

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

Complaint no. 1185 of 2024
Date of filing of complaint 01.04.2024
Date of decision 06.05.2025

Akanksha Saraswat
R/O: Villa no. 142, prestige Ozone whitefield, main
road whitefiled, Bangluru.

Complainants

Versus

1. Manglam Multiplex Private Limited
Regd. Office: LGF, F-22, Sushant Shopping Arcade,
Sushant Lok-1, Gurugram-122002.
2. M Three M India Private Limited.
Regd. Office: 41st Floor Tower1, M3M
International Dinance Centre, Sector-66,
Badshahpur
3. Roop Bansal
Regd. Office: 103B, the Aralias DLF Golf Course
Road, Gurugram
4. Basant Bansal
41st Floor Tower1, M3M International Dinance
Centre, Sector-66, Badshahpur
5. M Three M India Holding Private Limited.
Regd. Office: SB C 5L, Office 008, M3M Urbana
Sector-67, Gurugram

Respondents

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Bhupender Pratap Singh (Advocate)

Complainant

Ms. Shriya Takkar & Ms. Smriti Srivastava
(Advocates)

Respondents

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"M3M 65 th Avenue", Sector 65, Gurugram
2.	Nature of the project	Mixed development
3.	Project area	14.4125 acres
4.	DTCP license no.	15 of 2017 dated 02.05.2017 valid up to 01.05.2025
5.	Name of licensee	Manglam Multiplex Pvt. Ltd.
6.	RERA Registered/ not registered	01 of 2017 dated 14.06.2017 (Issued for part of the project by the Interim RERA) 32 of 2023 dated 02.02.2023 valid up to 01.05.2024 (for whole project)



7.	Unit no.	MH TW-06-607, 6th floor & Tower-6 (As per page no. 15 of the complaint)
8.	Unit area admeasuring	1433 sq. ft. (Super area) & 776.73 sq. ft. (Carpet Area) (As per page no. 15 of the complaint)
9.	Allotment letter	12.09.2021 (As per page no. 15 of the complaint)
10.	Date of execution of BBA	Not executed
11.	Possession clause	7. POSSESSION OF THE UNIT 7.1 Schedule for possession of the said Unit: The promoter agrees and understands that timely delivery of possession of the unit along with the car parking space(s), if any, to the allottee and the common areas to the association of allottees or the competent authority, as the case may be, as provided under the act and Rule 2(1)(f) of Rules, 2017, is the essence of the agreement. (Taken from another complaint of the same project)
12.	Due date of possession	01.05.2024 (As per RERA registration)
13.	Total sale consideration	Rs.1,73,85,706/- (As per customer ledger dated 26.07.2023 on page no. 47 of the complaint)
14.	Amount paid by the complainant	Rs.85,01,272/-

		(As per customer ledger dated 26.07.2023 on page no. 47 of the complaint)
15.	Occupation Certificate	Not obtained
16.	Offer of possession	Not offered
17.	Demand letter	14.10.2021 & 29.05.2023 (As per page no. 32 & 34 of the complaint)
18.	Reminder letter	17.11.2021, 08.02.2022 & 01.07.2022 (As per page no. 127, 130 & 136 of the reply)
19.	Pre-cancellation notice	04.07.2023 (As per page no. 88 of the complaint)
20.	Cancellation notice	01.08.2023 (As per page no. 89 of the complaint)
21.	Conveyance deed in favour of third-party	10.07.2024 (As per page no. 5 of application placed on record by the respondent on 01.08.2024)

B. Facts of the complaint:

3. That the complainant is an allottee of unit bearing number **MH TW-06-607** located in village **Badshahpur & Maidaws, Sector 65, Gurgaon** in the project **M3M Heights** being developed by the Respondent Company under RERA registration number **32 of 2023 (Earlier registration No 1 of 2017)**. Copy of allotment letter dated 12.09.2021 is annexed as **Annexure C1**. Total consideration payable for the said unit was fixed at Rs. 1,70,02,544.00 including GST of Rs. 8,09,644.00/-. The payment plan annexed to the allotment letter is reproduced below:



