, in spite of offer of possession failed to make the balance payment due towards the sale consideration of the unit and failed to take physical possession of their unit.
- iv. That the complainant at the time of execution of the Flat Buyers Agreements dated 29.10.2014 specifically agreed to Clause 10 of the Agreement which states that timely payment of the instalments/ amounts due shall be the essence of the Agreement, and in the event, the buyers/ Complainant fails to make payment within the stipulated time or breaches any of the terms and conditions of the Agreement, the Agreement shall be cancelled.

- v. That upon failure of the complainant to make payments, the respondent issued reminder letters dated 07.02.2020, 04.01.2020 and 21.06.2019, 15.10.2018 requesting the complainant to clear the outstanding dues towards the unit but the complainant avoided the letters and failed to clear its due outstanding. That only upon the failure of the complainant to clear its due outstanding's, the respondent was forced to send Letter dated 18.04.2020 i.e. Intimation of Termination Proceedings calling the complainant to clear its outstanding dues of Rs. 1,02,65,740/- within 15 days failing which their provisional allotment in the unit shall stand cancelled. The said fact is undisputed and admitted by the complainant in the present Complaint. However, the complainant failed to clear the outstanding amounts within the stipulated time despite repeated reminder(s), as such the respondent was left with no option, vide letter dated 26.06.2020 terminated the provisional allotment of the complainant in terms of clause 9 of the Agreement, and further in terms of clause 9 of the agreement, forfeited the amount paid by the complainant.
- vi. That for the sake for arguments without admission, despite taking into consideration the submissions and legal prepositions made by the respondent in the preceding paras, still if this Hon'ble Authority feels inclined to allow the claim of the complainant taking a sympathetic view, in such scenario refund, if any, be allowed subject to deductions as per the cancellation clause of the agreement executed for the unit in question and statutory Dues/ Taxes paid on behalf of the complainant to the Concerned Authorities for the unit in question by the Respondent. That since the said amount was neither retained by the respondent nor is

recoverable from the concerned department/authorities. Thus, the complainant should not get undue benefits of the same.

- vii. That vide order dated 28.09.2021 passed by the Haryana Real Estate Regulatory Authority, Panchkula in complaint bearing no. **384 of 2021** was pleased to decide the matter on the same observation as pleaded above. The same observation is also taken by this Hon'ble Authority in **Complaint No. 2253 of 2018** titled as "**Major General Bhaskar Kalita & Anr. Vs. Selene Constructions Limited**" decided on 26.03.2019 wherein the respondent was granted liberty to adjust the amount paid by the Customer/ Complainant towards the service tax and other taxes deposited with the concerned authorities. Further, the Hon'ble RERA Appellate Tribunal, Chandigarh in the Appeal bearing no. **347 of 2019** titled as "**Major General Bhaskar Kalita & Anr. Vs. The Haryana Real Estate Regulatory Authority, Gurugram Haryana & Anr.**" against the aforesaid directions of the Hon'ble Authority, wherein the Hon'ble Tribunal while dismissing the Appeal vide order dated 23.12.2019 upheld the observation passed by the Hon'ble Authority.

That in view of the observations taken by this Hon'ble Authority and same being upheld by the Hon'ble RERA Appellate Tribunal, Chandigarh, the respondent is entitled to adjust the Govt. dues passed on the concern Govt. Departments for the unit in question.

- viii. That a bare perusal of the complaint will sufficiently elucidate that the complainant has miserably failed to make a case against the respondent. The complainant has merely alleged in his complaint about delay on part of the respondent in handing over of possession but has failed to substantiate the same. The fact is that

the respondent has been acting in consonance with the Buyers Agreement executed for the unit and no contravention in terms of the same can be projected on the respondent. That the complainant has made false and baseless allegations with a mischievous intention to retract from the agreed terms and conditions duly agreed in FBA entered into between the parties. In view of the same, there is no cause of action in favour of the complainant to institute the present complaint.

7. The complainant as well as the respondent has filed written arguments and the same have been taken on record. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

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

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant:

F.I Direct the respondent to refund the entire amount paid by the complainant i.e., Rs. 21,93,616/- along with RERA rate of interest per annum from the date of first payment i.e., July 2014.

12. Briefly, the facts of the case are that the unit bearing no. R101, 10th Floor, Tower R was allotted in favour of complainant by the respondent and thereafter the buyer's agreement was executed between the complainant and the respondent on 29.10.2014. The complainant has paid an amount of Rs. **21,93,616/-** against the basic sale consideration of Rs.**80,76,500/-**. As per clause 21 of the agreement, the respondent was required to hand over possession of the unit within a period of 36 months from the date of execution of the buyer's agreement with a grace period of 6 months. Therefore, the due date of possession comes out to be 29.04.2018. Subsequently, the

possession of the subject unit was offered to the complainant on 23.02.2018 after receipt of occupation certificated by the competent authority on 05.02.2018. Thereafter, the respondent has issued various reminder/demand letters to the complainant and requested to pay the outstanding dues but the complainant has failed to pay the same due to financial hardship. Due to non-payment of the outstanding dues, the respondent has cancelled the unit vide letter dated 26.05.2020 vide which the respondent has forfeited the entire amount paid by the complainant.

