

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

Complaint no. : 442 of 2022
Date of filing of
complaint: 02.02.2022
Date of decision : 13.05.2025

Nalin Sood

Monika Sood

Both R/o: 1801, Tower-17, South Close,
Nirvana Country, Gurugram-122018.

Complainants

Versus

M/s Manglam Multiplex Pvt. Ltd.

Office: Cabin-1, LGF, F-22,
Sushant Shopping Arcade
Sushant Lok Phase-1
Gurugram - 122002, Haryana.

M/s M3M India Pvt. Ltd.

Unit no. SB/C/5L/Office/008, M3M Urbana,
Sector-67, Gurugram - 122102, Haryana.

Respondents

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman

Member

Member

APPEARANCE:

Sh. Riju Mani

Ms. Shriya Takkar

Counsels for Complainants

Counsel for Respondent

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 allottees 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 and location of the project	"M3M 65 th Avenue", a part of mixed land development project, Sector 65, Gurugram
2.	Nature of the project	Commercial
3.	Project area	14.4125 acres
4.	DTCP license no.	15 of 2017 dated 02.05.2017 valid up to 01.05.2022
5.	Name of licensee	Manglam Multiplex Pvt. Ltd.
6.	RERA Registered/ not registered	01 of 2017 dated 14.06.2017 valid up to 01.05.2024
7.	Allotment Letter	10.02.2018 (Page 44 of the complaint)
8.	Unit no.	R8 1 50, First Floor, Block 8 (Page 44 of the complaint)
9.	Unit area admeasuring (Super area)	930.99 sq. ft. (Page 44 of the complaint)

10.	Date of builder buyer agreement	20.08.2019 (Page 63 of the complaint)
11.	Possession clause	<p>In clause 7.1 of the agreement, the builder agrees that the possession of the unit will be delivered before commitment period.</p> <p>(m) "Commitment Period" shall mean June, 2022 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.</p>
12.	Due date of possession	<p>June 2022</p> <p>(The HARERA registration certificate was issued on 14.06.2017 and no further changes were made in date of completion after execution of agreement inter se the parties).</p>
13.	Total sale consideration	<p>Rs. 1,27,28,495/-</p> <p>(As per BBA on page 106 of complaint)</p>
14.	Amount paid by the complainant	<p>Rs. 29,99,851/-</p> <p>(As per applicant ledger on page 10 of application by respondent)</p>
15.	Occupation certificate	<p>30.09.2021</p> <p>(Page 132 of reply)</p>

16.	Offer of possession	25.10.2021 (Annexure R/6 at page 135 of reply)
17.	Pre-cancellation letters	25.11.2021, 15.02.2022
18.	Cancellation Letters	10.12.2021 , 27.05.2022 (142 & 144 of reply)

B. Facts of the complaint

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

- I. That the complainants booked a commercial unit on 08.05.2017 in the project and paid the necessary booking amount of Rs. 5,00,000/- on 08.05.2017 via cheque bearing no. 056862 drawn on Kotak Bank in favour of respondent no. 2, M3M India Ltd. Thereafter, certain other payments were also made in the name of respondent no. 2. The complainants opted for assured return scheme.
- II. That after booking of the unit, the complainants came to know that the name of the project has been changed from CITY HUB to its current name i.e. M3M 65th Avenue. The change of name was not communicated to the complainants. M3M 65th Avenue was the name of the entire project and not of a single component of the mixed used project. Upon inquiry by the complainants about the change of name, the complainants were informed that the name CITY HUB was opposed and therefore, they were constrained to change the name to its current name to avoid any unnecessary litigation.

