

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

Complaint no.: 5834 of 2023
Date of complaint: 18.12.2023
Order pronounced on: 16.05.2025

Mr. Sanjay Grover
Ms. Meenu Grover
Both RR/o: R/o N-3/27A, DLF, Phase-II,
Gurugram, Haryana-122001

Complainants

Versus

M/s Splendor Landbase Limited
Regd. Office at: - Unit No.501-511, 5th floor,
Splendor Forum, Plot No.3, District Centre Jasola,
New Delhi-110025.

Respondent

CORAM:

Sh. Ashok Sangwan

Member

APPEARANCE:

Sh. Ankit Vohra (Advocate)
Ms. Shriya Takkar (Advocate)

Complainants
Respondent

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 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*.

A. Unit and project related details.

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

Sr. No.	Particulars	Details
	Name of the project	"Splendor Epitome", at Sector-62, Gurugram, Haryana
1.	Nature of the project	Commercial Colony
2.	Project area	3.35 acres
3.	DTCP License no. and validity status	<ul style="list-style-type: none"> 51 of 2009 dated 27.08.2009 Valid up to 26.08.2019 58 of 2012 dated 05.06.2012 Valid up to 04.06.2020
4.	Rera registration	22 of 2019 dated 26.03.2019 Valid up to 31.12.2023
5.	Allotment letter	19.07.2012 [Page 30 of complaint]
6.	Unit no.	23, ground floor [Page 30 of complaint]
7.	Unit area admeasuring	765 sq. ft. (super area) 382.5 sq. ft. (carpet area) [Page 30 of complaint]
8.	Builder buyer Agreement	Not executed
9.	Possession clause as per provisional allotment letter dated 19.07.2012	Clause (xxiii) - <i>The Company shall endeavor to complete the construction of the complex including the said space within a period of three years from the date of approval of building plan of the complex subject to timely payment by the intending allottee(s) of the sale price and other charges due and payable according to the payment plan applicable to him or as demanded by the company and subject to force majeure.</i>
10.	Due date of delivery of possession	26.06.2022 including grace period of 6 months on account of COVID-19 [As per record of planning branch of the Authority, the Building Plan was granted on 26.12.2018]

11.	Payment plan	Construction linked payment plan [Page 31 of complaint]
12.	Total basic sale consideration as per provisional allotment letter	Rs. 76,50,000/- [Page 30 of complaint]
13.	Total amount paid by the complainants	Rs. 23,54,098/- [As per demand letter dated 16.05.2019, at page 28 of complaint and P.A.L. dated 19.07.2012 at page 30 of complaint]
14.	Demand for payment	02.01.2012, 23.02.2012, 24.04.2012, 10.12.2013, 18.01.2014, 25.04.2014 [Page 69-75 of reply] 16.05.2019, 11.06.2019, 07.07.2019 [Page 135-138 of reply]
15.	Final reminder by the respondent dated	07.07.2019 [Page 139-140 of reply]
16.	Cancellation notice	02.08.2019 [Page no. 142 of reply, on the ground of non-payment] Note: As per cancellation letter, earnest money amounting to Rs. 15,30,000/- and service tax amounting to Rs. 87,465/- were forfeited by respondent 2 cheques of Rs. 3,68,317/- were returned by respondent to complainants
17.	Occupation certificate	Not placed on record

B. Facts of the complaint:

3. The complainants have made the following submissions:

- That being lured by the false commitments of the respondent company and in pursuance of the application, the complainants paid advance amount of Rs.5,00,000/- to the respondent to get the booking confirmed for the Shop/unit no. 023 measuring 765 sq. ft. super area in the project of the respondent for the total sale consideration of Rs. 76,50,000/- in the project "Splendor Epitome".

- ii. That Allotment Letter was signed by the parties on 19.07.2012 in respect of the subject unit and it contained one sided terms and conditions favouring only the respondent. On 05.01.2021, an amount of Rs. 11,47,500/- was paid by the complainant to the respondent in lieu of unit admeasuring 765 Sq. Ft. (super area) in cash via Golden Bricks (Broker). By this time, the complainants had paid a total amount of Rs. 35,01,598/- approx. The complainants had not defaulted in any payment and it was made as and when the demand was raised by the respondent. Since, the complainants were trapped into the lies laid by the respondent, the complainants had no option but to sign on the dotted line. That as per clause 23 of the allotment letter, the respondent had agreed to deliver the possession of the shop within 36 months from the date of the approval of building plans of the complex. That the Allotment letter was signed on 19.07.2012 and the respondent had to deliver the possession of the shop by 18.07.2015.
- iii. That the complainants used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going in full mode and accordingly asked for the payments which the complainants gave on time and the complainants when visited to the site were shocked & surprised to see that construction work was not going on and no one was present at the site to address the queries of the complainants. The only intention of the respondent was to take payments for the unit/flat without completing the work and not handing over the possession on time.
- iv. That despite receiving of approximately 50% payments on time for all the demands raised by the respondent for the said shop/unit and

despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent has failed to deliver the possession of the allotted shop/unit to the complainants within stipulated period. The respondent has failed to obtain occupation certificate from the concerned department till date. The respondent also failed to obtain the RERA registration certificate.

