

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

Complaint no. : 2075 of 2024
Date of filing of complaint: 15.02.2024
Date of Order: 04.09.2025

Neha Sharma
R/o: 331/24, Jagdish Colony, Rohtak-124001.

Complainant

Versus

Lavish Buildmart Private Limited
Regd. Office at: Cabin No. 1, Unit no. SB/C/5L/
Office/008, M3M Urbana, Sector-67, Gurugram
Manesar Urban Complex, Gurugram-122002

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Sanjeev Kumar Sharma (Advocate)

Complainant

Ms. Shriya Takkar and Ms. Meenal Khanna (Advocates)

Respondent

ORDER

1. The present complaint has been filed on 14.05.2024 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 there under or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"M3M Prive", Sector-73, Gurugram
2.	Nature of the project	Commercial
3.	Project area	11.6025 acres
4.	DTCP license no.	183 of 2008 dated 25.10.2008 valid up to 24.10.2023
5.	Name of licensee	Lavish Buildmart Pvt. Ltd.
6.	RERA Registered/ not registered	GGM/333/65/2019/27 dated 24.05.2019 valid up to 29.02.2024
7.	Unit no.	K214, 12nd Floor & Block-1 (As per page no. 26 of the complaint)
8.	Unit area admeasuring	1825 sq. ft. (Super area) 1085 sq. ft. (Carpet Area) (As per page no. 26 of the complaint)
9.	Allotment letter	30.07.2019 (As per page no. 15 of the complaint)
10.	Date of agreement for sale	Not executed
11.	Possession clause	NA
12.	Due date of possession	Not specified
13.	Total sale consideration	Rs.61,42,154/- (As per page no. 15 of the complaint)
14.	Amount paid by the complainant	Rs.5,00,000/- (As per receipt information on page no. 20 of the complaint)
15.	Offer of possession	Not offered
16.	Demand letter	30.07.2019 (As per page no. 85 of the reply)
17.	Reminder letter	27.08.2019 (As per page no. 88 of the reply)
18.	Pre-cancellation notice	02.11.2019 (As per page no. 89 of the reply)

19.	Cancellation notice	23.12.2019 (As per page no. 90 of the reply)
20.	Occupation Certificate	31.08.2021 (As per page no. 95 of the reply)
21.	Amount of Rs.5,00,000/- paid by the complainant refunded to the complainant	08.08.2024 (As per page no. 94 of the reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - i. That the representation by the respondent and advertisement done in said behalf, the respondent was to construct/ develop a commercial colony in the name of "M3M Prive-73", located at sector-73, Village Begampur Khotala, Gurgaon, Haryana on parcel of land admeasuring 2.75 acres and an integral part of land 1.625 acres wherein the DGTCP has granted License no. 183 of 2008 dated 25.10.2008.
 - ii. That the complainant had applied for a unit with the respondent dated 01.07.2019 for booking of a commercial unit wherein the allotment letter dated 30.07.2019 was issued in the name of the complainant and allotted a unit no. K214, 2nd floor, Block – 1, having carpet area 91.49 sq. ft. and super area 425.98 sq. ft. for a total consideration of Rs.61,42,154 /-. The complainant had paid an amount of Rs.5,00,000/- on 01.07.2019. No agreement has been executed between the both parties.
 - iii. That the respondent/developer issued a pre-cancellation notice dated 02.11.2019 in the name of the complainant to remit the outstanding amount of Rs. 24,50,838/- within 15 days. Thereafter, the respondent/developer issued a cancellation notice dated 23.12.2019 in

the name of the complainant but did not return the paid-up amount without any sale agreement.

- iv. That the respondent be asked to refund the paid up amount of Rs.5,00,000/- plus interest amount of Rs.2,64,562/-. Thus, the total refundable amount is Rs.7,64,562/-.
- v. That the complainant reserves her right to file a separate complaint seeking compensation before the appropriate Authorities.

