

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

Complaint no. :	5724 of 2022
Date of filing of complaint:	17.08.2022
Date of Order:	03.04.2025

1. Kumar Pravir
2. Pooja Shankar

Complainants

Both R/o: 1/6, Ground Floor, Malviya
Nagar, Khirki Village, South Delhi, New
Delhi-110037

Versus

Emaar MGF Land Limited
Regd. Office at: 306-308, Square One, C-2,
District Centre, Saket, New Delhi-110017

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Sh. Gaurav Bhardwaj (Advocate)

Complainants

Sh. Harshit Batra (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainants/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 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 complainants, 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 of the project	Palm Gardens, Sector 83, Gurugram, Haryana
2.	Total area of the project	21.90 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	108 of 2010 dated 18.12.2010
	Validity of license	17.12.2020
	Licensee	Logical Developers Pvt. Ltd. and 2 others
	Area for which license was granted	21.9 acres
5.	HRERA registered/ not registered	Registered vide no.330 of 2017 dated 24.10.2017 (1,2,6,8 to 12 and other facilities and amenities)
	HRERA registration valid up to	31.12.2018
	HRERA extension of registration vide	02 of 2019 dated 02.08.2019.
	Extension valid up to	31.12.2019
6.	Occupation certificate granted on	17.10.2019 [page 197 of reply]
7.	Unit no.	PGN-11-12A02, 13 th floor, building no. 11. (As per page no. 30 of the complaint)
8.	Area of the unit	1900 sq. ft. (As per page no. 30 of the complaint)
9.	Provisional allotment letter issued on	24.11.2018 (As per page no. 13 of the complaint)
10.	Date of execution of buyer's agreement	25.01.2019 (As per page no. 22 of the complaint)
11.	Date of execution of tripartite agreement	03.04.2019 [As per page no. 269 of the reply]
12.	Possession clause	7. POSSESSION AND SALE DEED

		<p>(a) Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned Authorities, the Company shall offer the possession of the Unit to the Allottee. Subject to Force Majeure and fulfillment by the Allottee of all the terms and conditions of this Agreement including but not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan, Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company shall offer the possession of the Unit to the Allottee on or before 31-12-2018 or such time as may be extended by the competent authority.</p> <p>(Emphasis supplied)</p> <p>(As per page no. 38 of the complaint)</p>
13.	Due date of possession	31.12.2018 (As mentioned in the possession clause)
14.	Total consideration	Rs.1,17,67,964/- (As per payment schedule on page no. 68 of the complaint)
15.	Total amount paid by the complainants	Rs.1,05,36,834/- (As per statement of account dated 30.05.2022 on page no. 94 of the complaint)
16.	Occupation Certificate	17.10.2019 (As per page no. 197 of the reply)
17.	Offer of possession	22.10.2019 (As per page no. 199 of the reply)
18.	Possession reminder letter	26.11.2019, 27.03.2020, 02.04.2020, 02.09.2020, 17.05.2022,
19.	Pre cancellation letter	21.02.2022 (As per page no. 209 of the reply)
20.	Cancellation letter	30.06.2022 (As per page no. 212 of the reply)

21.	Conveyance deed executed in favour of Mr. Vaibhav Mehra (i.e., second allottee)	29.03.2023 (As per page no. 214 of the reply)
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B. Facts of the complaint:

3. That the complainant has made following submissions:

- I. That somewhere in mid-2018, the respondent advertised about its new project namely "Palm Gardens" in Sector-83, Village Kherki Daula, Tehsil and District Gurugram. The respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project aims at providing group housing colony which inter-alia comprises of residential floor space, car parking space, recreational facilities, landscaped gardens.
- II. That believing the representations of the respondent and on the lookout for an adobe for himself and his family, on 28.08.2018, the complainants booked a unit in the said project by making a payment of Rs.1,00,000/-.
- III. That thereafter on 24.11.2018, the respondent has issued an allotment letter allotting the unit bearing no. PGN-11-12A02, situated on 13th floor in block-11 having super area of 1900 sq. ft. in the said project.
- IV. That after almost 4 months from the date of booking, finally, on 25.01.2019, the apartment buyer's agreement was executed between the parties. The complainants had made a payment amounting to Rs.7,79,612/- from the date of booking till execution of agreement in accordance with the demands of the respondent. It was also assured that the unit in question shall be handed over to the complainants within 60 days from the date of issuance of the occupation certificate

from the concerned authorities. The occupation certificate of project issued by the department on 10.01.2018. It is further to note that the said unit was a ready to move in unit.