- v. That the construction work that is being carried out at the project site is bare minimal and at a very slow rate. There is no chance of completion of construction in near future. It is evident from the facts stated herein above and from the position of construction at ground, that the respondent be put to pay delayed possession charges to the complainants @ 18 % per annum to be calculated from the date of payments made by the complainants.
- vi. That the cause of action for filing of the present complaint arose when the respondent got signed an illegal and arbitrary Allotment Letter from the complainants. The cause of action subsequently arose on multiple occasions when the complainants' made requests to the respondent to complete the construction on time and when the respondent failed to deliver possession of the shop and failed to pay delayed possession charges to the complainants. The cause of action is continuous one and still subsisting, hence the present complaint.

C. Relief sought by the complainants:

4. The complainants are seeking the following reliefs:

- i. Direct the respondent handover the possession of the shop no. SE/023, Ground Floor, Splendor Epitome, Sector-62, Gurugram, after taking of Occupation Certificate from the concerned department.

- ii. Direct the respondent to execute the Builder Buyer's Agreement with the complainants.
 - iii. Direct the respondent to pay delayed possession charges @18% per annum (compoundable) from the date of each payment made by the complainants and the respondent may kindly be directed not to charge anything that is not a part of the Allotment Letter for the said unit.
 - iv. Direct the respondent to complete the construction as per the approved layout plan and provide all the amenities as promised in its brochure and to the complainants.
 - v. Direct the respondent to pay litigation cost amounting to Rs. 1,00,000/-.
 - vi. To pass any other order/relief or any directions as this Hon'ble Authority and your Honour may kindly deem just and appropriate in favour of the complainants.
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 by way of filing reply dated 05.07.2024 and written submission dated 09.05.2025:
- i. That complainant's allotment was cancelled on 02.08.2019, following their persistent defaults in fulfilling payment obligations from December 2013 and completing necessary formalities. Notwithstanding clear notice of both the impending cancellation and an opportunity to rectify such defaults, no challenge or objection was ever raised against this termination. As a result, by the time the present complaint was filed in 2023, a period of nearly

four years had elapsed since the cause of action arose. In this case, any such cause of action, if it existed, became time-barred when the complainants failed to take legal recourse within three years of the cancellation. Having remained silent for almost four years, the complainants are now precluded from resurrecting this claim. Thus, the present complaint is barred by limitation.

- ii. That complainants were allotted unit no. 023, Ground Floor, admeasuring 765 sq. ft. vide provisional allotment letter dated 19.07.2012. The complainants made payments amounting to Rs. 23,54,098/-. However, the complainants were also obliged to make further instalments strictly in accordance with the construction-linked payment plan opted by them. Timely payment was the essence of the arrangement, and the complainants had agreed to abide by the terms and conditions as laid down in the provisional allotment letter including clauses xi, xii, xiii and xiv thereof.
- iii. The respondent initially sent a demand letter dated 10.12.2013 for Rs. 9,46,367/- towards due instalments under the construction-linked payment schedule. This was followed by reminder letters dated 18.01.2014 and 25.04.2014. When no payment was received, the respondent issued further reminders dated 16.05.2019, 11.06.2019 and a final reminder notice dated 07.07.2019, demanding the outstanding sum of Rs. 32,41,367/-. The complainants were repeatedly apprised not only of the instalment amounts due but also of the consequences of failure to make timely payments. Despite this, no payment was made by the complainants towards the aforementioned demands.
- iv. The construction of the project was continuously ongoing, and after receiving necessary regulatory permissions, the respondent once

again called upon the complainants to honour their payment obligations through the aforementioned notices and reminders. However, the complainants chose to persist in default despite multiple opportunities.