1. PAYMENT PLAN OF TCV

ANNEXURE B

Name of Instalment	Payment Plan	Charge Amount in (Rs.)	Tax Amount in (Rs.)	Instalment (amount in Rs.)
On Booking	6.47 % of TCV	10,47,619.00	52,380.00	10,99,999.00
On or Before 20th Sep 2021 (Subject to Signing of Builder Buyer Agreement)	8.53 % of TCV	13,81,316.00	69,066.00	14,50,382.00
On or Before 15th Nov 2021	20 % of TCV	32,38,580.00	1,61,930.00	34,00,510.00
On or Before 31st Jan 2022	15 % of TCV	24,28,915.00	1,21,446.00	25,50,381.00
On Application of OC	40 % of TCV	64,77,160.00	3,23,858.00	68,01,018.00
On Notice of Offer of Possession	10 % of TCV	16,19,290.00	80,964.00	17,00,254.00
	Total	1,61,92,900.00	8,09,644.00	1,70,02,544.00

4. That a mere glance at the payment schedule will reveal that 50% of total consideration is demanded without being linked to the progress of construction at the site, a violation of the mandate of 4(2)(1)(d) which mandates withdrawal from the escrow account strictly in accordance with the progress of construction.
5. That that the respondents have raised demands up to 90% of the total consideration without getting the builder buyer agreement (hereinafter, "BBA") executed and registered. And on the complainant's insistence on execution and registration of BBA the respondents cancelled the allotment and forfeited the entire money paid by the complainant. The respondents have thus violated the mandate of section 13 of the Act which mandates the promoter not to accept more than 10% of the total consideration without registering the BBA and also section 11(5) which mandates that the cancellation can only be in terms of the agreement to sell and cannot be done unilaterally and without sufficient cause.
6. It is submitted that the complainant paid a sum of Rs. 10,99,999.00/- on booking, being 6.47% of the total sale consideration against the first payment milestone i.e. "On Booking". Thereafter the respondent raised the demand for another 8.53% of the total consideration for a sum of Rs. 14,50,382/- which was also paid by the Complainant

7. That this demand itself was admittedly subject to the signing of the BBA. The BBA having not been executed and registered till date the respondents were prohibited from raising any further demands, before first getting the BBA executed and registered.
8. That the respondents, however, went on to raise the third demand for 20% of the sale consideration amounting to **Rs. 34,00,510/-** against the payment milestone, "**On or before 15th Nov 2021**" and for another 15% of the total consideration amounting to **Rs. 25,50,381/-** against the payment milestone, "**On or before 31st Jan 2022**". The respondents thus raised and collected 50% of the total consideration without getting the BBA executed and registered despite repeated requests by the complainant to register the same.
9. It is interesting to note from the said communication that the Respondent had issued an email as early as 05.09.2021 cancelling allotment and forfeiting the booking amount when the due date for payment was 20.09.2021 and even the allotment letter had not yet been issued. The allotment letter itself was issued on 12.09.2021 (**Annexure C1 refers**). Another such instance of issuing cancellation notice happened on 05.04.2022. The complainant had asked for execution of BBA even then but to no avail. The email exchange is testimony. Thus within 6 of booking the Company issued cancellation and forfeiture notices twice for no fault of the complainant. The respondent company resorts to these intimidating and arm-twisting tactics only to keep the allottees at tenterhooks.
10. The respondents however, kept insisting on the payment without paying any heed whatsoever to the request for registration of the BBA first. The complainant made specific requests for registration of BBA 05.04.2022, 15.03.2023, 17.08.2023, 25.09.2023, 03.02.2024. Further the respondent

company on 13.04.2023 acknowledged and admitted that the BBA was ready, and it would send the same to the address provided by the complainant. On 19.04.2023 the respondent once again sought confirmation on mailing address and acknowledged on 14.07.2023 that the BBA was ready for dispatch.

11. The BBA was admittedly not even dispatched to the complainant until after pre-cancellation notice was issued on 04.07.2023.
12. The respondent then issued a pre-cancellation notice dated 04.07.2023 calling upon the complainant to pay the demand of Rs. 68,01,018/- along with interest within 7 days of receipt of notice or face cancellation of allotment.
13. It is submitted that the cancellation is illegal on several grounds. One, the BBA was never executed by the Respondents. Two, the respondent demanded 90% of the total consideration without executing and registering the BBA. Three, the respondents did not even refund a single penny to the complainant upon unilaterally cancelling the allotment without just cause. Four, while deduction of 10% of total consideration as earnest money is stipulated in the allotment letter in the event of cancellation it could have been resorted to only after registration of the BBA and only after discharging the onus of proving that the loss suffered by the respondents on account of breach of the payment obligations by the complainant amounted to 10% of the total consideration. In the present case, however, the Respondents were themselves in breach of their obligation to first get the BBA registered before raising demands in excess of 10% of the total consideration.
14. It is submitted that the cancellation of allotment and forfeiture of the entire monies paid by the complainant amounting to a total of 50% of the total

consideration is illegal and the cancellation ought to be set aside on this ground alone.

15. It is submitted that the respondent company had agreed to pay pre-handover interest at the rate of Rs. 75,567/- per month for the intervening period between completing 35% of the payment and 50% of the payment and sum of Rs. 1,21,447/- for the period after completing 50% of payment until receipt of OC. Communication dated 13.08.2021 from the Respondent Company where this factum is admitted is annexed as Annexure C12. The Respondent in fact, gave its version of pre-handover interest due to the complainant vide communication dated 15.07.2023, whereby a sum of Rs. 11,59,867/- was admittedly due to the Complainant on account of pre-handover interest.
16. It is submitted that a further sum of only Rs. 17,00,254/- would be payable on notice of offer of possession, which never happened as the Respondent Company cancelled the allotment on 01.08.2023. The complainant was only insisting on the registration of buyer agreement before paying the balance consideration, which was a fair expectation given the mandate of section 13 and a legitimate apprehension of the complainant arising from the fact that the all the promoters of the respondent companies were in jail on charges of money laundering and bribing the presiding judge of the Special CBI Court.

C. Relief sought by the complainants:

17. The complainants have sought following relief(s):
- i. Declare the cancellation of the unit as illegal and restoration of allotment in favour of the complainant.
 - ii. Execution of BBA.

- iii. Direct the respondent to give credit to the complainant of the monies payable to the complainant as pre-handover interest and to issue her a fresh statement of accounts.
- iv. Direct the respondent not to levy holding charges or penal interest against unlawful demands raised without registration of BBA.
- v. Direct the respondent to handover possession of the complete unit in all respects to the complainant.
- vi. Direct the respondent to pay delay possession charges along with prescribed rate of interest.
- vii. Impose penalties upon the respondents under section 63 read with section 69 of the Act for violation of sections 13 and 11(5) of the Act.

D. Reply by respondent:

18. That the complainant was allotted unit bearing no. MH TW-06-607 vide allotment letter dated 12.09.2021. The cost of the unit for an area admeasuring 776.73 sq. ft. carpet area was fixed at Rs. 1,70,02,544/- plus other applicable charges. The complainant on her own free will and volition had opted for a time linked payment plan.
19. That the respondent company no.1 vide cover letter dated 24.09.2021 sent triplicate copies of the buyers agreement for due execution at the complainant's end. However, for the reasons best known to the complainant, the complainant failed to return the duly executed triplicate copies of the buyer's agreement and did not come forward for the registration process.
20. That the respondent no.1 on various occasions vide emails dated 17.10.2021, 01.03.2022, 15.03.2023, 23.03.2023, 14.07.2023, requested the complainant to come forward and execute the buyer's agreement, but to no avail.

