BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.: **676 of 2025**
Date of complaint: **10.02.2025**
Date of order: **22.07.2025**

Devender Singh Rawat
R/o: -1-305, third floor, Millenium Appt. plot no.2, Sector 9, Dwarka, New Delhi-110077. **Complainant**

Versus

S.S. Group Pvt. Ltd.
Regd. Office at: - Ss House, plot no. 77, Sector 44, Gurugram-122003 **Respondent**

CORAM:

Shri Arun Kumar **Chairman**
Shri Ashok Sangwan **Member**

APPEARANCE:
Ms. Tanya Complainant
Sh. Venket Rao Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder 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 Coralwood"
2.	Nature of the project	Group housing complex
3.	DTCP license no. and validity status	59 of 2008 dated 19.03.2008 valid upto 18.03.2025
4.	Allotment letter	11.05.2012 (page 24 of complaint)
5.	Unit no.	C-602, Type-A, 3 B/3, Tower - C (page 24 of complaint)
6.	Unit admeasuring	1890 sq. ft. (super area) (page 24 of complaint)
7.	Date of execution of Buyers agreement	11.05.2012 (page 32 of complaint)
8.	***Possession clause***	***8.1*** *Subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc. as prescribed by the developer,* ***the developer proposes to handover the possession of the flat within a period of thirty six months from the date of signing of this agreement.*** *However, this period will automatically stand extended for the time taken in getting the building plans sanctioned.* ***The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six months or such extended period, for applying and obtaining occupation certificate in respect of the Group Housing Complex.*** *(Emphasis supplied).*
9.	Due date of possession	09.08.2015 (Calculated from the date of execution of the agreement including grace period of 90 days)

10.	Total sale consideration	Rs.80,15,840/- (as per BBA page 53)
11.	Amount paid by the complainant	Rs.71,73,142/- (as submitted by complainant and on page 105 of complaint annexed reply dated 06.01.2025 of legal notice sent by complaint)
12.	Offer of possession	16.08.2018 (page 60 --of complaint)
13.	Demand Letters/Reminders	05.04.2019, 18.06.2020, 14.04.2021, 24.05.2021, 26.05.2022, 17.04.2023 and 15.04.2024(Page 60-68 of reply to the application submitted by respondent)
14.	Notice of cancellation	21.11.2024 (page 96 of complaint)
15.	Cancellation Letter	24.12.2024 (Page 71 of reply to the application submitted by respondent)
16.	Occupation certificate	17.10.2018 (page 54 of reply to the application submitted by respondent)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

I. That in 2010, the respondent's advertisement for the project and encouraged the public at large to invest through various affiliated retailers and agencies, as well as through multiple pamphlets and newspaper ads. These materials presented an excessively optimistic view of the development, stating that the respondent was launching the said commercial project.

II. That the project was described as featuring a children's park, basketball and tennis courts, aesthetically designed landscaping with water features, trellises, walkways, stone seating, a jogging park, and a secure compound with 24/7 security, including an intercom system. It also promised a continuous supply of treated water, 100% power backup, and a clubhouse with amenities such as a gym, swimming pool, party lawn, and sports center. The location was advertised as offering excellent connectivity, being near the airport, railway station, NH8, and a proposed metro station. The Respondent

further highlighted that the project was one-of-a-kind and would offer significant value for money.

III. That the complainant, relying on the assurances, representations, and warranties provided by the respondent, booked a flat in the project of the respondent on 02.05.2012 by submitting an application form and made a deposit of Rs. 7,25,000/-.

IV. That the complainant was allotted flat no. 602, type A, located on the 6th floor in tower no. C, measuring super area of 1890 sq. ft. in the said project vide the allotment letter dated 11.05.2012.

V. That subsequently, the complainant and the respondent entered into a flat buyer's agreement dated 11.05.2012, which detailed the terms of the allotment. The parties opted for construction-linked payment plan for the remittance of the sales consideration of the unit.

VI. That it is submitted that since the inception, after the booking was made by the complainant, the *malafide* activities of the respondent began to unturn and the false promises, assurances, and warranties saw the light.

VII. That as per clause 8.1 of the agreement, the respondent was obligated to complete the development of the project and deliver possession of the unit to the complainant within 36 months from the date of execution of the agreement, therefore, the possession of the flat should have been granted by the respondent by 11.05.2015.

VIII. Thereafter a delay of more than 3 years from the due date of possession, the respondent on 16.08.2018 issued an illegal offer of possession to the complainant raising various illegal demands from the complainant to the tune of Rs. 16,13,271 and asking the complainant to execute illegal indemnity-cum-undertaking. The respondent has charged club charges without any intimation about the operation of the club to the complainant.

IX. That the respondent had wrongly charged the Goods and Service Tax from the complainant. The due date of possession in the present case was 11.05.2015, that is before and the GST Act, 2016 i.e., 01.07.2017 hence, the respondent is not entitled to charge any amount towards GST from the complainant as the liability of that charge had not become due up to the due date of possession as per the agreements.

X. That the respondent had also charged interest on the delayed payment @18% p.a. compound interest compounded quarterly as is evident from the reminder letter dated 25.02.2019. The *malafide* of the respondent is also highlighted herein that even after the implementation of the RERA Act, the respondent had charged interest @18% p.a. from the complainant that too compound interest, whereas the Respondent had failed to provide any delayed compensation on the delay in offering the possession of the unit to the complainant.

XI. That the respondent had charged car parking charges to the tune of Rs. 3,00,000. However, the respondent had not specified if the car parking being allotted to the complainant is open car parking of covered car parking. The complainant had made a payment of Rs. 71,73,142/- that is more than 100% of the cost of the unit of Rs. 69,93,000/-.

XII. That it has been observed by the Authority in catena of judgments that the offer of possession is not a valid offer of possession if it is loaded with illegal demand of charges.

XIII. That in the present case at hand the respondent had offered the possession of the unit vide letter dated 16.08.2018 to the complainant which contained various illegal demands hence, the offer of possession dated 16.08.2018 is not a valid offer of possession.

XIV. That despite the fact that the complainant had made payment of 90% of the total sales consideration of the unit as acknowledged by the respondent in

their ledgers. Only the final installment remained to be paid by the complainant, the respondent's actions appear to be driven by a desire for unfair profit and an intention to delay the delivery of possession. This seems to be a deliberate tactic on the part of the respondent.

XV. That the complainant also sent an email on 26.03.2019, requesting a prompt reply and appropriate action to resolve the matter. However, the respondent chose to raise the unwarranted demand without any justification for the same.

XVI. That despite numerous requests and follow-ups through various channels, including emails and letters, to the respondent to resolve the issue, the complainant's concerns were completely ignored by the respondent. Furthermore, on 18.06.2020, the respondent shamelessly sent another email containing unjustified demands including but not limited to the interest on the secured demands, holding charges, and maintenance charges. The respondent kept on demanding various illegal charges from the complainant without responding to the emails and queries of the complainant.

XVII. That the respondent continued to demand an unclear and unjustified amount, without providing any proper justification or clarity, including the imposition of interest charges, holding charges, maintenance and electricity charges without handing over of possession etc. that appear to be arbitrary and unsupported by any legal or contractual basis. This conduct is not only a breach of the agreement but also a violation of the legal principles of fairness and transparency. The respondent had illegally sent and notice for cancellation dated 21.11.2024 wherein it mentioned that the allotment of the complainant shall be automatically cancelled if the complainant failed to make the payment within 30 days of this notice.

XVIII. That the complainant sent a legal notice dated 16.12.2024 to the respondent once again highlighting his grievances against the respondent related to but

not limited to the demand of unclear amount without providing justification, including interest, while delaying the resolution of the issue and the handover of possession of the flat. The respondent replied to said legal notice sent to the respondent. To the utter surprise of the complainant, the respondent wrote in their legal notice that the allotment of the unit of the complainant was cancelled vide cancellation latter dated 26.12.2024. Moreover, the respondent allegedly has also sent the net refundable amount of Rs. 63,71,558/- after deducting the earnest money of Rs. 8,01,584/- vide cheque dated 24.12.2024 to the complainant however, the complainant had neither received the said cancellation letter dated 26.12.2024 nor the refund cheque dated 24.12.2024.