- V. That believing on representation of the respondent, the complainants kept on making payment as and when demanded by the respondent. Till date the complainants have paid a total sum of Rs.1,05,36,834/- towards the unit in question against a total sale consideration of Rs.1,17,94,384/-.
- VI. That the complainants approached the project location several times during the said period to see the stage of construction but the project was nowhere near completion. The complainants subsequently approached the respondent representatives to know about the date of handing over of possession but to the utter shock of the complainants, the respondent refrain from replying to the same.
- VII. That subsequently, the complainants kept making calls, requests and through several meetings kept inquiring as to when will the respondent deliver the unit but the respondent's representatives never furnished a concrete answer to the same. The complainant time and again contacted the respondents expressing his concern over the delay in project and seeking an explanation from the respondent for the same, but to no avail.
- VIII. That after a delay of around 14 months from the date of booking, i.e., on 22.10.2019, the respondent issued the letter of offer of possession upon which the complainants protested to the respondent that they issued the letter of possession after 12 months without any justified reasons and the delay has caused hardship to the complainants.
- IX. That after receiving offer of possession, the complainants approached the project location to take possession of the unit but the same was

not in a habitable condition, upon which the respondent assured the complainants that finishing work in the unit shall be done within a period of 3 months. The complainants left with no other option give time to the respondent to finish the pending construction work in the unit. Subsequently a lockdown due to outbreak of Covid-19 was imposed by Government of India due to which the complainants could not approach the respondent to take possession of the unit.

- X. That the complainants in the month of February, 2022, approached the project site to take possession of the said unit but the unit in question was not ready for possession and there were many structural defects persisting in the said unit. The complainants contacted the respondent and further requested to handover the possession of the unit after completing remaining work but the respondent kept on asking the balance sale consideration from the complainants. The complainants further said that the balance sale consideration shall be paid at the time of offer of possession of the unit in habitable condition, but the respondent kept on persisting on the demand of balance sale consideration.
- XI. That to the utter shock, the complainants received a letter titled as "cancellation letter" dated 30.06.2022 from the respondent thereby cancelling the said unit due to non-payment of balance sale consideration. The complainants then approached the officials of the respondent regarding the same and enquired about the cancellation. In response to the same, the officials replied that the "you have breached the payment plan as stipulated in BBA and hence your unit has been cancelled". However the default was on the part of the respondent as the unit was allotted to the complainants with an assurance that the units are ready to move in but when the

complainants approached the project site to take the possession of the unit, the unit was not in a habitable condition.

- XII. That thereafter the complainants requested the officials of the respondent to not to cancel the above-mentioned unit as he has paid almost 90% of the total sale consideration and is ready to pay the remaining amount as well as holding charges, if any. But the officials of the respondent turned deaf ear and paid no heed to the request of the complainants.
- XIII. That the present complaint has been filed in order to seek possession of the unit by declaring the cancellation letter date 30.06.2022 as null and void being illegal and arbitrary and along with the other reliefs.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to handover the possession of the unit.
 - Direct the respondent company to pay delayed interest on the amount received by the respondent from the complainant
 - Direct the respondent not to charge the holding charges
 - Direct the respondent to charge delay payment at equitable rate of interest.