- v. The under the Provisional Allotment Letter's clear stipulations, the complainants at all times remained liable to make payment of the instalments falling due under the construction-linked payment plan, and failure to pay rendered the allotment of the subject unit in favour of the complainant subject to cancellation and forfeiture.
- vi. Even after this succession of demands (10.12.2013, 18.01.2014, 25.04.2014, 16.05.2019, 11.06.2019, and 07.07.2019), plus persistent follow-ups and opportunities, the complainants still did not clear the outstanding dues or fulfilled the requisite formalities. As a result, the respondent ultimately sent an intimation of termination dated 02.08.2019, cancelling the allotment in accordance with clause xii read with clauses x and xi of the Provisional Allotment Letter. After the complainants failed to pay the overdue sums, the respondent, in terms of the agreed conditions, refunded the balance amount after deducting the applicable earnest money and non-refundable charges. A refund cheque was enclosed representing the balance after deducting earnest money and non-refundable charges as per the Provisional Allotment Letter. The said cheques were tendered in full and final settlement of all claims related to the allotted unit. The complainants did not raise any objection or dispute regarding the cancellation and refund for a period of more than three years, which remain valid and binding on the parties.

vii. That the respondent company only accepts payment through bank transfer/banking instruments for which receipts are issued by the respondent company. It is submitted that no amount was ever accepted in cash by the respondent company from the complainants. The complainant's allegation regarding a purported cash payment of ₹11,47,500/- made to a third-party broker, namely M/s. Golden Bricks, is wholly unsubstantiated and denied. The only document produced in support of this alleged payment is a vague, handwritten receipt on a sheet bearing the header "M3M," annexed as Annexure C-1, which neither originates from nor is acknowledged by the respondent. In stark contrast, the complainants have themselves annexed, along with the complaint, formal receipts issued by the respondent for payments made against specific demand letters. Thus, by the complainant's own admission and documentary annexures, it is evident that the respondent acknowledged only those payments that were made in response to valid demands and recorded through receipts issued by the respondent. Accordingly, the alleged cash payment cannot be treated as payment made towards the unit, nor does the complainant's claim or annexures alter the respondent's consistent position that the complainants were persistently in default of the agreed payment obligations.

viii. That the complainants were in default of their contractual obligations of making timely payments and is thus in violation of section 19(6) and (7) of the Act. Despite repeated requests and issuance of reminder notices, the complainants failed to make payment of the outstanding amounts as per the construction-linked payment plan opted by them. As a consequence, the respondent,



after giving numerous opportunities to the complainants to make good their default, was constrained to cancel the allotment of the complainants vide cancellation notice dated 02.08.2019. The Complainant's persistent and unrectified default in making timely payments, as well as their failure to follow through on necessary documentation, clearly disentitles them from any relief. Under these circumstances, the respondent acted well within its rights in cancelling the allotment and forfeiting the amount deposited as per the terms of the Provisional Allotment Letter.

- ix. The principle consistently applied by this Hon'ble Authority is that an allottee who fails to remedy payment defaults, or otherwise cure contractual breaches, cannot demand complete refunds or specific performance, especially after receiving multiple opportunities to comply and failing to do so. By analogy, the present complainants are barred from claiming reliefs, given their unrectified defaults.
7. All other averments made by the complainant were denied in toto.
8. Written submissions filed by the respondent and complainant is also taken on record and considered by the authority while adjudicating upon the relief sought by the complainant. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

E. Objection raised by respondent

G.I Observations of Authority with regard to maintainability of complaint on account of complaint is barred by limitation.

9. The respondent submitted that complainant's allotment was cancelled on 02.08.2019, following their persistent defaults in fulfilling payment obligations from December 2013 and completing necessary formalities. The present complaint was filed in 2023, a period of nearly four years had elapsed

since the cause of action arose. In this case, any such cause of action, if it existed, became time-barred when the complainants failed to take legal recourse within three years of the cancellation. Having remained silent for almost four years, the complainants are now precluded from resurrecting this claim. Thus, the present complaint is barred by limitation.

10. In line with the aforesaid facts and submissions made by the parties and documents placed on record, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice and it is universally accepted maxim, the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
11. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
12. In the present matter the cause of action arose on 02.08.2019 when the subject unit was cancelled by the respondent. The complainant has filed the present complaint on 18.12.2023 which is 4 years 4 month and 16 days from the date of cause of action. In the present case the three-year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 12.07.2024. In view of the above, the Authority is of the view that the present complaint is filed within a reasonable time period and is not barred by the limitation.

F. Jurisdiction of the authority.

13. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

F.I Territorial jurisdiction

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose 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.

F.II Subject matter jurisdiction

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

Section 11.....(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

16. 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 complainants at a later stage.

G. Findings on the relief sought by the complainants

G.I Direct the respondent handover the possession of the shop no. SE/023, Ground Floor, Splendor Epitome, Sector-62, Gurugram, after taking of Occupation Certificate from the concerned department.