- III. The project was launched on 14.04.2017 and the booking of the complainants were accepted by the respondent no. 2 on 17.04.2017. However, the Director, Town and Country Planning, Haryana at Chandigarh (hereinafter referred to as “DTCP”) granted license no. 15 dated 02.05.2017 under the Haryana Development & Regulation of Urban Area Act, 1975 and Haryana Development & Regulation of Urban Areas Rules, 1976 for setting up the mixed land use colony. The Building plans were approved by DTCP vide memo no. ZP-1147/SD(BS)2017/11857 dated 01.06.2017. It is submitted that license by the DTCP and approvals of building plans by DTCP were granted in the name of the Manglam Multiplex Pvt. Ltd. i.e. respondent no. 1 instead of respondent no. 2 who originally launched the project and collected payments.
- IV. That upon receipt of license and building plan approvals from DTCP, the respondents registered the project with its current name under the provisions of Real Estate (Regulation & Development) Act, 2016 and the Haryana Real Estate Regulatory Authority, Panchkula granted the registration certificate bearing no. 1 of 2017 dated 14.06.2017. Subsequent to the registration of the project under RERA, the respondents demanded a further payment of Rs. 1 lakh. However, this time the allottees/buyers were asked to make the payment in the name of Manglam Multiplex Pvt. Ltd. MMPL i.e. respondent no. 1 instead M3M India i.e. respondent no. 1.

- V. That even though the bookings were invited and accepted in April 2017, no allotment of any unit was done to the complainants and no allotment letter was issued. Only after receipt of the building plan approval from DTCP on 01.06.2017 and registration of project under RERA on 14.06.2017, the respondents issued a provisional allotment letter dated 23.06.2017 to the complainants.
- VI. That after almost 8 months, the respondents issued a revised provisional allotment letter dated 10.02.2018 to the complainants and informed that the revised provisional allotment letter is being issued in lieu of and/or in substitution of earlier provisional allotment letter dated 23.06.2017 and that their allotment stands substituted/ varied/ revised/ altered in terms of the revised allotment letter and also informed that payment needs to be made as per Schedule of Payments as communicated earlier to the complainants. It is submitted that with the revised allotment letter, the size of the unit earlier allotted to the complainants was increased and accordingly the total consideration was also increased.
- VII. That also, from the revised allotment letter, the complainants found that there have been change in layout or building plan of the project as the super area of the unit was increased from 656.60 sq. ft. to 930.99 sq. ft. i.e. by around 42%. With the increase in super area, the overall cost of the unit was increased by almost 50%. Also, with the revised allotment letter, the ratio of carpet area to super area was decreased by around 2.4%.

- VIII. That as mentioned above, the unit was booked under Assured Return Scheme, however the assured return had not been booked in the books of the respondent till June 2018 despite making all payment by the complainants for availing the benefits of the assured return. The respondent later refused to pay/book the assured returns prior to June 2018. The respondent are denying assured returns on one pretext or other. On one occasion they said the assured returns are not paid as the outstanding dues for other units are not cleared whereas on other they said that it will be adjusted at the end.
- IX. It is pertinent to mention that though the unit was booked in April 2017, no builder buyer agreement/agreement for sale was executed with the complainants for the allotted unit. That after 2 years 4 months from date of allotment and that too after various follows-ups, a Builder Buyer Agreement was executed between the complainants and the respondents on 20.08.2019. The payment plan as agreed in the provisional allotment letter dated 23.06.2017 was confirmed in the builder buyer agreement.
- X. That the respondent sent an offer of possession dated 25.10.2021 to the complainants for the unit and demanded a sum of Rs. 1,18,76,746/- including stamp duty charges for taking over possession of the unit. The complainants were asked to pay the final demand by 24.11.2021 to take over possession. In the notice of offer of possession, the respondent mentioned that the construction/development of commercial project "M3M 65th Avenue" has been completed and the company has obtained

Occupancy Certificate (OC) for the same. However, no details about the OC were given. The respondent failed to mention the date and document number of the OC in the letter or failed to provide a copy of the OC to the complainants. Further, the respondent failed to adjust the unpaid dues of the complainants however levied charges which were unreasonable, unjustified and unexplained.

- XI. It is submitted that the complainants had contacted the respondent upon receipt of the offer of possession and requested them to revise the final demand after adjusting the pending assured returns and removing the illegal and unreasonable and unexplained charges. The complainants also undertook to make the final payment once the account has been settle and pending issues have been taken care off. However, the respondent failed to adjust the assured return as promised and revise the final demand.
- XII. That instead of adjusting the amount already paid and reconciling the account of the complainants and revising the final demand letter, the respondents sent a pre-cancellation letter dated 25.11.2021 and threatened to cancel the allotment if the final payment along with interest and holding charges are not made within 15 days from the date of the letter. It is submitted that the respondent has not sent any letters after offer of possession dated 25.10.2021 and directly sent a pre-cancellation letter. Upon receipt of the letter, the complainants contacted the respondent and asked them to cancel the pre-cancellation letter.