21. That thereafter, the respondent no.1 as per the payment plan opted by the complainant, raised the demand vide letter dated 14.10.2021 which to be paid on or before 15.11.2021 and requested the complainant to pay an amount of Rs.34,00,509/-.
22. That since the complainant failed to clear her outstanding dues raised vide the demand letter, the respondent no.1 company issued reminder letter-1 dated 17.11.2021 requesting the complainant to make the payment of outstanding dues within 15 days from the date of the reminder letter.
23. That despite issuance of the reminder letter, the complainant did not come forward to clear the complete outstanding dues, therefore the respondent no.1 company issued pre-cancellation letter dated 02.12.2021 to the complainant finally calling upon the complainant to make payment of the outstanding dues within 15 days of the issuance of the letter, failing which the allotment shall be cancelled/terminated.
24. That the respondent no.1 as per the payment plan opted by the complainant raised the demand vide letter dated 07.01.2022 and requested the complainant to pay an amount of Rs. 30,50,890/- which included the previous outstanding dues to the tune of Rs. 5,00,509/- which was to be paid on or before 31.01.2022.
25. That the complainant failed to clear her outstanding dues raised vide the demand letter as a result of which the respondent no.1 company issued reminder letter-1 dated 08.02.2022 requesting the complainant to make payment of outstanding dues within 15 days of the issuance of the said reminder letter.
26. That despite issuance of the reminder letter dated 08.02.2022, the complainant did not come forward to clear her complete outstanding dues,

therefore the respondent company issued a pre-cancellation letter dated 28.02.2022 finally calling upon the complainant to make payment of the outstanding dues within 15 days, failing which the allotment shall be cancelled/terminated.

27. That the complainant even after the issuance of the above-mentioned pre-cancellation letter failed to clear her dues and continued to breach the terms of the application form/allotment and did not come forward to execute the buyer's agreement. As a consequence of the same, the Respondent No.1 was constrained to cancel the allotment of the complainant vide cancellation letter dated 02.04.2022 and forfeited the amount deposited as per the terms of the Application Form/Allotment.
28. That the complainant approached the respondent no.1 and requested to reinstate the unit. The Respondent being a customer-oriented company agreed to the request of the complainant, subject to the complainant clearing her pending dues and execution of the buyer's agreement. The Complainant made payment of Rs. 10,00,000/- in instalments of Rs. 5,00,000/- each in order to revive the unit. The respondent No.1, on the assurance given by the complainant, acceded to the said request of the complainant.
29. That the complainant even after the leverage given to her failed to take advantage of the opportunity and defaulted in making the complete payment of the outstanding dues. The respondent no.1 left with no other alternative issued a last and final opportunity letter dated 01.07.2022 upon the complainant requesting the complainant to make the payments of the outstanding dues along with applicable interest within 7 days from the date of this letter.

30. The respondent no.1 company fulfilled its commitment and completed the construction before the agreed timeline by investing its own funds. The respondent no.1 completed the construction of the project much prior to the agreed timeline and applied for the grant of occupation certificate on 11.01.2023.
31. That as per the payment plan opted by the complainant, the respondent no.1 company raised demand vide demand letter dated 29.05.2023 due on the application of OC and requested the complainant to pay an amount of Rs. 68,01,018/- on or before 18.06.2023.
32. That the complainant again failed to clear her outstanding dues and failed to come forward to execute the buyers agreement and continued to breach the terms of the application form/allotment as a consequence of the same, the respondent no.1 company sent a pre-cancellation letter dated 04.07.2023 requesting the complainant to remit the overdue payment along with applicable interest within 7 days from the date of the issuance of this notice, failing which the respondent No.1 shall be constrained to cancel the booking/allotment.
33. Despite, issuance of the above-mentioned pre-cancellation letter, the complainant failed to clear her outstanding dues and failed to execute the buyer's agreement and continued to breach the terms of the application form/allotment. As a consequence of the same, the respondent no.1 company was constrained to cancel the allotment of the complainant vide cancellation letter dated 01.08.2023 and forfeit the amount deposited as per the terms of the application form (Clause 32) and allotment.
34. It is submitted that till cancellation of the unit the complainant had deposited an amount of Rs. 85,01,272/- against the total sale consideration of Rs. 1,70,02,544/- plus other charges.