- G.II Direct the respondent to execute the Builder Buyer's Agreement with the complainants.**
- G.III Direct the respondent to pay delayed possession charges @18% per annum (compoundable) from the date of each payment made by the complainants and the respondent may kindly be directed not to charge anything that is not a part of the Allotment Letter for the said unit.**
- G.IV Direct the respondent to complete the construction as per the approved layout plan and provide all the amenities as promised in its brochure and to the complainants.**
- G.V Direct the respondent to pay litigation cost amounting to Rs. 1,00,000/-.**

17. The abovementioned reliefs are dealt together as being interconnected.

18. Briefly stated the facts are that a unit no. 23, ground floor admeasuring 765 sq. ft. (super area) was allotted to the complainants in the project "Splendor Epitome" situated at Sector-62, Gurugram vide allotment letter dated 19.07.2012. The complainant has paid Rs. 35,01,598/- against the subject unit. The complainants through instant complaint submitted that they tried to contact the respondent through various means asking status update of the construction of the project. However, the respondent never gave any response to them. Therefore, the complainants have approached the authority through present complaint.

19. On the other hand, the counsel on behalf of the respondent submitted that complainant has only paid an amount of Rs. 23,54,098/- against the total sale consideration of Rs.76,50,000/- and several reminder and demand notices were sent by the respondent to the complainant giving opportunity to pay the outstanding dues following which a cancellation letter dated 02.08.2019 was sent to the complainants.

In view of the factual matrix of the present case, the question posed before the authority is whether the cancellation dated 02.08.2019 is valid in the eyes of law?

20. On consideration of documents available on record and submissions made by both the parties, it is evident that the complainants were allotted above

mentioned unit for a sale consideration of Rs.76,50,000/-. There is dispute between the parties w.r.t. payment made in cash of ₹11,47,500/- to a broker, namely M/s. Golden Bricks. The authority observes that the document relied by the complainant in this regard is a handwritten document and it does not bear seal of any legal entity who has issued the same. Further, the said handwritten document is on paper with header "M3M" which is contrary to the claim that the said letter was issued by Golden Bricks. The aforesaid documents are not sufficient to substantiate the claim of the complainant. Thus, in absence of adequate proof, it is deemed that the complainants have paid a sum of Rs. 23,54,098 /- to the respondent against the allotted unit.

21. Upon examining the documents submitted by both parties, the Authority observes that the complainants have made payment of Rs.23,54,098/- in the following manner i.e., Rs. 5 lakhs on 30.11.2011, Rs. 6,47,500/- on 15.11.2011 and Rs. 12,06,598/- on 14.06.2011. It is evident from above that the complainants have made payments only up to 30.11.2011. Thereafter, they have failed to make payment despite various demands/reminders by the respondent.

22. As per the cancellation letter dated 02.08.2019 annexed on page 142 of reply, the earnest money deposit and service tax stand forfeited against the amount of Rs.23,54,098/- paid by the complainant. Upon perusal of documents on record, various reminders were sent by the respondent to the complainants before cancelling the unit to clear the outstanding dues but, the complainants failed to pay the outstanding dues. Thus, the respondent sent a cancellation letter on 02.08.2019 due to non-payment. It is observed that as per section 19(6) & (7) of the Act, 2016, the allottee was under an obligation to make timely payment as per the payment plan towards consideration of the allotted unit. The respondent sent demand/reminder letters on 02.01.2012, 23.02.2012, 24.04.2012, 10.12.2013, 18.01.2014, 25.04.2014, 16.05.2019,



11.06.2019 and 07.07.2019 to the complainants regarding the payment of the outstanding dues for the subject unit. However, the complainants did not pay the outstanding dues despite affording numerous opportunities by the respondent.

23. In view of the above findings, the Authority observes that the complainants are not entitled for the reliefs being sought under the present complaint as the subject unit of the complainants was cancelled by the respondent after issuing proper reminders. Therefore, the cancellation letter dated 02.08.2019 is hereby held to be valid in the eyes of law. It is also pertinent to note that 2 cheques of Rs. 3,68,317/- were returned by respondent to complainants and same has been confirmed by the respondent as per Annexure R19, page 145 of reply.

24. However, the issue with regard to deduction of earnest money on cancellation of a contract arose 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 a 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 farmed 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."

25. 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.
26. 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, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs. 23,54,098/- after deducting the earnest money which shall not exceed the 10% of the sale consideration. The amount already refunded by the respondent shall be adjusted from the refundable amount and shall return the balance amount to the complainants 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 letter i.e. 02.08.2019 till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H.Directions of the Authority.

27. 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 paid-up amount i.e. Rs. 23,54,098/- to the complainants after deducting 10% of the sale consideration being earnest money. The amount already refunded by the respondent shall be adjusted from the refundable amount and shall return the balance amount to the complainants along with interest at the rate of 11.10% as prescribed under rule 15 of the Rules, 2017, from the date of cancellation letter i.e. 02.08.2019 till its realization.
- II. A period of 90 days is given to the respondent to comply with the direction given in this order and failing which legal consequences would follow.

28. Complaint stands disposed of.

29. File be consigned to registry.

Dated: 16.05.2025

Ashok Sangwan
Member

(Haryana Real Estate Regulatory
Authority, Gurugram)