D. Reply by the respondent:

5. The respondent contested the complaint on the following grounds:
- That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone. The complainants are estopped by their acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.
 - That the complainants being interested in the real estate development of the respondent under the name and style of "Palm

Gardens" tentatively applied for the provisional allotment of the unit vide application form and were consequently allotted unit no. PGN-11-12A02 in the Tower 11, tentatively admeasuring 1900 sq. ft. vide the provisional allotment letter dated 24.11.2018. The project is duly registered with the Haryana RERA with registration no. 330 of 2017 and was extended vide extension number 02 of 2019 dated 02.08.2019.

- III. That the complainants had *malafide* conduct from the very beginning. They have been engaged in delaying tactics. That after the provisional allotment of the unit, the complainants were required to execute the buyer's agreement, two copies of which were given to them, however, for reasons best known to the complainants, they delayed in the execution of the said agreement. The respondent had time and again followed up with the complainants and it was after the last reminder dated 14.01.2019 that the buyer's agreement was executed between the parties on 25.01.2019.
- IV. That the complainants have no locus standi or cause of action to file instant complaint because it is based on an erroneous interpretation of the provisions of RERA as well as an incorrect understanding of the terms and conditions of the agreement, as shall be evident from the submissions made in the following paragraphs of the present reply.
- V. That according to clause 7(a) of the buyer's agreement, the delivery of possession of the unit was proposed to be within 60 days from the issuance of OC by the concerned authority, subject to *force majeure* and compliance of all the terms and conditions by the allottees including but not limited to the timely payment of the total price payable in accordance with the payment plan.



- VI. The occupation certificate was issued by the competent authority on 17.10.2019 and the offer of possession was issued on 22.10.2019. Thus, there is no delay on part of the respondent in delivering the said unit as alleged by the complainants. Further, it is pertinent to note that there was a typographical error in clause 7(a) of the agreement which notes that the offer possession of the unit was to be given to the allottee on or before 31.12.2018 or such time as may be extended by the competent authority. The buyer's agreement had been executed between the parties on 25.01.2019 (i.e., after the expiry of the said date) whereas there has been a typographical error in clause 7(a) "*the Company shall offer possession of the unit on or before 31.12.2018*" rather it should have been 31.12.2019. It is also submitted that the period of registration was also extended by the Authority up to 31.12.2019. Thus, it is submitted that the respondent has offered possession of the said unit within the time period as extended by the Authority and in any event within a period of 60 days from the date of issuance of the occupation certificate. Thus, there is no default or lapse insofar as the respondent is concerned.
- VII. That as per the payment plan, the third and final stage of payment was "On intimation of possession or by 25.03.2019". This additionally shows that the date of 31.12.2018 was wrongly written in clause 7(a). Thus, as per the agreement, the first stage of the offer of possession was 25.03.2019 and was further extended till 31.12.2019, as extended by RERA.
- VIII. That the complainants have gravely defaulted in timely remittance of instalments against their unit. It is an undisputed fact, as is a part of the agreement that time is of essence under clause 1.2(b) and 12 of

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the agreement. As is widely known and understood that the continuous flow of funds is pertinent to the real estate industry, it is submitted that upon the failure of the complainants in making due payments as per the schedule agreed upon, it has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondent.

- IX. That the respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization etc. and other force majeure circumstances, yet, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.
- X. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it also needs to be noted that the project has also got delayed on account that the contractor hired by the respondent i.e., ILFS (M/s Infrastructure Leasing & Financial Services), a reputed contractor in real estate, started raising certain false and frivolous issues with the respondent due to which they had slowed down the progress of work at site. The respondent was constrained to issue several letters to ILFS requesting it to proceed and complete the construction work in accordance with the decided schedule. However, ILFS continued with

its wanton acts of instigating frivolous and false disputes for reasons best known to it.