35. It is relevant to mention here that post cancellation of the unit, the complainant only made the payment of Rs.9,50,000/- through RTGS instead of the complete pending amount of Rs 68,01,018/-. It is submitted that the amount of Rs.9,50,000/- was never accepted against the unit in question and the same was lying in the suspense account, later on refunded to the complainant.
36. That the unit has already been cancelled on 01.08.2023, accordingly, there is no privity of contract between the complainant and the answering respondent, and the complainant has no right, title or interest in the unit in question and neither is the allottee of the same and therefore the complaint is infructuous. The complainant thus has no right, title, interest or claim left in the unit. That in furtherance of the cancellation of the subject unit, the respondent company has allotted the unit to Mr. Kunal Kaul and Mrs. Kuldeep Kumar Kaul vide allotment letter dated 01.04.2024.
37. All other averments were denied in total.
38. 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:

39. 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

40. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of the Real

Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

41. 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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

42. 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. Finding on the relief sought by the complainants.

- F.I Declare the cancellation of the unit as illegal and restoration of allotment in favour of the complainant.**
- ii. Execution of BBA**

- iii. **Direct the respondent to give credit to the complainant of the monies payable to the complainant as pre-handover interest and to issue her a fresh statement of accounts**
- iv. **Direct the respondent not to levy holding charges or penal interest against unlawful demands raised without registration of BBA.**
- v. **Direct the respondent to handover possession of the complete unit in all respects to the complainant.**
- vi. **Direct the respondent to pay delay possession charges alongwith prescribed rate of interest.**
- vii. **Impose penalties upon the respondents under section 63 read with section 69 of the Act for violation of sections 13 and 11(5) of the Act.**

The above-mentioned reliefs no. F. I, F.II , F.III, F.IV, F.V, F-VI and F.VII 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

43. The counsel for the respondents stated at bar that respondent no. 2 and 4 are directors of the company and there is no privity of contract between them and the complainants and hence, respondent no.1 moved an application for deletion of their names and same was allowed on 06.05.2025.
44. The complainant stated that she booked a unit in the captioned project and allotment was done on 20.9.2021 and an amount of Rs.85,01,272/- against total sale consideration of Rs.11,73,85,706/- has been paid to the respondent. However, no BBA has been executed by the respondent and the respondent has received more than 10% of the sale consideration without entering into BBA, which is clear violation of Section 13(1) of the Act 2016, and the respondent shall be penalized in terms of section 61 of the Act 2016. She had been registering her protest and insisting on

execution and registration of BBA since April 2022, but the respondent was only interested in raising demands and threatening cancellation of the subject unit. The respondent had issued an email as early as 05.09.2021 cancelling allotment and forfeiting the booking amount when the due date for payment was 20.09.2021 and even the allotment letter had not yet been issued. It is important to note that the BBA was admittedly not even dispatched to the complainant until after pre-cancellation notice was issued on 04.07.2023. The complainant further states that unit was cancelled on 01.08.2023 on account of non-payment of outstanding dues and a demand draft of Rs.77,50,948/- was sent to the complainant which was never encashed by the complainant as the said draft was issued without the consent of the complainant.

45. On the contrary, the counsel for the respondent states that the respondent No.1 on various occasions vide emails dated 17.10.2021, 01.03.2022, 15.03.2023, 23.03.2023, 14.07.2023, requested the complainant to come forward and execute the buyer's agreement, but to no avail. Despite issuance of the reminder letter, the complainant did not come forward to clear the complete outstanding dues, therefore the respondent No.1 issued pre-cancellation letter dated 02.12.2021 to the complainant finally calling upon the complainant to make payment of the outstanding dues within 15 days of the issuance of the letter, failing which the allotment shall be cancelled/terminated. The complainant approached the respondent no.1 company and requested to reinstate the unit. The respondent being a customer-oriented company agreed to the request of the complainant, subject to the complainant clearing her pending dues and execution of the buyer's agreement. The complainant made payment of Rs. 10,00,000/- in instalments of Rs. 5,00,000/- each in order to revive the unit. The

respondent no.1, on the assurance given by the complainant, acceded to the said request of the complainant.