13. The respondent submitted that the complainant is a defaulter and has failed to make payment as per the agreed payment plan. Various reminders dated 07.02.2020, 04.01.2020, 21.06.2019, 15.10.2018 and final opportunity was given to the complainant vide letter dated 18.04.2020 and thereafter the unit was cancelled vide letter dated 26.05.2020. The complainant failed to abide by the terms of the agreement to sell executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule.

Now, the question before the authority is whether this cancellation is valid or not?

14. The authority has gone through the payment plan which was duly agreed between the parties and the same is reproduced below for ready reference:

<u>PLP 25:75 Payment Plan</u>	
On Booking	1 Lakh
Within 30 days from the booking date	10% of Sale Price + 10% of EDC/IDC (less booking amount)
Within 60 days from the booking date	15% of Sale Price + 15% of EDC/IDC
On Offer of Possession	75% of Sale Price + 75% of EDC/IDC + Maintenance Security + Club Charges

15. It is matter of record that the complainant booked the aforesaid unit under the above-mentioned payment plan and paid an amount of Rs. **21,93,616/-** towards total consideration of Rs. **80,76,500/-** which constitutes 27.16% of the total sale consideration. Rest of the 75% payment was payable at the time of offer of possession. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 05.02.2018 and thereafter, the possession of the same was offered on 23.02.2018.
16. It is pertinent to mention here that the complainant is alleging that the respondent has not merged the payments made by the complainant and his son for both the units. But, the complainant has failed to substantiate the same as there is not even a single document on record whereby the respondent was obligated to merge the two units purchased by the complainant and his son. Thus, there is no merit in this contention of the complainant.
17. It is pertinent to mention here that as per section 19(6) & 19(7) of Act, the allottee is under obligation to make payments towards consideration of allotted unit as per agreement to sale executed inter se parties. The respondent after giving reminders dated 29.08.2018, 31.05.2018, 15.10.2018, 21.06.2019, 04.01.2020, 07.02.2020 for making payment for outstanding dues as per payment plan, has cancelled the subject unit. Despite issuance of aforesaid numerous reminders, the complainant has failed to take possession and clear the outstanding dues. The respondent has given sufficient opportunity to the complainant before proceeding with termination of allotted unit. Thereafter, the respondent issued "Intimation of Termination Proceedings" dated 18.04.2020, and the relevant proportion of the said notice is reproduce as under:



*"It is therefore evident that you are not interested in continuing with the provisional reservation of the said unit. Please take note that in the event that you fail to make entire payment of the outstanding dues **within 15 days** from the date of this letter, the provisional reservation of the said unit **shall stand terminated and the monies paid by you shall stand forfeited** as per the terms of Agreement."*

18. Further, as per clause 9 of buyer's agreement, the respondent /promoter has right to cancel the unit and forfeit the earnest money where allottee fails to perform its obligations or fulfil all terms and conditions set out in this Agreement. Clause 10 of the said Agreement, the allottee was under obligation to make timely payment of instalments. Clause 9 and 10 of the buyer's agreement are reproduced under for ready reference:

9. The Developer and the Buyer hereby agree that the earnest money for the purpose of this Flat Buyers Agreement shall be calculated @15% of the Total Selling Price of the Unit. The Buyer hereby authorizes the Developer to forfeit the earnest money along with the interest and cost on delayed payments in case of non-fulfillment of the terms and conditions herein contained.

*10. Timely Payment of the Installments /amounts due shall be of the essence of this Agreement. **If payment is not made within the period stipulated** and or the Buyer commits breach of any of the terms and conditions of this Agreement, then **this Agreement shall be liable to be cancelled**. In the eventuality of cancellation, earnest money being 15% of the Total Selling Price would be forfeited and the balance, if any, would be refundable without interest. On cancellation of the Agreement, the Buyer shall also be liable to reimburse to the developer the amount of brokerage paid, if any, by the Developer towards the booking of the Unit. In any case, all the dues, whatsoever including interest, if any, shall be payable before taking possession of the Unit."*

19. That the above-mentioned clause of the Agreement provides that the promoter has right to terminate the allotment in respect of the unit upon default by the allottee under the said agreement. Further, the respondent company has already obtained the occupation certificate for the project of the allotted unit on 05.02.2018 and offered the possession on 23.02.2018. Despite the issuance of offer of possession after obtaining OC, the complainant has failed to take possession of the subject unit and clear the outstanding dues.

Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

"5. AMOUNT OF EARNEST MONEY

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

22. Also, Hon'ble Apex Court in **Civil Appeal no.3334 of 2023** titled as **Godrej Projects Development Limited Versus Anil Karlekar** decided on 03.02.2025 has held that 10% of BSP is reasonable amount, which is liable to be forfeited as earnest money.
23. 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, the respondent/promoter cannot retain more than 10% of basic sale consideration as earnest money on cancellation. So, the respondent is directed to refund amount received from the complainants after deducting 10% of the basic sale consideration and return the remaining amount along with interest at prescribed rate i.e. 11.10% from the date of cancellation i.e., 26.05.2020 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. Directions of the authority

24. 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 amount received by the complainant i.e., Rs. **21,93,616/-** after deducting 10% of the basic sale consideration of Rs. **80,76,500/-** being earnest money 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 i.e., 26.05.2020 till the actual realisation of the amount.
- 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.

25. Complaint stands disposed of.

26. File be consigned to registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.03.2025