- XI. That all these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the respondent. That as per clause 7(c), in such circumstances, the due date for offer of possession was bound to extend automatically.
- XII. That the respondent, despite defaults on part of the complainants, earnestly fulfilled its obligation under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. The default committed by various allottees and due to various factors beyond the control of the respondent are the factors responsible for delayed implementation of the project. The respondent cannot be penalised and held responsible for the default of its customers or due to force majeure circumstances. Thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.
- XIII. That the respondent has complied with all of its obligations, not only with respect to the buyer's agreement with the complainants but also as per the concerned laws, rules and regulations thereunder and the local authorities. Despite innumerable hardships being faced by the respondent, the respondent submitted that once an application for grant of occupation certificate is submitted to the concerned statutory authority to respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any influence in any manner whatsoever over the same. There is a delay of around 8 months caused due to the non-issuance of the occupation certificate by the statutory authority while calculating the period of

delay. Therefore, it is respectfully submitted that the time period utilised by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilised for implementation of the project. That thereafter, only after obtaining the requisite permissions, the respondent legally offered the possession of the unit to the complainants on 22.10.2019. The respondent promised to offer the possession with 60 days of the grant of OC, and as per its promise, the respondent offered the possession of the unit to the complainants within 5 days of the grant of OC. Vide letter dated 22.10.2019 regarding offer of possession, the complainants were asked to make the requisite payment based on the statement of final dues and complete the documentation required to enable the respondent to initiate the process of handover of unit, however, the complainants never turned up to take the possession of the unit. Multiple reminders dated 26.11.2019, 27.03.2020, 02.04.2020, 26.09.2020, and 17.05.2022 were also sent to the complainants in this regard, however, the complainants willingly and voluntarily did not take possession of the unit.

- XIV. That the complainants stood in the event of default since 03.12.2019 for not making payment, not taking possession of the unit, non-execution of conveyance deed, and non-payment of statutory dues. Accordingly, the respondent had a right to terminate the unit as per the agreed terms and conditions under the agreement. That after having waited for almost 3 years, a final opportunity was given to the complainants to rectify their default through the pre-cancellation letter dated 21.02.2022, however, the complainants again willingly and voluntarily chose to not rectify the same, and consequently, the

respondent terminated the unit by issuing the cancellation letter on 30.06.2022.

- XV. That accordingly, after cancellation of the unit, the respondent has a right to forfeit the earnest amount along with delayed interest and total tax against the unit. That after the cancellation of the unit solely due to the fault of the complainants, the respondent was entitled for a forfeiture of the non-refundable charges including earnest money, GST and delay interest, which accounted for Rs.29,88,576/-.
- XVI. That the respondent has already transferred the ownership of the unit to a third-party as the unit has been sold to one Mr. Vaibhav Mehra, who enjoys the complete rights and ownership over the unit via conveyance deed dated 29.03.2023, hence, any relief against the said unit cannot be imposed upon the respondent as the respondent has no right or title over the said unit. The conveyance deed dated 29.03.2023 has already been filed vide application dated 24.04.2023.
- XVII. That moreover, the complainants had sought a loan from PNB Housing Finance Limited against the subject unit and accordingly, a tri-partite agreement was executed on 03.04.2019. Also the complainants have not disclosed this fact in the complaint and has approached the Authority with unclean hands. The complaint is bound to be dismissed solely due to the *malafide* conduct of the complainants.
- XVIII. That as on date, the complainants have no rights whatsoever, over the captioned unit. However, the rights of the PNB Housing Finance Limited with respect to the refund of the balance amount after forfeiture, have been preserved in the tripartite agreement. The complainants had not only been in default with the answering respondent but also with the PNB Housing Finance Limited. The

complainants had defaulted in making the payment of EMI to the Bank and hence, a notice dated 13.02.2023 for recall of the entire loan amount was also issued by PNB Housing Finance Limited to the complainants. Thereafter, a notice dated 06.03.2023 for demand and cancellation was issued by PNB Housing Finance Limited to Emaar India Limited wherein PNB Housing Finance Limited had communicated to the respondent of the grave default of the complainants and hence sought to cancel the tri-partite agreement /booking of the complainants.