XIX. That even after the alleged cancellation of the allotment of the unit of the complainant, the respondent sent interest calculation sheet calculating the interest payable for delay in handover to the complainant over WhatsApp on 08.01.2025.

XX. That the complainant's repeated attempts to resolve the matter amicably were met with continued inaction and unjustified demands, which constitutes a clear attempt to manipulate and unfairly burden the complainant. Therefore, the respondent's actions can be construed as being in bad faith and in violation of the agreed contractual terms, which warrants legal action for redressal.

XXI. That the respondent failed in complying with all the obligations, not only with respect to the agreement with the complainant but also with respect to the concerned laws, rules, and regulations thereunder, due to which the complainant faced innumerable hardships. Moreover, the respondent made false statements about the progress of the project as and when inquired by the complainant. Thereafter, the *malafide* conduct and unlawful activities of the respondent continued which has consequently led the complainant to go

through mental agony and financial distress. It is further submitted that taking advantage of the dominant position and *malafide* intention the respondent had resorted to unfair trade practices by harassing the complainant by way of delaying the project by diversion of the money from the innocent and gullible buyer.

XXII. That the respondent has flagrantly failed to fulfill its obligation to deliver possession of the property within the agreed timeframe, in breach of the contractual terms. This failure has caused significant mental distress, undue harassment, and considerable financial losses to the complainant, thus warranting the filing of this complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

I. Direct the respondent to revoke the cancellation letter dated 24.12.2024.

II. Direct the respondent not to create any third-party rights over the unit.

III. Direct the respondent to provide the valid physical possession to the complainant with complete specifications as per the buyer's agreement within a period of one month.

IV. Direct the respondent to give delay possession charges from the due date of the offer of possession till the actual handing over of physical possession at the prescribed rate of interest.

V. Direct the respondent not to raise any illegal demands which are not agreed to between the parties in the agreement to sell.

VI. Direct the respondent to charge the maintenance from the date of handing over of possession.

VII. Direct the respondent to not charge holding charges.

VIII. Direct the respondent to specify if the car parking slot allotted to the complainant is for open or closed car parking.

IX. Direct the respondents to execute the conveyance deed within a period of one month.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds: -

i. That the complainant has not come to the Authority with clean hands and have suppressed material facts from the Authority so as to portray a completely false and misleading picture before the Authority. The complainant by twisting the facts and circumstances of the case in hand, have filed the complaint under reply.

ii. That vide booking application dated 02.05.2012, a unit bearing no. C-602, in block C, admeasuring 1890 sq. ft. in the project **"The Coralwood"** was booked by the complainant. An allotment letter was issued by the respondent to the complainant on 11.05.2012. Thereafter, a flat buyer's agreement dated 11.05.2012 was executed between the parties.

iii. That an application for grant of Occupation Certificate was made before the competent authority on 25.07.2018 and the same was granted by the competent authority on 17.10.2018 vide memo no. ZP-534/ SD(BS)/ 2018/ 29687.

iv. That upon the application for grant of Occupation Certificate, the respondent offered the possession of the subject unit *vide* letter dated 16.08.2018 and subsequently intimated the allottee regarding the receipt of the Occupation certificate vide email date 23.10.2018 and again requested the complainant to complete the possession formalities and take possession of the subject unit.

v. That despite receiving the aforementioned offer of possession, the complainant failed to take possession of the subject unit, therefore, the respondent was constrained to issue multiple reminders dated 05.04.2019, 18.06.2020, 14.04.2021, 24.05.2022, 26.05.2022, 17.04.2023 and 15.04.2024 via emails and letter to the complainant wherein the respondent kept on requesting the complainant to clear the dues, complete the necessary formalities and requested to take possession of the subject unit. However, the

complainant did not pay any heed, rather kept on delaying the possession process for years on one pretext or other.