- XIII. That instead of cancelling the pre-cancellation letter dated 25.11.2021, the respondent sent a cancellation letter dated 10.12.2021 and informed that the provisional allotment of the unit allotted to the complainants was cancelled in view of non-payment of instalments and/or non-compliance of other obligations and the entire amount paid by the complainants was forfeited.
- XIV. That the respondent, in order to hide their failure in fulfilling their obligations and responsibilities and payment of assured return, cancelled the allotment of the complainants. It is pertinent to mention that the cancellation of allotment of the complainants by the respondent is illegal and invalid. The complainants pray before this Hon'ble Authority that the cancellation letter dated 10.12.2021 be cancelled and allotment of the complainant be reinstated.
- XV. That the respondents have mortgaged the project land and its receivables including inventory with Piramal Enterprise Limited without any information to the complainants. The respondents never informed the complainants about this development. Now the respondents have informed since the project is mortgaged with Piramal Enterprise Limited, any refund or waiver or any related decision can only be taken by Piramal Enterprise Limited and these things are no longer in control of the respondents. It is also submitted that the project was initially started by M3M under its name violating various existing laws in force including various provisions of RERA. Later, in order to escape any penal action for such violation and after luring buyers of its brand name and

expertise in the field and receiving booking from buyers, transferred the project ownership to Manglam Multiplex Private Limited. However, it is very important to state that to date the project is being promoted in the website of M3M and all the emails related to the project are being answered/replied by M3M instead of Manglam Multiplex. This transfer of responsibility is to cheat people and avoid liabilities.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - I. Cancel the Cancellation Letter dated 10.12.2021 whereby the allotment of the complainants have been cancelled.
 - II. Deliver peaceful legal physical possession of the unit complete in all aspects as per the agreement and to the satisfaction of the complainant and after furnishing copy of the OC obtained from the competent authority.
 - III. Pay the Assured Return due and accrued since the fulfilment of required criteria by the complainants.
 - IV. Not to include any charges which are not part of the Buyers Agreement in the final demand letter.
 - V. Cancel all the charges included in the final demand letter which are illegal and unreasonable and unjustified and issued revised demand letter.
 - VI. Hold that the Respondent followed unfair trade practices and accordingly compensate the complainants.
 - VII. Penalize the respondents gross negligence and deliberate and wilful violation of provisions of the Real Estate (Regulation & Development) Act, 2016 and promoting project without registration.
 - VIII. Initiate inquiry how the offer of possession was sent claiming the unit to be complete when the construction activities just above the retail segment is still being carried out and will be carried out till 2024.
 - IX. Penalize the respondents for violation of RERA provisions and for not maintaining the accounts of the buyers and the projects properly and for tax (TDS) related fraud.

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 complainants were allotted commercial unit bearing No. R8 1 50 on first floor in 8th block in 'M3M 65th Avenue', a commercial component of the mixed land use development project of the respondent, vide allotment letter dated 23.06.2017. It is submitted that the complainants being the allottees, on their own free will and after due understanding of the legal import and effect had opted for the specific payment plan. It is submitted that the complainants were intimated about the change in building plan as earlier approved building plan bearing DTCP memo no. ZP-1147/SD(BS)/2017/11857 dated 01.06.2017 has been revised to ZP-1147/SD(BS)/2018/5252 dated 08.02.2018 with reference to unit no. R8 1 50 and were also requested to submit their objections if any. However, the complainants did not raise any objections with respect to the same. Thereafter, a revised allotment letter was issued by the respondent for the commercial unit No. R8 1 50 in "M3M 65th Avenue" in lieu of and/or in substitution of the earlier provisional allotment letter for commercial unit no. R8 1 50. It was further informed to the complainants that the allotment of their commercial unit in "M3M 65th Avenue" stands substituted / varied / revised / altered and henceforth the allotment



of the complainants would be referred to as commercial unit no. R8 150 on the same terms and conditions as per the schedule of payments to be made as earlier.

