

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM****Complaint no.:** 5073 of 2024**Date of complaint:** 22.10.2024**Date of Order:** 12.08.2025

M/s Horizon BPO Pvt. Ltd.

Address: E-27, South Extension-II,
New Delhi – 110 049**Complainant**

Versus

M/s DLF Ltd.

Registered office: Ground Floor,
DLF Gateway Tower, R Block, DLF
City, Phase-III, Gurugram – 122 002,
Haryana**Respondent****CORAM:**

Shri Arun Kumar

Shri Ashok Sangwan

Chairman**Member****APPEARANCE:**

Mrs. Sonal Anand (Advocate)

Shri Ishaan Dang (Advocate)

Complainant

Respondent

ORDER

1. This order shall dispose of two complaints titled as above filed before this Authority 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. no.	Particulars	Details
1.	Name of the project	"The Grove in DLF5", Sector 54, Gurugram, Haryana
2.	Nature of project	Residential plotted colony
3.	RERA Registration	13 of 2022 dated 21.02.2022 valid up to 31.12.2025
4.	Total project area	5.3073 acres
5.	Allotment letter	15.10.2022 (As per annexure-C3, at page no. 34 of the complaint)
6.	Unit no.	B-3/10, 3rd floor, in tower- B (As per the agreement to sell at page no. 52 of the complaint)
7.	Total carpet area in 3 rd floor	2208.891 sq. ft. (As per the agreement to sell at page no. 52 of the complaint)
8.	Date of execution of buyer's agreement	30.01.2023 (Page no. 51 of the complaint)
9.	Possession clause	7. POSSESSION OF THE SAID INDEPENDENT FLOOR RESIDENTIAL USAGE: <i>7.1 The Promoter assures to offer to hand over possession of the Said Independent Floor for residential usage along with parking as per agreed terms and conditions by 31/12/2025, unless there is delay due to "force majeure", Court orders, Government policy/guidelines, decisions effecting the regular development of the Project. If, the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Said Independent Floor for residential usage.</i> (Emphasis supplied) (Page no. 58 of the complaint)
10.	Due date of possession	31.12.2025 (As per the clause 7.1 of the agreement to sell dated 30.01.2023)
11.	Total sale consideration	Rs.9,54,82,501/-

		(As per clause 1.2 of the agreement to sell at page 53 of the complaint)
12.	Amount paid by the complainants	Rs.3,21,51,076/- (as per cancellation letter page 83 of complaint)
13.	Payment plan	Time linked payment plan (Page no. 80 of complaint)
14.	Reminder letter	10.04.2024, 01.05.2024, (page no. 140 to 147 of reply)
15.	Final notice (seeking amount of Rs.2,38,70,625/-)	11.06.2024 (Page no. 148 of reply)
16.	Cancellation letter	12.07.2024 (Page no. 152 of reply)
17.	Full and final settlement (along with DD of Rs.2,08,73,992/-)	09.08.2024 (Page no. 83 and 90 of complaint)
18.	Legal notice to respondent	14.08.2024 (page 91 of complaint)
19.	Reply to legal notice by respondent	07.09.2024 (page 100 of complaint)
20.	Occupation certificate	Not obtained

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

- I. That sometime in July/August 2022, the respondent through its employees and agents approached the complainant and represented to her that it is coming up with one of its kind project called "The Grove, DLF 5, Sector 54, Gurugram, Haryana". The same is registered with RERA vide Regn. No. RC/REP/HARERA/GGM/538/270/2022/13. It was represented by the respondent that it is a great investment opportunity and the complainant stands to multiply her returns manifold by just making a booking and thereafter, the respondent shall even assist her in selling/trading the units she purchases. The respondent further assured the complainant that in case she wishes to retain the units, even then she can

make payments at her convenience and at present, she must make the booking payments and enter into a definitive agreement.