vi. That since the complainant was not completing the requisite formalities for taking possession of the subject unit and was also not making the payments of the outstanding dues, therefore the respondent was constrained to issue a notice for cancellation of the allotment letter dated 21.11.2024, wherein the respondent provided an opportunity to the complainant to clear the outstanding dues within a period of 30 days. And further intimated to the complainant that in case the complainant fails to make payment of the outstanding dues then the allotment of the complainant shall automatically be cancelled as per the terms and conditions of the FBA. Despite receiving the aforementioned notice for cancellation, the complainant failed to clear the outstanding amounts and take the possession of the unit. Since, the complainant failed to abide by the notice for cancellation letter dated 21.11.2024, therefore, the respondent was constrained to cancel the allotment of the complainant *vide* cancellation letter dated 26.12.2024, i.e., after lapse of more than 30 days of the notice for cancellation. Vide the said cancellation letter, the respondent duly intimated to the complainant that after deduction of 10% earnest money, an amount of Rs. 63,71,558/- was refundable to the complainant and a cheque bearing no. 006999 dated 24.12.2024 amounting to Rs. 63,71,558/- was dispatched to the address of complainant along with the cancellation letter. The said letter along with the cheque therein, was duly delivered to the complainant on 30.12.2024. In the meanwhile, the complainant nefariously issued a legal notice dated 16.12.2024 to the respondent on false and frivolous grounds. The respondent duly sent a reply dated 06.01.2025 to the legal notice of the complainant, wherein suitable reply to all the allegations/issues raised was provided. It was also informed to

the complainant that refund of the amounts paid, after deduction of earnest money, has already been delivered to the complainant.

vii. A completion certificate dated 27.01.2025 has also been granted by the competent authority.

viii. That the respondent offered the possession vide letter dated 16.08.2018 and subsequent email dated 23.10.2018. Further, reminders dated 05.04.2019, 18.06.2020, 14.04.2021, 24.05.2022, 26.05.2022, 17.04.2023 and 15.04.2024 via emails and letter were sent to the complainant wherein the respondent kept on requesting the complainant to complete the necessary formalities and take possession of the subject unit. However, the complainant with *malafide* intention of extracting illegitimate monetary benefits from the respondent kept delaying the taking over of possession on one pretext or another.

ix. That one such pretext to specifically state herein is the letter dated 01.03.2019 of the complainant referred to in this complaint itself, wherein the complainant alleges that he is interested in taking possession. The complainant instead of clearing the dues and taking possession started imposing conditions on approvals such as fire and safety.

x. That the complainant on one pretext or another kept delaying the handing over of possession of the unit and further sought refund in the legal notice, therefore, it was abundantly clear that there is a default on the part of the complainant and that the complainant was not interested in taking possession of the unit.

xi. That as per mutually agreed terms and conditions of the FBA, the complainant was obligated to make timely payments of the instalments as per the agreed payment plan. The said understanding is categorically recorded in clause 6 of the FBA. The Complainant had opted for a construction-linked payment plan, and all the demands were raised on the achievement of respective milestones mentioned in the payment plan annexed as annexure – I of the FBA. However,

the complainant in utter disregard to the payment plan, failed to make timely payments of the instalments.

xii. That the total sale consideration of the subject unit was Rs. 80,15,840/- (exclusive of service tax). The complainant has paid an amount of Rs. 71,73,142/- against the sale consideration of the subject unit. An amount of Rs. 16,13,271/- was outstanding to be paid by the complainant at the time of offer of possession. A statement of accounts providing details of all the amounts payable by the complainant was duly annexed thereto. However, the complainant failed to make the payment of the outstanding dues.

xiii. That it was not the first time that the complainant had defaulted in making timely payments. The complainant is a habitual defaulter who had made defaulted in making timely payments of many demands' letters issued by the respondent.

xiv. That since, the complainant defaulted in making payments of the amounts payable at the time of offer of possession and knowing the complainant being a habitual defaulter, the respondent being a responsible developer has issued multiple demands/reminders to the complainant to clear the outstanding dues and take possession of the subject unit.