XIX. That the unit was already been cancelled by the respondent on 30.06.2022. Consequently, the foreclosure letter dated 15.04.2023 was shared by PNB Housing Finance Limited. Subsequently, the respondent has duly made the payment of Rs.73,15,872/- i.e., the entire outstanding amount as per the foreclosure letter. The same was also duly informed to PNB Housing Finance Limited vide email dated 20.04.2023. PNB Housing Finance Limited upon receipt of the aforesaid amount has issued the No Objection Certificate dated 24.04.2023 certifying that the amount has been repaid in full. Moreover, the complainants had failed to implead PNB Housing Finance Limited who is a necessary and proper party.

XX. That the facts and circumstances of the present case reveal that the respondent has no right or lien over the unit in question. The ownership as well as the physical possession of the unit in question is enjoyed by a third party and hence, the present claim against the respondent company is infructuous. Accordingly, the present complaint should be dismissed.

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6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

7. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

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.

E.II Subject matter jurisdiction

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)(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:

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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.

8. 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 objections raised by the respondent:

F.I Objection regarding non-joinder of PNB Housing Finance Limited as a necessary party.

9. The respondent has raised a contention that the filing of present complaint without making PNB Housing Finance Limited as a necessary party to the present complaint as the complainants have availed a loan of Rs.82,98,465/- from the financial institution. Though a tri-partite agreement dated 03.04.2019 was executed between the complainants, respondent and PNB Housing Finance Limited and in lieu of the same the complainants have approached the financial institution to avail the loan amount. But as per the email dated 20.04.2023 (annexed at page no. 284 of the reply) and amount of Rs.73,15,872/- has been transferred to the financial institution vide letter dated 19.04.2023. Thereafter, on 24.04.2023, a no objection certificate has been issued by the PNB Housing Finance Limited stating that the disbursed loan amount has been repaid in full and there is no due outstanding against the said loan. Therefore, there is no privity of contract between the parties and there is no need to make the PNB Housing Finance Limited a party to the present complaint. Thus, the contention of the promoter stands rejected.

F.II Objection regarding force majeure conditions:

10. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various

construction bans, issue of second staircase, default of contractors, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization of currency. But all the pleas advanced in this regard are devoid of merit. As the events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact the project being developed by the respondent and are to be considered while fixing the timelines for completion of the project. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on relief sought by the complainant:

G.I Direct the respondent to handover the possession of the unit.

G.II Direct the respondent company to pay delayed interest on the amount received by the respondent from the complainant

11. The above sought reliefs by the complainant are taken together being inter-connected.
12. The complainants were allotted a unit in the project of respondent "Palm Gardens", in Sector 83, Gurugram vide provisional allotment letter dated 24.11.2018 for a total sum of Rs.1,17,67,964/-. A buyer's agreement was executed between the parties on 25.01.2019 and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs.1,05,36,834/-. As per clause 7(a) of the buyer's agreement dated 25.01.2019, the due date of handing over of possession is 31.12.2018. However, the respondent in its reply dated 09.05.2023

clarified that it is a typographical error and the due date cannot be determined before the execution of the buyer's agreement and in the present case the buyer's agreement was executed on 25.01.2019 and hence the correct due date is 31.12.2019. Therefore, the due date of possession comes to 31.12.2019.

13. The respondent has obtained the occupation certificate of the unit of the complainants on 17.10.2019 and offer of possession has been made on 22.10.2019. Thereafter, the respondent vide letters dated 26.11.2019, 27.03.2020, 02.04.2020, 02.09.2020 and 17.05.2022 issued reminders for taking possession on payment of outstanding dues but the complainants never come forward to take the possession and to clear the outstanding dues of the subject unit. The respondent issued a pre-cancellation letter on 21.02.2022 and finally terminated the allotment of the unit on 30.06.2022 on failure of payment of outstanding instalments.
14. The complainants-allottees are under an obligation to make payment of outstanding as agreed between the parties vide agreement dated 25.01.2019. As per section 19(6) of the Act of 2016, every allottee who has entered into an agreement to take an apartment, plot or building under section 13 is responsible to make necessary payments in the manner and within the time as specified in the said agreement. In the present case, the complainants-allottees have not obliged with the terms of the agreement, therefore, the cancellation dated 30.06.2022 of the unit stands valid.
15. The respondent in its reply mentioned that the unit of the complainants was allotted to third-party after cancellation and conveyance deed in favour of third-party i.e., Mr. Vaibhav Mehra was also executed on 29.03.2023. In view of the afore-mentioned fact, no case of DPC is made out as conveyance deed in favour of third-party has already been