- II. That based on the assurances and promises, the complainant was induced into booking four (4) units in the project i.e. unit no(s) B - 3/10A, B, C and D respectively. That the booking(s) for unit nos. B-3/10A and B were made in the individual capacity of Smt. Survina Bhalla and name and the booking of unit nos. B-3/10 C and D were made in the name of horizon BPO Private Limited. The complainant as such was interested in purchasing only one/two units, however, the respondent through its agents and representatives assured her and coaxed her into making four bookings, representing that she may trade 2/3 of the four units in mid-2023, once the inventory of the developer is sold and she shall make huge profits. Further, in any case, if she retains the units, she can make the payments at her own ease. The respondent further assured her that its staff and employees shall themselves take care of her interest and she need not worry about making any payments and after making the initial payment and getting the agreement to sell registered, she may then make payments at her own pace/convenience. Also, for the units that were booked in her individual capacity viz. unit nos. B-3/10A and B, she availed loans from M/s IIFL Home Finance Ltd.
- III. Believing upon the specific promise of giving her convenience of making payments, the complainants made the booking for the aforesaid four units, which is a matter of record and insofar as the present unit is concerned i.e. unit no. B-3/10C having a carpet area of 216.640 sq. mts. *inter alia* on the first floor, more particularly described in the allotment letter and the Schedule I to the agreement to sale for a total consideration of

Rs.9,54,82,501/- the respondent issued to her an allotment letter on 15.10.2022.

- IV. That along with the allotment, the complainant immediately made to the respondent, a payment of Rs.10,00,000/- plus GST, which was duly accepted by the respondent and hence, the parties hereto i.e. the complainant and the respondent entered into a binding arrangement. That from time to time, the complainant kept on making payments to the respondent. as and when demanded by the respondent. The complainant has made to the respondent, a total payment of Rs.3,89,80,969/- (including GST) which is duly accepted by the respondent and under its deployment.
- V. That sometime in January 2023, the respondent again approached the complainant and represented to her that she must get the agreement to sell for the unit registered which will help crystallize the rights in her favour. the complainant as per the instructions of the respondent also got the agreement to sell registered with the office of the sub-registrar, wazirabad and paid the requisite registration fee as directed by the respondent. The agreement to sell as also the allotment letter was never issued to the complainant prior to the signing and she was simply asked to execute the same, stating that the same is a pre-printed and standard agreement and she cannot make any changes.
- VI. That already having parted with a huge sum of money and in any case in light of the trust she has always reposed upon the respondent due to its assurances and representations, she signed the same without creating any demure as in any case, it was stated by the respondent that she cannot make any changes. The respondent clearly had a position of dominance over the complainant. that vide its letter dated 15.02.2023, the respondent sent to the complainant the certified copy of the registered agreement to sell.

- VII. That the essence of the agreement to sell dated 30.01.2023 was that the allottee/complainant may make the initial payment and further got the agreement to sell dated 30.01.2023 registered, which was done. However, the very basis of the agreement to sell dated 30.01.2023 and the essence based on which the present complainant entered into the said agreement was that she shall not be compelled to make any payments immediately and she may make the payments as per own convenience and comfort. Further, even if she wishes to hold the balance payment, she may do so and the same may be made by her at the time of the final delivery and possession of the unit, as and when given to her.
- VIII. That sometime in August/September 2023, the complainant contacted the representatives of the respondent, re-affirming its commitment that she need not pay anything at this time and also enquired from its team about their promise to help her sell 1 or 2 units in the market if she desires and was specifically assured that there is no difficulty in her making payments at her ease even so at the time of possession as she already has a registered agreement to sell in her favor and the company is cognizant about their past relationship.
- IX. That the complainant also in her name and those of her family members and associate entities has made various other investments in the projects of the respondent, including its prestigious DLF camellias and already has made substantial investments upon the assurances and promises of the respondent and as such, has always believed the commitments made by the respondent and its team, including its representatives and agents and hence, continued to be guided by them.
- X. That instead of sticking to its promise of allowing the complainant to pay at her convenience, the respondent started sending her unlawful demands

seeking her to make further payments. The complainant who is a senior citizen was extremely perturbed and made frantic contacts to the respondent and was assured by its words and in meetings that she need not worry and that the payment requests/reminders are a part of the routine exercise and she need not worry. Further, as regards Clause 1.7 of the allotment letter, the complainant was further specifically assured that as such, no interest shall be levied upon her for any late payment.