C. Relief sought by the complainant:

- 4. The complainant has sought following relief(s):
 - i. Direct the respondent to refund the entire amount paid by the complainant amounting to Rs.5,00,000/-.
 - ii. Direct the respondent to pay interest upon the amount paid by the complainant from the date of the payments made by the complainant to the respondent till date.

D. Reply by respondent:

- 5. The respondent has contested the complaint on the following grounds:
 - 1. That the complaint filed by the complainant before the Authority being misconceived and erroneous, is untenable in the eyes of law. 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. That at the very outset, the complaint filed by the complainant is baseless, vexatious and is not tenable in the eyes of law. The complainant has approached the Hon'ble Authority with unclean hands and has tried to mislead the Hon'ble Authority by making incorrect and false averments and stating untrue and/or incomplete

facts and as such, is guilty of *suppressio very suggestion falsi*. The complainant has suppressed and/or mis-stated the facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law. On this short ground alone, the complaint is liable to be dismissed.

II. The complainant is not entitled to any relief whatsoever:

- a. The complainant after conducting her own due diligence and market research and after being satisfied with the project had approached the respondent developer with an intention to make a booking in the commercial project 'M3M Prive 73' an integral part/block/constituent/segment/phase of the commercial colony being developed on land situated in over a period of time on land situated in Sector-73 Gurugram Manesar Urban Complex, Gurugram vide application form. The complainant had paid an amount of Rs.5,00,000/- towards booking of the food court unit. The complainant on account of her own free will and understanding and after having read and understood all the terms of the application form and duly signed it.
- b. Thereafter in due consideration of the part booking amount paid by the complainant and her commitment to make timely payments, the respondent company allotted the commercial space bearing No. K214 on 2nd floor in Block-1 in favour of the complainant vide allotment letter dated 30.07.2019. The cost of the commercial space admeasuring 91.49 sq. ft. carpet area was Rs.61,42,154/- plus other charges. The complainant had opted for a specific payment plan on her own free will and volition.

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- c. Thereafter vide demand letter dated 30.07.2019, the respondent company raised the second demand due for an amount of Rs.23,92,322/- payable on or before 15.08.2019.
- d. That the respondent company vide cover letter dated 07.08.2019, sent triplicate copies of the buyer's agreement for due execution at the complainant's end. The complainant even after constant follow-ups with the respondent company failed to execute the buyer's agreement for the reasons best known to her.
- e. Since the complainant failed to clear the dues raised vide demand letter, the respondent company issued reminder vide letter dated 27.08.2019 requesting the complainant to pay the outstanding dues within a period of 15 days from the date of the reminder.
- f. That regardless of issuing the reminder letter, the complainant failed to clear the outstanding dues raised vide demand letter, the respondent company was constrained to issue pre-cancellation letter dated 02.11.2019 reminding the complainant to remit the outstanding dues along with interest within a period of next 15 days.
- g. That the complainant even after the issuance of the pre-cancellation notice dated 02.11.2019 failed to adhere to the opportunity and continued to breach the terms of the application form/allotment. The respondent company left with no other alternative cancelled the booking/unit of the complainant vide cancellation notice dated 23.12.2019 and forfeit the amount deposited being less 10% of sale consideration.
- h. That the respondent company was constrained to cancel the unit on account of non-payment of the demands and non-execution of the buyer's agreement. The cancellation of allotment was done in

accordance with clause 27 of the application form and clause 15 of the allotment letter. The respondent company is incurring various losses/damages on account of breach of the terms of the application form/allotment which the complainant is liable to pay as per the terms of the application form/allotment. Thus, the total loss calculated comes to Rs.7,10,194/- (approx.) which includes, earnest money deduction @10% to the tune of Rs.6,14,215/- and a sum of Rs.95,979/- was the interest payable by the complainant for the delayed payments.

- i. That the complainant is raising these issues as an afterthought in order to unjustly enrich herself. The respondent company has complied with all its contractual obligations. The complainant is not entitled to any relief from this Hon'ble Authority whatsoever.