executed. Though the complainants have sought the relief of DPC while filing the complaint but the counsel for the complainants during the proceedings of the day dated 12.09.2024 requested to file an application for amending the relief sought. But despite ample opportunities being given vide hearing dated 21.11.2024, 06.03.2025 and 03.04.2025, the complainants have failed to file an application for amendment of relief. However, the respondent was served a copy of the application for amendment of relief and the counsel for the respondent has filed a reply to the application for amendment of relief on 14.11.2024 by which it was clarified that the complainants are seeking refund of the paid-up amount along with interest.

16. The counsel for the respondent vide proceedings of the day dated 06.03.2025 stated that as the relief sought by the complainants in the complaint is not maintainable due to cancellation of the unit on 30.06.2022. He further stated that an amount of Rs.73,15,872/- has been refunded to the bank in terms of the tri-partite agreement dated 03.04.2019 and after the refund of afore-mentioned amount to the bank nothing is left to be refunded to the bank. As per clause 1.2(d) of the agreement dated 25.01.2019, in case of cancellation of the unit for no fault of the respondent-company, the respondent is entitled for deduction of 10% of sale consideration as earnest money. Clause 1.2(d) of the buyer's agreement is reproduced below for the ready reference:

1.2(d)

In case of cancellation of allotment for any reason(s) whatsoever, for no fault of the company or in the event of failure of the allottee to sign and return this agreement in its original form to the company within thirty days from the date of its receipt by the allottee, the company shall be entitled to cancel the booking and forfeit the earnest money along with delay payment charges and GST borne by the company till that date, and thereafter refund the balance amount, if any, to the allottee within 90 days of such cancellation."

*"**Earnest Money**" shall mean the booking amount for the unit to be purchased by the allottee, being equivalent to 10% of the total price to be paid by the*

allottee as per the schedule of payments for the due fulfilment of the obligations of the allottee for booking the unit in the project.

17. 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 Indian 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 Private 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 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."

18. Keeping in view the aforesaid factual and legal provisions, the respondent can retain the earnest money paid by the complainants against the allotted unit and shall not exceed 10% of the consideration amount. So, the same was liable to be forfeited as per clause 1.2(d) of the buyer's agreement and Haryana Real Estate Regulatory Authority Regulation 11(5). So, the respondent/builder is directed to refund the amount received from the complainants i.e., Rs.1,05,36,834/- after deducting 10% of the sale consideration along with interest on such balance amount at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation i.e., 30.06.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid. The respondent may deduct the amount already paid to the bank i.e., Rs.73,15,872/- from the above refundable amount.

G.III Direct the respondent not to charge the holding charges

G.IV Direct the respondent to charge delay payment at equitable rate of interest.

19. The counsel for the complainants requests for refund of the paid-up amount along with the interest vide proceedings of the day dated 12.09.2024. As the Authority is allowing the refund of the paid-up amount along with interest as mentioned in para 18, all above sought reliefs by the complainant becomes redundant.

H. Directions of the Authority:

20. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations

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cast upon the promoters 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 amount i.e., **Rs.1,05,36,834/-** received by him from the complainants after deduction of 10% of sale consideration of Rs.1,17,67,964/- as earnest money along with interest on such balance amount at the rate of 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 of cancellation i.e., 30.06.2022 till the actual date of refund of the amount. The respondent may deduct the amount already paid to the bank i.e., Rs.73,15,872/- from the above refundable amount.
- ii. 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.

21. Complaint stands disposed of.

22. File be consigned to the registry.

HARERA
GURUGRAM

V.I. 3

(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.04.2025