- XI. As per the allotment letter, the respondent/builder has no rights, whatsoever to cancel the allotment of the allottee. At the highest point, the respondent can charge interest as per Clause 1.7 of the allotment letter for delayed payments, which also stood waived for the complainant. Hence, the respondent had no right to cancel the apartment/unit of the complainant, under any circumstances. The respondent has named clause 4 of the allotment letter as "cancellation by allottee" however, a perusal of the said clause reveals that it is rather a clause which is regarding "cancellation by the promoter".
- XII. That despite the regular assurances of the respondent, suddenly on 11.06.2024, the respondent sent to the complainant, a letter titled 'final notice' for making payment demanding her to pay a huge sum of Rs.2.38 crores, which the respondent claimed is due from 05.04.2024 giving her just 30 days to make the payment. The complainant was taken aback by this letter and immediately contacted the team of the respondent and was once again assured that she need not worry and may make the payments at her convenience. Upon the complainant reminding the representatives of the respondent about their promise of making the payments at her own convenience and/or at the time of the handing over of the possession, she was specifically assured she need not worry and her allotment shall never

be cancelled and she can make the payments by September/October 2024 or even later as per own ease.

XIII. That even earlier in May/June 2024, the complainant had contacted the representatives and customer service team of the respondent, in light of its various communications and she was then asked that she may just issue a security cheque from any entity towards the dues just to allow the company to update their records, however, the cheques (in any case being from an entity which is not the booking entity) shall never be banked. She hence issued a cheque from an entity / 'indyasoft' which the respondent again banked against its own assurance, which was returned unpaid. however, instead of sending a fresh demand, the respondent has attempted to cancel the unit, which is unlawful. thus, even if assuming some payment was to be made in June 2024, the respondent did not raise any fresh demand in light of the cheque having been returned unpaid

XIV. That the complainant has adequate funds and is ready and willing to make the payment as may be due to the respondent, without prejudice to her rights in light of its commitments of allowing the complainant to pay at her own pace/convenience. However, despite the same, the complainant has received a letter dated 12.07.2024, stating that the respondent has unilaterally cancelled her booking and holding out a threat to be selling the unit already in her name to some 3rd party, hence jeopardizing the interest and title of the complainant. The letter also mentioned that in view of the cancellation of the unit, the amount paid on behalf of the complainant i.e. Rs.3,21,51,076/- shall be refunded after deducting an amount of Rs.1,12,77,084/-.

XV. That the notice dated 12.07.2024 issued by the respondent to the complainant is bad in law and against its own commitment and promises

inter alia because: the respondent has always assured the complainant that she need not make further payments and she may make the payments at her own pace and convenience being a prestigious customer. Even as recently as June 2024, the respondent has assured the complainant that she need not worry or be perturbed by its various notice(s). The respondent has become greedy and wishes to illegally enrich itself, wherein, the respondent wishes to cancel the allotment of the complainant, usurp part of the amount paid by her and sell the units in the open market and make unlawful profits at the expense of the complainant, which cannot be allowed. Further in light of the registered agreement of sell dated 30.01.2023, the respondent cannot cancel the unit, in light of the settled position in law that a registered agreement cannot be cancelled unilaterally and in light of the above, the agreement to sell in favor of the complainant remains valid, binding and subsisting.

XVI. That the respondent sent her a letter dated 09.08.2024, along-with a demand draft bearing no. 523963 of Rs.2,08,73,992/- dated 09.08.2024, drawn on ICICI bank from the respondent bank towards the full and final settlement of the unit. Along with this letter, the respondent intimated to the complainant that the allotment of her unit in the project stood cancelled and that now, she had no right/lien on the unit and its parking spaces. The respondent vide the said letter further asked the complainant to return the original property documents i.e. allotment letter, payment receipts and the agreement to sell of the unit, while intimating that the said documents are treated as cancelled & null & void and further, the respondent is now free to deal with the unit in whatsoever manner it deems appropriate.

XVII. That the complainant through her counsel, sent a legal notice dated 14.08.2024 *inter alia* calling upon the respondent to withdraw its letter

dated 12.07.2024, within 15 days from the receipt of the said notice and to warn the respondent against attempting to create any 3rd party rights *qua* the unit allotted to the complainant which remains her property. The said notice was sent through email as well as speed post. The same has been replied to by the respondent through its counsel vide reply dated 07.09.2024, in which the respondent has denied everything and blatantly declined the requests of the complainant.

XVIII. That the complainant continues to have her rights, title and interest in the subject unit and any act on the part of the respondent to create any 3rd party rights shall be illegal. However, the complainant anticipates that the respondent shall create 3rd party rights in her unit, which shall severely jeopardize her rights and her hard-earned money. Hence, the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought the following relief(s)
 - i. Direct the respondent to withdraw its letter dated 12.07.2024, and reinstate the booking/allotment of the complainant with immediate effect.
 - ii. Direct the respondent to take back the demand draft of Rs.2,08,73,992/.
 - iii. Direct the respondent to not to create any 3rd party rights, whatsoever *qua* the allotted unit of the complainant.
 - iv. Direct the respondent to send her a fresh demand notice waiving off various unlawful interest/other charges levied by it and demanding a legitimate amount towards her dues, as the complainant is ready, willing and able to pay the same
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:
 1. That the director of the complainant (Mrs. Survina Bhalla) and her family members had initially also booked for purchase 4 more independent floors

bearing numbers-B-3/12A, B-3/12B, B-3/12C and B-3/12D in the project namely "The Grove" DLF 5, Sector 54, Gurugram, Haryana. Subsequent to making of abovementioned bookings, the bookings in respect of the aforesaid floors were cancelled in the month of May 2023 due to non-payment of instalments. Further, the complainant has a unit in project known as "The Camellias" DLF 5, Sector 54, Gurugram, Haryana. The past bookings of units/apartments in projects developed by the respondent (if any) made by Mrs. Survina Bhalla or entities controlled by her have got absolutely no significance or relevance as far as booking of the residential independent floor to which this complaint relates.

- II. That the booking in respect of residential independent floor pertaining to which this complaint relates had been made by the complainant through M/s PVG Realtors Private Limited.
- III. That residential independent floor bearing number B-3/10C having plot area measuring 420 square meters and with constructed area having total carpet area measuring 216.640 square metres out of which carpet area measuring 205.211 square metres is situated on C floor and 11.426 square meters of carpet area is situated in the basement and described in allotment letter and schedule I of the buyer's agreement had been booked for purchase by the complainant. Total sale consideration in respect of subject unit had been agreed to be Rs.9,54,82,501/-. By virtue of the misconceived and factually and legally unsustainable complaint, a false impression is sought to be generated by the complainant that she had allegedly relied upon representations claimed to have been made to her by respondent/its officials/representatives/agents etc.
- IV. That application for allotment dated 08.10.2022 had been voluntarily and consciously executed and submitted by the complainant after scrutinising

the terms and conditions incorporated therein. It was mentioned in clause 2(iii) of application for allotment that respondent would periodically intimate in writing to the complainant the amount payable by the complainant towards consideration in respect of the said apartment. It was specifically mentioned in clause 21 (i) of the application for allotment dated that in case the complainant failed to make payment of any instalment due as per the payment plan appended to the aforesaid application as schedule -III, in that event the complainant would be liable to pay interest to respondent on the unpaid amount from the due date of such instalment at the rate prescribed in Rules, 2017. It was categorically mentioned in clause 21 (ii) of the application for allotment that in case the complainant committed default in making payment of outstanding amount for a period beyond 90 days after receipt of notice from respondent in this regard, in that event respondent would be entitled to cancel the allotment of the said apartment and to refund the money paid by the complainant by forfeiting the amounts out of the amount paid for the allotment of the said apartment as mentioned in the aforesaid application. Further provided in clause 21 (ii) of the application for allotment that the balance amount of money paid by the complainant would be returned by respondent to the complainant within 90 days of cancellation of allotment of said apartment. It was further provided that respondent would intimate the complainant 30 days prior the contemplated termination of the allotment.

- V. That the complainant had opted for time linked payment plan with indicated amount of part sale consideration (10 lacs) to be paid on submission of application for allotment followed by three subsequent payments of indicated amounts within 30 days (10%), 90 days (15%) and 270 (25%) days from submission of application for allotment. it was also

mentioned in the payment plan that the payment of sale consideration amount indicated therein would also be made by the complainant in three tranches i.e. on submission of application for occupation certificate (25%), grant of occupation certificate by the concerned statutory authority (15%) and on offer of possession (10%).

- VI. In furtherance of application for allotment dated 08.10.2022, allotment letter dated 15.10.2022 had been issued by respondent in favour of the complainant in respect of said apartment. The complainant had proved to be extremely erratic and irregular in making timely payment of consideration in respect of said apartment. Respondent was under no obligation to send repeated reminders to the complainant calling upon the complainant to make payment of outstanding instalments especially since it was the financial and contractual duty of the complainant to make payment of instalments of consideration in respect of said apartment in a timely and irregular manner.
- VII. Reminder letter dated 14.11.2022 had been issued by respondent to the complainant calling upon the complainant to make payment of outstanding amount. Thereafter, agreement for sale in respect of said apartment had been forwarded for execution to the complainant by respondent along with covering letter dated 14.12.2022. Subsequent thereto another email dated 06.01.2023 had been sent by respondent whereby it was once again conveyed to the complainant that the agreement for sale in respect of said apartment had been forwarded for execution to the complainant and the same had not been returned back after execution by the complainant to respondent.
- VIII. Eventually, agreement for sale bearing Vasika no. 21393 dated 30.01.2023 had been executed by the complainant and the same had been sent back

by respondent to the complainant after registration along with covering letter dated 15.02.2023.

- IX. That it was mentioned in clause 1.2 (iii) of said agreement that respondent would periodically intimate in writing to the complainant the amount payable by the complainant towards consideration in respect of the said apartment. it was also recited in clause 1.4 of said agreement that the complainant shall make payment as per payment plan set out in schedule c. it was clearly mentioned in clause 1.10 of the said agreement that in case the complainant delayed making of payment of any amount, it would be liable to pay interest at the rate prescribed in rule 15 of Rules, 2017.
- X. It was categorically mentioned in clause 9.3 (i) of said agreement that the complainant would be considered under the condition of default in case the complainant failed to make payment of any instalment due as per the payment plan appended as schedule c to the said agreement. it was specifically mentioned that the complainant would be liable to pay interest to respondent on the unpaid amount for the period of delay at the rate prescribed in Rules, 2017.
- XI. Further, it was specifically provided in clause 9.3 (ii) of the said agreement that in case the default committed by the complainant in making payment continued for a period beyond 90 days after receipt of notice from respondent in this regard, respondent would be entitled to cancel the allotment of the said apartment and refund the money paid by the complainant by forfeiting the booking amount. the modalities of calculation of booking amount were provided in the said agreement. It was further specified in the said agreement that interest payable by the complainant to respondent for the period of delay in making your payments would be State Bank of India's highest marginal cost of lending

rate plus two percent. In clause 9.3 (ii) of the said agreement that the balance amount paid by the complainant would be returned by respondent to the complainant within 90 days of such cancellation. It was further mentioned that on the commission of the default referred to above in making payment of consideration for the said apartment the said agreement and liabilities of respondent arising out of the same would stand terminated. It was further provided that respondent would intimate the complainant 30 days beforehand about the contemplated termination of the said agreement. other clauses of the said agreement have not been adverted to in the present reply as the same are not directly relevant to the matter in hand.

- XII. That the complainant turned out to be a chronic defaulter in timely payment of instalments of consideration in accordance with schedule of payments mentioned in the payment plan. without being under any obligation to remind the complainant of fulfilling its financial and contractual obligations, reminder letter dated 13th of February, 2023, reminder letter dated 7th of March, 2023 and final notice for making payment dated 17th of April, 2023 were sent by respondent to the complainant. In the final notice dated 17th of April, 2023 it was mentioned that a sum of Rs.1,43,19,933/- (including GST) was outstanding and payable by the complainant to respondent as on 10th of February, 2023.
- XIII. That on account of failure on the part of the complainant to make payment of agreed consideration in respect of said apartment, reminder letter dated 10th of April, 2024, reminder letter dated 1st of May, 2024 followed by final notice for making payment dated 11th of June, 2024 had been sent by respondent to the complainant calling upon the complainant to make payment of outstanding amounts mentioned in the aforesaid

letters/notice. In the final notice dated 11th of June, 2024 it was mentioned that sum of Rs.2,38,70,625/- (including GST) was outstanding and payable as on 5th of April, 2024.

- XIV. That it was further mentioned by respondent in the final notice dated 11th of June, 2024 that several communication/reminders had been sent by respondents to the complainant and despite receiving the same, the complainant had failed to come forward to remit the outstanding amounts in respect of said apartment. Accordingly, final opportunity was made available to the complainant by respondent vide final notice dated 11th of June, 2024 for clearing all outstanding dues pertaining to said apartment within a period of 30 days from the date of the said final notice.
- XV. That it was explicitly and unambiguously stated by respondent in the final notice dated 11th of June, 2024 that in case the outstanding dues were not paid within the stipulated period of 30 days, respondent would be compelled to take action as per terms and conditions of the said agreement and the allotment in respect of said apartment would be terminated/cancelled and respondent would forfeit/retain the booking amount along with interest on delayed payments, interest paid, due or payable as well as any other amount of non-refundable nature.
- XVI. That a cheque bearing no. 000337 dated 20th of June, 2024 for Rs.1,53,51,468/- drawn on ICICI bank, unit no. 1, Solitaire Plaza, Dlf City, Phase III, Mg Road, Gurugram furnished by the complainant towards payment of consideration in respect of said apartment was dishonoured by its banker on account of insufficiency of funds in the bank account of the complainant. Intimation pertaining to dishonour of cheque was received by respondent on 25th of June, 2024. Thus, the complainant lacked