- ii. It is submitted that in furtherance of the allotment, the respondent company had sent the agreement for sale to the complainant for due execution at his end and the agreement for sale was executed between the parties on 20.08.2019 is marked and annexed. It is pertinent to mention that the buyer's agreement duly covers all the liabilities and rights of both the parties. The relevant clauses of the Buyers agreement are reproduced herein below for ready reference:

"Commitment Period shall mean June, 2022 notified by the promoter of 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."

- iii. That the complainants are chronic defaulters as they failed to make payment to the demands raised by the respondent company. It is submitted that all the demands were raised as per the payment plan opted by the complainants. It is submitted that the complainants were very well aware that time was of essence in making payments.
- iv. That in terms of the booking made by the Complainants in respect of the unit R8150 in the project M3M 65th Avenue, the Respondent had made timely payments towards the pre-handover amounts payable to THE COMPLAINANTS, duly fulfilling their contractual obligation.
- v. That despite the non-fulfilment of the obligation of making timely payment, the respondent fulfilled its promise and had constructed the



said unit of the complainants, by investing its own funds. It is pertinent to mention that the respondent has completed the construction way before the agreed timeline and applied for the OC on 30.04.2021. That the respondent no. 1 was granted the OC from the competent authorities on 30.09.2021 after due verification and inspection.

- vi. It is submitted that the Unit was ready and the Respondent No. 1 herein vide letter dated 25.10.2021, offered possession to the Complainants herein and requested the Complainants to remit outstanding amount towards the remaining basic sale price, service tax, cess, stamp duty charges etc.
- vii. That the complainants in violation of their agreed obligations failed to remit any amount towards the dues communicated vide the offer of possession, therefore the respondent was constrained to issue a pre-cancellation notice dated 25.11.2021.
- viii. That despite the pre- cancellation letter the complainants herein failed to come forward to clear dues, constrained by which the respondent having being left with no other option issued a cancellation notice dated 10.12.2021 in accordance with the terms and conditions of the buyers agreement.
- ix. That thereafter the complainants submitted a cheque for an amount of Rs. 10,48,440/- in respect of the said unit and thus the cancellation was revoked by the respondent. However, when the cheque was deposited in the bank by the respondent, it was dishonoured stating



insufficient funds. Therefore, the respondent again issued a pre-cancellation letter dated 15.02.2022.

- x. That even after the issuance of the various reminders and pre-cancellation notices the complainants failed to come forward to clear their outstanding dues and take over the possession and therefore the Respondent was constrained to terminate the allotment of the unit vide termination letter dated 27.05.2022.
- xi. It is submitted that the complainants have till date made a payment of Rs. 29,99,851/- as raised by the respondent in accordance with the payment plan and the terms of the buyers agreement.
- xii. That the respondent was constrained to cancel the unit on account of non-payment of the demands as raised by the respondent. it is submitted that the respondent is incurring various losses/damages on account of the breach of the terms of the allotment and application by the complainants, which the complainants are liable to pay as per the terms of the agreement.
- xiii. It is stated that the loss suffered by the respondent is a follow:
 - a. That respondent had allotted the unit to the complainant of the price prevalent in the market on the assurance that the complainant would make timely payments and conclude the transaction. However, the complainant defaulted in making payment. The respondent kept giving the complainant on opportunity to make the payment and thus could not allot the said unit to any third party who was willing to book the unit of a higher



price. The complainant have thus caused the company to incur loss of opportunity cost and are thus liable to indemnify the respondent towards the same.