46. The complainant again failed to clear her outstanding dues and failed to come forward to execute the buyers agreement and continued to breach the terms of the application form/allotment as a consequence of the same, the respondent No.1 sent a pre-cancellation letter dated 04.07.2023 requesting the complainant to remit the overdue payment along with applicable interest within 7 days from the date of the issuance of this notice, failing which the respondent No.1 shall be constrained to cancel the booking/allotment.
47. It is important to note that post cancellation of the unit, the complainant only made the payment of Rs. 9,50,000/- through RTGS instead of the complete pending amount of Rs. 68,01,018. It is submitted that the amount of Rs. 9,50,000/- was never accepted by the respondent and was later refunded to the complainant by way of a demand draft.
48. As per cancellation letter dated 01.08.2023 annexed on page no. 95 of complaint, 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. 1,73,85,706/- against which the complainant paid an amount of Rs. 85,01,272/-. The respondent-promoter raised various demands letter as per the payment plan opted by the complainants. The complainant continued with their default and again failed to make payment even after receipt of pre-cancellation letter dated 04.07.2023 which led to cancellation of their unit. It is admitted by both the parties that after cancelation of the unit, the respondent-promoter refunded the amount of Rs. 77,50,948/- bearing demand draft no. 512613 for an amount of Rs. 68,00,948/- drawn on IndusInd Bank dated

20.03.2024 in favour of the complainant and another demand draft no. 512614 for an amount of Rs. 9,50,000/- drawn on IndusInd Bank dated 16.05.2024 but the complainant failed to encash the same. 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.

49. However, the deductions made from the paid-up amount by the respondent are not 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."

50. It is observed that the respondent issued a demand draft amounting to Rs. 68,01,018/- on 20.03.2024. Although the complainant did not encash the said demand draft, the amount stood deducted from the account of the respondent. In view of the above, the respondent is liable to pay the balance amount after deducting the amount of Rs. 68,01,018/- from the amount so calculated with interest at the prescribed rate till its realization.

51. 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 @11.10% p.a. (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 refundable amount, from the date of cancellation i.e., 1.08.2023 till 20.03.2024 and further, after deducting already refunded amount, with interest at the rate 11.10% from

20.03.2024 till realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

52. Further the complainant shall return the original demands drafts bearing no. 512613 dated 20.03.2024 amounting to Rs. 68,00,948/- and demand draft no. 512614 dated 16.05.2024 amounting to Rs. 9,50,000/- sent by the respondent no.1 within a period of 15 days to the respondent no. 1 and the respondent no.1 will return the same after revalidation from the concerned bank within next 15 days.

H. Directions of the Authority:

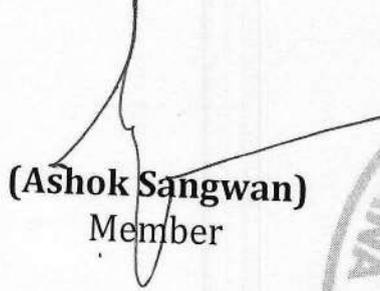
53. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent/promoter 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 @11.10% p.a. on the refundable amount, from the date of cancellation i.e., 1.08.2023 till 20.03.2024 and further, after deducting already refunded amount, with interest at the rate 11.10% from 20.03.2024 till realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
- ii. Further the complainant shall return the original demands drafts bearing no. 512613 dated 20.03.2024 amounting to Rs. 68,00,948/- and demand draft no. 512614 dated 16.05.2024 amounting to Rs. 9,50,000/- sent by the respondent no.1 within a period of 15 days to

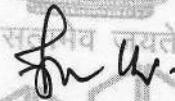
- the respondent no. 1 and the respondent no.1 will return the same after revalidation from the concerned bank within next 15 days
- iii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

54. Complaint stands disposed of.

55. File be consigned to the registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.05.2025

HARERA
GURUGRAM