xv. That the respondent, being a responsible developer, has issued multiple reminder letters to the complainant requesting him to take possession of the subject unit, however, the complainant, even after receipt of the said reminder letters, failed to take possession of the subject unit.

xvi. That in clause 15 of the FBA, it was mutually agreed between the complainant and the respondent that the complainant would be considered at default if the complainant fails to take possession of the subject unit within the stipulated period or execute the conveyance deed or fails to make timely payment of the instalments and it was also agreed between the parties that such default shall result in cancellation of the allotment/agreement. Furthermore, it was also

agreed between the parties in clause 1.2 (f) of the FBA which provides the definition of the terminology 'earnest money' that 10% of the sale price shall be treated as 'earnest money' and in case of failure of the complainant's in fulfilling its part of the obligation under the BBA, the respondent shall be authorized to deduct earnest money along with interest on delayed payments and any other amounts of non-refundable in nature.

xvii. That as per clause 9.3 of the model agreement for sale prescribed by the Authority, an allottee shall be considered under a default if the allottee fails to make payment of two consecutive demands raised by the developer. In case the allottee continues to default in making payment of the demands raised by the developer for a period beyond ninety days then the model builder buyer's agreement itself grant the developer the right to cancel the allotment of the defaulting allottee and refund the amount after deduction of booking amount and interest component on the delayed payments.

xviii. That due to the continuous default of the complainant in taking possession of the subject unit and making payments of the outstanding instalments, the respondent was constrained to exercise its rights granted to him by the complainant under the FBA and Section 11 (5) of the Act, 2016 and accordingly, the respondent as per clause 15 of the FBA issued a notice for cancellation dated 26.11.2024, wherein the respondent intimated to the complainant that an amount of Rs. 15,65,056/- towards principal, Rs. 17,87,596/- towards interest, Rs. 3,62,607/- towards maintenance charges and Rs. 2,04,205/- towards interest on outstanding maintenance dues i.e., a total of Rs. 39,19,464/- was payable by the complainant. Vide the said notice, the respondent provided the complainant a period of 30 days to clear the payments post which the agreement was to be cancelled in terms with FBA.

xix. That the complainant despite receiving the notice of cancellation dated 21.11.2024 failed to take possession of the subject unit and clear the outstanding dues.

xx. Since the complainant had not taken any steps to take possession of the unit or comply with the reminder letters/notice for cancellation letter dated 21.11.2024, therefore, the respondent exercising its rights under the FBA and Act, 2016 cancelled the allotment/agreement of the complainant vide cancellation letter dated 26.12.2024. Vide the said cancellation letter the respondent duly intimated to the complainant that as per the terms and conditions of the FBA and judgments passed by the various forums an amount of Rs. 63,71,558/- was refundable to the complainant after deduction of 10% earnest money and a cheque bearing No. 006999 dated 24.12.2024 amounting to Rs. 63,71,558/- was duly dispatched to the address of complainant along with the cancellation letter, which was duly delivered to the complainant on 30.12.2024. The complainant with a *malafide* intention of extracting illegitimate monetary benefits from the respondent, despite receiving the said cheque, preferred to file the present complaint.

xxi. That under clause 15 of the FBA, it was mutually agreed between the complainant and the respondent that post cancellation of the unit, the refund shall be made to the complainant after the sale of the subject unit. However, the respondent being a law-abiding company, followed the due procedure prescribed by the Authority in many cases, wherein the Authority has held that after the cancellation of the unit the amount has to be refunded to the allottee immediately. Accordingly, the respondent had sent the cheque of the refund amount post deductions of the earnest money to complainant along with the cancellation letter. Since the unit was cancelled and cheque of the refund amount was also sent to the complainant, therefore, the unit was free

from all aspects. Thus, the respondent post-cancellation has already created third-party rights over the unit.

xxii. That after the cancellation of the unit on 26.12.2024, a prospective customer/new allottee approached the respondent expressing the desire to buy the subject unit. The respondent considering the request of the new allottee allotted the subject unit in favor of the new unit, therefore, as on date the new allottee has rights and interest over the subject unit. The respondent in the hearing dated 27.02.2025 has already apprised the Authority about the creation of third-party rights in favor of the new allottee.