the financial means, capacity and resources to make payment of agreed consideration pertaining to said apartment to respondent.

XVII. That under these compelling circumstances cancellation letter dated 12th of July, 2024 wherein it was mentioned that final notice dated 11th of June, 2024 had been issued by respondent to the complainant and yet overdue payments had not been made. Accordingly, the allotment of the said property had been made by respondent for non-payment of dues. It was also communicated that in terms of clause 9.3 of agreement for sale bearing Vasika no. 21393 dated 30th of January, 2023, the earnest money along with the interest on delayed payments and other non-refundable amounts of forfeitable character had been deducted out of the payments made by the complainant. the actual amount paid by the complainant, quantum of earnest money, interest on delayed payments, GST applicable on delayed payments and GST already paid were succinctly and transparently mentioned in the aforesaid letter. The details of computation of the deductible amount of Rs.1,12,77,084/- and the net refundable amount of Rs.2,08,73,992/- were specifically contained in the aforesaid cancellation letter.

XVIII. That the cancellation letter had been sent to the complainant by courier and the same had been duly received by the complainant. Thereafter, letter dated 9th of August, 2024 had been sent by respondent to the complainant through courier along with which refund demand draft bearing no. 523963 dated 9th of August, 2024 drawn on ICICI bank for Rs.2,08,73,992/- had been enclosed by respondent.

XIX. That it was communicated to the complainant by respondent vide letter dated 9th of August, 2024 that the allotment in respect of said apartment stood cancelled and the complainant had got no right/lien in respect of the

same. By virtue of letter dated 9th of August, 2024 the complainant had been called upon to return the original property documents i.e. allotment letter, payment receipts and agreement for sale pertaining to the said apartment. It was also conveyed that the aforesaid documents were treated as cancelled, null and void and that the respondent would be at liberty to deal with the said apartment in any manner deemed fit by it.

XX. That numerous opportunities were afforded by respondent to the complainant to make payment of agreed sale consideration amount. However, the complainant instead of doing so committed persistent and repeated defaults in fulfilling its financial and contractual obligations arising out of application for allotment dated 8th of October, 2022, allotment letter dated 15th of October, 2022 and agreement for sale bearing Vasika no. 21393 dated 30th of January, 2023. Furthermore, once the parties to a transaction voluntarily and consciously execute/register a contract, the rights and obligations of the parties are determined squarely and entirely by the covenants incorporated in the contract.

XXI. That no lapse in the entire sequence of events can be attributed to respondent. As far as respondent is concerned, it has conducted itself in a fair and transparent manner strictly in conformity with contractual covenants. The complainant was never ready and willing to fulfil its contractual and financial obligations arising out of application for allotment, allotment letter and said agreement referred to above. On the other hand, respondent was always ready and willing during the subsistence of said agreement to fulfil its contractual obligations arising out of aforesaid contract.

7. All other averments made in the complaint were denied in toto.

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

E. Jurisdiction of the Authority:

9. 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

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the 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.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainant(s):

F.I Direct the respondent to withdraw its letter dated 12.07.2024, and reinstate the booking/allotment of the complainant with immediate effect.

F.II Direct the respondent to take back the demand draft of Rs.2,08,73,992/-.

F.III Direct the respondent to not to create any 3rd party rights, whatsoever qua the allotted unit of the complainant.

F.IV Direct the respondent to send her a fresh demand notice waiving off various unlawful interest/other charges levied by it and demanding a legitimate amount towards her dues, as the complainant is ready, willing and able to pay the same.

13. The above-mentioned reliefs are interconnected. Accordingly, the same are being taken up together for adjudication.
14. In the present complaint, the complainant booked a unit in the project of respondent namely, 'The Grove' in DLF 5, situated at Sector 54, Gurugram. The complainant was allotted a unit B-3/10, 3rd floor, in tower- B vide allotment letter dated 15.10.2022. Further, the builder buyer's agreement was executed between the parties on 31.01.2023 for the total sale consideration of Rs.9,54,82,501/- out of which the complainant has made a payment of Rs.3,21,51,076/-. As per clause 7 of the agreement, the respondent was required to hand over possession of the unit by 31.12.2015.
15. The complainant in the present complaint is seeking relief w.r.t the withdrawal of cancellation letter dated 12.07.2024 and stated that the letter dated 12.07.2024 is illegal and should be dismissed.
16. The plea of the respondent is otherwise and stated that the demands were raised as per payment plan annexed with builder buyer's agreement dated 31.01.2023 and the complainant has made payment of Rs.3,21,51,076/-. However, reminder letters were issued on 10.04.2024, 01.05.2024 following a final notice dated 11.06.2024 but despite repeated follow ups the

complainant failed to act further and comply with their contractual obligations and therefore the unit of the complainant was finally terminated vide letter dated 12.07.2024.

17. Now the question before the authority is whether the cancellation issued vide letter dated 12.07.2024 is valid or not ?

18. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that the builder buyer agreement was executed between the complainant and respondent on 31.01.2023. The sale consideration of the unit was Rs.9,54,82,501/- and the complainant has made a payment of Rs.3,21,51,076/- against the same in all. As per the payment plan annexed as Schedule C in the agreement dated 31.01.2023, the complainant was required to make payments as per the time linked payment plan. The payment plan is reproduced below for ready reference:

Inst No.	Description	Due date	TSP_F	GST/Stax	Total
1	Amount on Application	08 Oct 2022	952378.70	47621.30	1,00,00,000/-
2	Within 30 days of Application	07 Nov 2022	8141171.20	407078.90	85,48,250.10/-
3	Within 90 days of Application	06 Jan 2023	13640324.85	682050.40	1,43,22,375.25/-
4	Within 270 days of Application/On completion of structure (whichever is later)		22733874.75	1136750.60	2,38,70,625.35/-
5	On Application of OC		22733874.75	1136750.60	2,38,70,625.35/-
6	On Receipt of OC		13640324.85	682050.40	1,43,22,375.25/-
7	On offer of possession		9093459.90	454700.20	95,48,250.10/-
	Total		90935499.00	4547002.40	95,48,2501.40/-

19. As per payment plan the complainant has to make a payment of Rs.5,67,41,250/- upto 270 days of application. But the complainant has only made a payment of Rs.3,21,51,076/-. The respondent issued various reminders dated 10.04.2024, 01.05.2024 and 11.06.2024 but the complainant failed to honour its obligation to pay the amount on time.

20. It is pertinent to mention here that as per Section 19(6) and 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit as per builder buyer agreement dated 31.01.2023. The respondent gave various reminders dated for making payment for outstanding dues as per payment plan. Despite issuance of aforesaid numerous reminders, the complainant has failed to clearing the outstanding dues. Therefore, the respondent cancelled the unit on 12.07.2024.
21. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainants is hereby declined as the complainants-allottee have violated the provision of Section 19(6) & (7) of Act, 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainant after certain deductions as prescribed under law.
22. 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 Ors. VS. Sarah C. Ors., (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."

23. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done.
24. It is pertinent to note that the respondent sent a demand draft amounting to Rs.2,08,73,992/- on 09.08.2024. So, the respondent is directed to refund the paid-up amount to complainant after deducting 10% of the sale consideration being earnest money along with interest at the rate of 10.90% (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 such balance amount from the date of cancellation i.e. 12.07.2024 till 09.08.2024 when a demand draft amounting to Rs.2,08,73,992/- has been issued. After adjusting the said demand draft amount, the respondent shall refund the remaining balance amount along with interest @ 10.90% per annum from 09.08.2024 till the date actual

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

G. Directions of the Authority.

25. 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/builder is directed to refund the deposited amount after deducting 10% of the sale consideration along with an interest @10.90% on such balance amount from the date of cancellation i.e. 12.07.2024 till 09.08.2024 when a demand draft amounting to Rs.2,08,73,992/- has been issued. After adjusting the said demand draft amount, the respondent shall refund the remaining balance amount along with interest @ 10.90% per annum from 09.08.2024 till the date actual realization within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

26. Complaint as well as applications, if any, stand disposed off accordingly.

27. Files be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 12.08.2025