III. The project was completed much before the agreed time limit:

- a. That the due date of possession as per the terms of the application form was 29.02.2022, or as may be further revised/approved by the Authorities.
- b. That the respondent company despite adverse circumstances like NGT orders, COVID 19 pandemic completed the construction of the project. The occupation certificate was granted by the competent Authority on 31.08.2021 after due verification and inspection. Thus, no case under Section 18 of the Act of 2016 is made out and the complaint merits dismissal.
- c. That in the present case, the allotment of the complainant was cancelled vide cancellation letter dated 23.12.2019, much before the due date of possession i.e., 29.02.2022 as the complainant despite

repeated requests did not come forward to clear her dues and execute the buyer's agreement.

IV. The present complaint is infructuous:

- i. That the complainant is a defaulter who had defaulted in making timely payments of the dues and failed to execute the buyer's agreement and therefore the respondent was constrained to cancel the allotment of the unit vide cancellation letter dated 23.12.2019 and forfeit the amount deposited being less than 10% of sale consideration . That in furtherance of the cancellation of the subject unit, the unit stands re-allotted to subsequent purchaser. That the unit being cancelled there is no privity of contract between the parties and the complainant has no right, title or interest in the unit in question and neither is the allottee of the same and therefore the complaint is infructuous.
- ii. That the respondent in full and final settlement has also refunded the amount of Rs.5,00,000/- to the complainant on 10.07.2024 and the same has been encashed by the complainant on 08.08.2024 and thus, nothing survives in the present matter.

V. The present complaint is barred by limitation and merits dismissal:

- a. That the cause of action if any, against the respondent arose on or when the allotment of the complainant was cancelled on 23.12.2019 on account of her breaches and repeated defaults and the amounts forfeited and to be refunded were informed. The complainant has approached this Hon'ble Authority after a lapse of 4 years 4 months 15 days since the cause of action and is now seeing to reap benefits of her own defaults.

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 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

8. 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

9. 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.

10. 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.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent:**F.I Objection regarding the complaint barred by Limitation Act, 1963.**

13. The respondent has raised the contention that the cancellation of the unit was done way back on 23.12.2019, so the period of limitation of 3 years comes to an end on 23.12.2022. Although the period of limitation does not apply on the Act on 2016 but the complaint has been filed before the expiry of limitation period of 3 years. Moreover, the period from 15.03.2020 to 28.02.2022 was quoted as zero period vide order dated 10.01.2022 of the Hon'ble Apex Court in M.A. No. 21 of 2022 of suo-moto writ petition Civil No. 3 of 2020. And the complaint is within limitation after computing the said zero period allowed by the Hon'ble Supreme Court of India. Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to refund the entire amount paid by the complainant amounting to Rs.5,00,000/-.

G.II Direct the respondent to pay interest upon the amount paid by the complainant from the date of the payments made by the complainant to the respondent till date.

14. The above-sought relief(s) by the complainant are taken together being inter-connected.
15. The complainant was allotted a unit in the project of respondent "M3M Prive", in Sector 73, Gurugram vide allotment letter dated 30.07.2019 for a total sum of Rs.61,42,154/-. Though no buyer's agreement was executed between the parties till date but the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.5,00,000/.
16. The respondent-promoter started raising various demands against the allotted unit and the complainant paid more amount than initial booking amount. As per the payment plan annexed with the allotment letter dated 30.07.2019, the complainant has to pay 2% of the sale consideration prior

to the execution of buyer's agreement and 46% within 45 days of the booking subject to the signing of execution of buyer's agreement. But the complainant has already paid 8% of the sale consideration on booking itself and did not pay further as no buyer's agreement has been executed till date. The respondent raised a demand vide demand letter dated 30.07.2019 followed by a reminder letter on 27.08.2019, thereafter issued a pre-cancellation notice dated 02.11.2019 and finally terminated the unit vide cancellation notice dated 23.12.2019 on account of non-payment but not refunded the amount paid by the complainant.