xxiii. That the cancellation of the unit has been done in compliance of statutory provisions. Therefore, creation of third-party rights over the cancelled unit is not in contradiction of the provisions of the Act, 2016. In view of which, the rights and interests of the new allottee over the subject unit cannot be jeopardized basis the false and frivolous allegations of the complainant.

xxiv. That the complainant in various paras, is putting forth wrong allegations that the offer of possession made by the respondent was invalid as the demands raised at the time of said offer of possession were illegal. The complainant further raised wrong contention that he has paid Rs. 71,73,142/- which is more than 100% sale consideration of the unit. In view of which, the respondent is providing detailed justifications to the demand raised.

xxv. That the complainant in the present complaint, is alleging that the demands raised by the respondent are illegal as the complainant has already paid more than 100% of the sale consideration of the subject unit. The total sale consideration excluding the taxes was Rs. 80,15,840/- that the same is mentioned in booking application, payment plan annexed in the allotment letter dated 11.05.2012, clause 1.2 of the FBA and annexure – I of the FBA which the payment schedule. The complainant by claiming to have paid more than 100% of the sale consideration is trying to mislead the Authority. The

same can be verified from the perusal of para 7 of the legal notice sent by the complainant wherein the complainant himself is acknowledging that he has paid an amount of Rs. 71,73,142/- which is 89% of the sale consideration of the unit.

xxvi. That under clause 1.2 (a) of the FBA, it was mutually agreed between the complainant and the respondent that a club membership charges to the tune of Rs. 50,000/- shall be paid by the complainant. Furthermore, the same has also been mentioned in the payment plan annexed with the allotment letter dated 11.05.2012, and in the booking application. In annexure I of the FBA, which is the payment schedule, it is categorically mentioned that the club membership charges shall be paid at the time of possession. Therefore, the complainant at this stage cannot dispute that the payment, which is already agreed to be paid by him at the time of booking, allotment and execution of the FBA, is illegal.

xxvii. That at the time of booking and allotment of the subject unit in favor of the complainant, it was mutually agreed between the complainant and the respondent that the complainant shall pay all the service taxes, taxes or cess, taxes of all any kind by whatever name called, whether levied or leviable now or in future. The said understanding is categorically mentioned in clause 7 of the allotment letter dated 11.05.2012.

xxviii. That the complainant is alleging that the respondent without specifying whether the car parking space is open or covered has charged the parking charges to the tune of Rs. 3,00,000/-. In the annexure I of the FBA, it is categorically provided that the car parking space is in basement. Thus, it is evident that it was clarified at the time of execution of the FBA that the car parking space is in the basement, which itself gives the idea that the car parking space offered to the complainant is a covered car parking. The complainant with an ulterior motive has kept on delaying the handing over of

possession, and now at this stage to cover up his own default the complainant is raising all these false allegations that the respondent has raised illegal demands at the time of offer of possession.

xxix. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that construction/ completion of the project got hampered due to force majeure situations beyond the control of the respondent. Some of the force majeure situations faced by the respondent which affected or led to stoppage of the work.

xxx. That the construction/ development of the project was hampered due to circumstances beyond the control of the respondent such as as demonetisation, orders/ restrictions of the National Green Tribunal, weather conditions in NCR region, non-payment of instalment by different allottee of the project and major spread of Covid-19 across worldwide. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 36 months plus 90 days grace period as has been provided in the agreement.

xxxi. That it is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story. The complainant has vehemently failed to showcase how a prima facie case has been built in his favour. Therefore, in view of the aforementioned submissions, the present complaint is neither maintainable nor the complainant is entitled to any relief sought in the present complaint. Thus, the present complaint is liable to be dismissed with heavy cost.

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 the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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.

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

> ***Section 11*****.....***(4) The promoter shall-***
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
> ***Section 34-Functions of the Authority:***
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding delay due to force majeure conditions.

13. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 11.05.2012 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 19.08.2015, which was prior to the effect of Covid-19 on above project could happen. The Authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 which has observed that-

> *"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."*

14. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Though some allottee 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 some of the allottee. Moreover, the respondent promoter has already been given 90 days grace period being unqualified to take

case of unforeseen eventualities. Therefore, no further grace period is warranted in account of Covid-19. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Relief sought by the complainant.

G.I Direct the respondent to revoke the cancellation letter dated 24.12.2024.
G.II Direct the respondent not to create any third-party rights over the unit.
G.III Direct the respondent to provide the valid physical possession to the complainant with complete specifications as per the buyer's agreement within a period of one month.
G.IV Direct the respondent to give delay possession charges from the due date of the offer of possession till the actual handing over of physical possession at the prescribed rate of interest.
G.V Direct the respondent not to raise any illegal demands which are not agreed to between the parties in the agreement to sell.
G.VI Direct the respondent to charge the maintenance from the date of handing over of possession.
G.VII Direct the respondent to not charge holding charges.
G.VIII Direct the respondent to specify if the car parking slot allotted to the complainant is for open or closed car parking.
G.IX Direct the respondents to execute the conveyance deed within a period of one month.

15. The above-mentioned relief sought by the complainant are taken together being inter-connected.

16. Some of the admitted facts submitted by both the parties are that a unit no. C-602, Type A, 3B/3, tower C admeasuring 1890 sq.ft. was purchased by the complainant. A builder buyer's agreement detailing area, payment plan and other terms and conditions of allotment was executed in this regard on 11.052012 between the parties. As per clause 8.1 of the said agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 36 months from the date of signing of this agreement and a grace period of 90 days. The said period has admittedly expired on 09.08.2015.

17. In the present complaint the complainant is seeking to set aside the cancellation letter dated 24.12.2024 and handover the physical possession of the allotted unit

along with delay possession charges. However, the respondent in its reply states that upon the application for grant of Occupation Certificate, the respondent offered the possession of the subject unit vide letter dated 16.08.2018 and subsequently intimated the allottee regarding the receipt of the OC vide email dated 23.10.2018 and requested the complainant to complete the possession formalities and take possession of the subject unit. Despite issuing various reminders dated 05.04.2019, 18.06.2020, 14.04.2021, 24.05.2022, 26.05.2022,15.04.2024 and 17.04.2023 vide emails and letters, and thereafter final notice issued to the complainant on 21.11.2024 the 5/ failed to pay the balance amount which led to the cancellation of the subject unit vide letter dated 24.12.2024. Copies of the same is available on record. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 24.12.2024.

18. On considering the documents available on record as well as submissions made by both the parties, it can be ascertained that the complainant has paid Rs.71,73,142/- out of the sale consideration of Rs.80,15,840/-. No payment was made by the complainant after April 2017. The Occupation Certificate for the unit in question was obtained by the respondent on 17.10.2018 and thereafter vide email dated 23.10.2018 the respondent requested the complainant to complete the possession formalities and take possession of the subject unit. As per the payment plan agreed between the parties, 'notice for handing over of possession' the complainant was obligated to pay Rs. 7,33,271/-. However, the complainant defaulted in making the payment and respondent issued demand letters and emails dated 05.04.2019, 18.06.2020, 14.04.2021, 24.05.2022, 26.05.2022,15.04.2024 and 17.04.2023 to complete the necessary formalities and requested to take possession. Thereafter a final notice was issued to the complainant on 21.11.2024, but the same had no positive results which ultimately leading to cancellation of unit vide letter dated 26.12.2024. The

Authority observes that Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 11.05.2012 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money.

19. 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 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."*

20. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.71,73,142/- after deducting 10% of the sale consideration of Rs.80,15,840/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 24.12.2024 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.
21. In view of the findings detailed above, the rest of the reliefs sought by the complainant becomes redundant and no direction to the same.

H. Directions of the authority.

22. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
    I. The respondent/promoter is directed to refund the paid-up amount of Rs.71,73,142/- after deducting 10% of the sale consideration of Rs.80,15,840/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 24.12.2024 till its realization.
    II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
23. Complaint stands disposed of.

24. File be consigned to the registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.07.2025