- b. Earnest Money- Rs. 12,58,885/-. It is submitted that the complainants herein had agreed to the forfeiture of the earnest money, in the event if failure to comply with the terms of the agreement and perform their obligations.
 - c. Loss of taxes deposited- Rs. 4,59,364/-. It is stated that the respondent has already deposited the requisite amounts towards GST. It is submitted that these taxes are to be deposited by the respondent the moment the demands are raised, and thus an amount of Rs. 4,59,364/-towards GST has been paid by the respondent and a loss to the said amount is borne as the same is not refundable to the respondent.
 - d. Interest: Sum of Rs. 7,93,077/- was the interest payable by the complainant for the delayed payments.
 - e. Pre-Handover amount- 7,71,428/- was paid by the Respondent to the complainants in compliance of their contractual obligations. It is submitted that the complainants are in default of their contractual obligations.
- xiv. Thus, the total loss calculated comes to Rs. 32,82,754/- which includes earnest money deduction @10% to the tune of Rs. 12,58,885/-, taxes to the tune of Rs. 4,59,364/- and further a sum of Rs. 7,93,077/- was the interest payable by the complainants for the delayed payments.



Thus, the complainants are not entitled to get any reliefs as sought for from the Authority. Failure on the part of the complainants to perform their contractual obligations disentitles them from any relief.

- xv. That the present complaint has been filed with total disregard to the terms of agreement executed by the complainant. The default of the complainant in making the payments towards the amount due, amounts to default as per the agreement. The complainant, thus an attempt to avoid the consequences of the breach of the agreement have filed the present malafide complaint and thereby in essence, the quashing of the terms and conditions of the agreement. It is submitted that the respondent is acting as per the terms and conditions of the agreement executed between the parties.
- xvi. It is submitted that all the demands by the respondent is as per the Schedule of payment opted by the complainant. Hence, being totally aware about the payment as per the payment plan, the complainant intentionally failed to make timely payments and therefore is a chronic defaulter and is liable to pay interest to the respondent for the delay in payment under Section 19(6) RERA which states that the complainant are responsible to make necessary payments in the manner and within time as specified in the agreement and in case of default the complainant are liable to pay interest for delay under Section 19(7) of RERA.
7. All other averments made in the complaint were denied in toto.

8. 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

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

E.I Territorial jurisdiction

10. 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

11. 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.

12. 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.

- I. Cancel the Cancellation Letter dated 10.12.2021 whereby the allotment of the complainants have been cancelled.
 - II. Deliver peaceful legal physical possession of the unit complete in all aspects as per the agreement and to the satisfaction of the complainant and after furnishing copy of the OC obtained from the competent authority.
 - III. Pay the Assured Return due and accrued since the fulfilment of required criteria by the complainants.
 - IV. Not to include any charges which are not part of the Buyers Agreement in the final demand letter.
 - V. Cancel all the charges included in the final demand letter which are illegal and unreasonable and unjustified and issued revised demand letter.
 - VI. Hold that the respondent followed unfair trade practices and accordingly compensate the complainants.
 - VII. Penalize the respondent's gross negligence and deliberate and wilful violation of provisions of the Real Estate (Regulation & Development) Act, 2016 and promoting project without registration.
 - VIII. Initiate inquiry how the offer of possession was sent claiming the unit to be complete when the construction activities just above the retail segment is still being carried out and will be carried out till 2024.
 - IX. Penalize the respondents for violation of RERA provisions and for not maintaining the accounts of the buyers and the projects properly and for tax (TDS) related fraud.
13. The above mentioned reliefs no. F.I, F.II, F.III, F.IV, F.V, F.VI, F.VII, F.VIII and F.IX as sought by the complainant is being taken together as the findings in

one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.

14. The complainants were allotted unit no R8 1 50, first floor in Block-8 in the project "M3M 65th Avenue" by the respondent builder for a total consideration of Rs. 1,27,28,495/- against which the complainants paid an amount of Rs. 29,99,851/-. Buyer agreement between the parties was executed on 20.08.2019 and the unit of the complainants have been cancelled by the respondent on the grounds of non-payment.
15. The contention of the respondent is that the complainants have defaulted in making payment with respect to allotted unit. The respondent has placed on record the reminder letters sent to complainants regarding payment of dues. The respondent-promoter obtained occupation certificate on 30.09.2021 and offered possession to the complainant on 25.10.2021 and requested the complainants to clear outstanding dues. The complainants in violation of their agreed obligation failed to remit any amounts towards the dues communicated vide offer of possession, therefore the respondent issued a pre-cancellation notice on 25.11.2021. Despite the pre-cancellation letter, the complainant failed to clear the dues and respondent issued cancellation letter dated 10.12.2021. Thereafter, on the request of the complainant, the allotment of ~~it~~ ^{unit} was revived and complainant submitted a cheque for an amount of Rs. 10,48,440/- in request of the subject unit and thus the cancellation was revoked by the respondent. However, when the cheque was presented in the bank by the respondent, it was dishonoured stating insufficient funds. Therefore, the respondent issued a pre-termination letter dated 15.02.2022. It is important to note that after issuance of various reminders pre-cancellation notices, the complainant failed to clear the outstanding dues. Therefore, the respondent terminate the allotment of unit vide termination letter dated 27.05.2022.

16. The respondent further stated that third party rights already been created against the subject unit and the complainants are not entitled to get any reliefs as the total loss calculated comes to Rs. 32,82,754/- which includes earnest money deduction 10% to the tune of Rs. 12,58,885/-, taxes to the tune of Rs. 4,59,364/- and further a sum of Rs. 7,93,077/- was the interest payable by the complainants for the delayed payments.
17. In the present case, the complainants are challenging the cancellation of the unit on the ground that the cancellation was effected in violation of clause 9 of the buyer agreement. On the contrary, the respondent states that the complainants were made valid offer of possession on 25.10.2021 and after subsequent reminders to pay the pending instalments, the unit of the complainant was duly cancelled as per procedure on 10.12.2021 and 27.05.2022.
18. While discussing earlier it has been held that the complainants were in default in making timely payments leading to cancellation of the allotted unit by the respondent as per the term and conditions of allotment. Now, the issue for consideration arises as to whether the complainants are entitled for refund of the illegal deduction of earnest amount from the respondent.
19. As per cancellation letter dated 10.12.2021, the earnest money deposit shall stand forfeited against the amount paid by the complainants. In the present complaint, the said unit was booked for a total consideration of Rs. 1,27,28,495/- against which the complainant paid an amount of Rs. 29,99,851/-. The respondent builder offered possession of the unit on 25.10.2021 after obtaining occupation certificate on 30.09.2021. The respondent-builder raised various demands letter as per the payment plan opted by the complainants. The complainants continued with their default and again failed to make payment even after receipt of pre-cancellation letter dated 25.11.2021 which led to cancellation of their unit. It is important

to notes that the respondent states that the the complainants are not entitled to get any reliefs as the total loss calculated comes to Rs. 32,82,754/- which includes earnest money deduction 10% to the tune of Rs. 12,58,885/-, taxes to the tune of Rs. 4,59,364/- and further a sum of Rs. 7,93,077/- was the interest payable by the complainants for the delayed payments. The authority is of view that as per section 19 (6) and (7) of Act of 2016, the allottees are under obligation to make timely payment as per payment plan towards consideration of the allotted unit. The complainants continued with their default and making payment even after of various reminder letters, which led to cancellation of their unit. The Authority is of considered view that the cancellation done by respondent is valid in the eyes of law.

20. The deductions from the amount refundable are to be made as per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928*** and ***Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 **Ramesh Malhotra VS. Emaar MGF Land Limited** (decided on 29.06.2020) and **Mr. Saurav Sanyal VS. M/s IREO Private Limited** (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as **Jayant Singhal and Anr. VS. M3M India Limited** decided on 26.07.2022, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate*

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

"5. AMOUNT OF EARNEST MONEY

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

21. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainants against the allotted unit and respondent/builder is directed to *refund* the paid-up amount by the complainants after deducting 10% of the sale consideration being earnest money along with an interest @11% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) on such balance amount 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., 27.05.2022 till 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

22. 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):

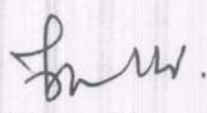



- i. The respondent/promoter is directed to refund the amount i.e., Rs. 29,99,851/- after deducting 10% of the sale consideration being earnest money along with an interest @11.10% p.a. on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date cancellation i.e., 27.05.2022, till the actual date of refund of the deposited 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.

23. Complaint stands disposed of.

24. File be consigned to registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairman


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.05.2025