17. The complainant has filed the present complaint on 14.05.2024 seeking refund of the paid-up amount along with interest @ 18% per annum as she does not want to continue with project.
18. The respondent in its reply dated 10.01.2025 mentioned that the entire paid-up amount has been refunded to the complainant on 08.08.2024, so the present complaint is not maintainable.
19. While going through the terms and conditions of the allotment letter issued by the respondent, in favour of the complainant, the Authority observed that the respondent-promoter is liable to refund the entire amount paid by the complainant towards booking amount without any interest if case of cancellation of allotment in case of non-execution of agreement for sale. The relevant clause of the allotment letter is reproduced below for the ready reference:

14.

"The allottee shall sign and deliver the agreement for sale with all the schedules along with the payments due as stipulated in the above payment plan within 30(Thirty) days (or such further period as provided/provisioned for by the company) from the date of this allotment letter, and appear for registration of the agreement for sale before the concerned sub-registrar in accordance with the stipulated timelines prescribed by the applicable law. This allotment letter is not meant or be treated or deemed to be as agreement for sale as contemplated under provisions of law. If the allottee fails to execute and deliver to the company the agreement

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for sale within the aforesaid prescribed time along with due payment and/or appear before the sub-registrar for its registration, the company shall be entitled to cancel this allotment and upon such cancellation, the allottee shall have right only to seek refund of sums deposited by him without any interest or compensation whatsoever in the manner and to the extent as provided for hereinafter and shall not have any claim in respect of the unit."

(Emphasis supplied)

20. The Authority has observed that no buyer's agreement has been executed between the parties but as per settled law decided by the Hon'ble Supreme Court in the case of ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018*** observed that "*when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.*"
21. In view of the above-mentioned reasoning, the due date of possession is to be calculated from date of allotment letter i.e., 30.07.2019. Therefore, the due date of handing over of the possession of the unit comes out to be 30.07.2022. Further the occupation certificate of the project has been obtained on 31.08.2021 which depicts that the construction of the project was completed in all aspects prior to the due date of possession.
22. Also, the Maharashtra Real Estate Appellate Tribunal in the case titled as ***Mr. Dinesh R. Humane and Anr. Versus Piramal Estate Pvt. Ltd. dated 17.03.2021***, the following has been observed:

"..... Allottees merely booked the flat and paid some amount towards booking and executed letter for request of reservation of the flat in printed form. Thereafter there is no progress in the transaction and neither allotment letter nor confirmation letter is issued by Promoter. Agreement for sale is not executed between the parties. Parties never reached to the stage of executing agreement for sale. There was no attempt to execute agreement on the part of either party. In such circumstances, Allottees cannot claim refund on the basis of binding effect at clause (18) of "model agreement" for sale under rules of RERA. In fact, claim of Allottees for refund cannot be supported by clause 18 of model agreement for sale under RERA rules. Refund of amount paid to promoter can be demanded as per Section 18 of

on the ground that promoter fails to give possession on agreed date or fails to complete the project as per terms and conditions of agreement for sale. Transaction in the instant case is not governed by Section 18 of RERA. In this peculiar matter, though the claim of refund is not governed by any specific provision of RERA, it cannot be ignored that object of RERA is to protect interest of consumer. So, whatever amount is paid by home-buyer to the promoter should be refunded to the Allottee on his withdrawal from the project."

23. The counsel for the complainant confirmed during proceedings of the day 04.09.2025 mentioned that the booking amount of Rs.5,00,000/- has been refunded by the respondent on 08.08.2024 i.e., after filing of the complaint but no interest on the said amount has been paid and requested to allow the interest on the said amount.

24. On consideration of all the documents and submissions made by the parties, the Authority observes that total paid-up amount of Rs.5,00,000/- by the complainant has already been refunded by the respondent on 08.08.2024. Thus, the relief sought by the complainant is not maintainable anymore. Thus, no direction to this effect.

H. Directions of the authority:

25. Hence, in view of the findings recorded by the authority on the aforesaid issues, no case of refund of the paid-up amount with interest is made out as the deposited amount has already been refunded in terms of clause 14 of the allotment letter dated 30.07.2019. Hence, the complaint is liable to be dismissed and as such is rejected.

26. The complaint stand disposed of.

27. File be consigned to registry.

Dated: 04.09.2025


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram