

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

Complaint no. :	4856 of 2023
Order reserved on :	07.08.2025
Order pronounced on:	11.09.2025

Jitendra Kumar Gupta**R/o:** 1908, 21st A Main, Queens Hospital, HSR Layout,
Sector-2, HSR Layout, Bengaluru, Karnataka-560102**Complainant****Versus****DSS Buildtech Builders Pvt. Ltd****Regd. office:** 506, 5th Floor, Time Square Building, B-Block,
Shushant Lok, Phase 1, Gurugram, Haryana**Respondent****CORAM:****Shri Vijay Kumar Goyal****Member****APPEARANCE:****Shri Nitin Goel (Advocate)****Shri Harshit Batra (Advocate)****Complainant
Respondent****ORDER**

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project-related details:

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, the due date of proposed handing over of the possession,

and the delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"The Melia", Sector-35, Gurugram
2.	Total area of project	17.418754 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no.	77 of 2013 dated 09.08.2013 valid up to 09.08.2024
5.	Registered/not registered	Registered vide no. 288 of 2017 dated 10.10.2017 Valid up to 25.10.2021
6.	Unit no.	G-703, 7 th floor, [Page 39 of complaint]
7.	Area of the unit	1350 sq. ft. [Page 36 of complaint]
8.	Date of allotment letter	17.06.2019 [Page no. 24 of the complaint]
9.	Date of execution of BBA	22.06.2019 [Page no. 26 of the complaint]
10.	Possession clause	7.1 ...The promoter assures to hand over the possession of the apartment on or before 25.10.2021 unless there is delay due to "force majeure", court orders, govt. policy/guidelines, decisions affecting the regular development of real estate project. [Page no. 43 of the complaint]
11.	Due date of possession	25.10.2021

		[Page no. 44 of the complaint]
12.	Sale consideration	Rs. 92,11,991/- [Page 85 of the complaint]
13.	Total amount paid by the complainant	Rs. 18,65,000/- [as per receipts at page no. 25-69 of the complaint]
14.	Surrender Notice	01.03.2023 [Page no. 115 of the complaint]
15.	Offer of possession	Not offered
16.	Occupation certificate	Applied on 17.08.2023 (Page no. 92 of the reply)

B. Facts of the complaint:

3. The complainant has made the following submissions:

- In the month May 2019, the complainant was looking for a flat in Gurugram, or its nearby areas, and for the same he posted his requirement on internet. That upon this the complainant was contacted by the officials of the respondent who appraised the complainant about the aforesaid project.
- The officials of the respondent further showed the complainant a sample flat and brochures and further told the complainant that the possession would be given shortly as the project is nearly at completion stage.
- Before booking the flat in question, the officials of the respondent told the complainant that ICICI bank on their pretext is providing loan facility at low-interest rates for the customers/buyers to purchase the flat in the project of you the addressee. That the officials of the respondent further assured the complainant that if they purchase a flat with them and take

loan from the said financing institution for financing the loan for the flat in question, then in that case the respondent will make timely and regular payment of all the EMI's of the flat to the said financial institution on behalf of the complainant till the possession is delivered to the complainant.

- iv. At that time it was also assured by officials of the respondent to the complainant that if for the aforesaid flat the complainant gets the loan sanctioned from said financial institution, then in that case they have made such an arrangement with the bank that in the event of non-completion of project in time or/and non-allotment of flat in question, the respondent will be solely responsible for the default of loan amount and they will also be liable for closing the loan account with the bank after making the payment of entire loan amount along with interest either by arranging the said amount themselves or by selling the flat.
- v. On the basis of aforesaid representation, the complainant desired to purchase a residential apartment and accordingly he was allotted Flat No. G-703, 7th Floor, Tower-G in the project "The Melia", situated at Sector-35, Sohna, District Gurugram for a total consideration of Rs. 92,11,991/- vide agreement to sell cum construction agreement executed between the complainant and the respondent.
- vi. For the remaining amount of unit in question the officials the respondent introduced the complainant to officials of ICICI, having its branch office at Bangalore, Karnataka, for housing loan of unit in question. That the said financial institution sanctioned and disbursed an amount to a tune of Rs. 62,83,605/- directly to the respondent without confirming the actual status of construction of unit in question vide loan account no. LBBNG00005042405.

- vii. That vide agreement for sale dated 22.07.2019, the respondent assured the complainant the possession of unit in question on or before 25.10.2021, however the same has not taken place. That more than 37 months have elapsed however the respondent remains evasive of the possession of unit in question.
- viii. Despite repeated requests and reminders to the developer has failed to handover the possession. Even though initially the respondent paid some EMI's to the complainant, however the respondent later stopped paying the same. The builder/developer used to deposit the EMI's in cash in the account of the complainant. Due to personal and monetary reasons our client wished to terminate/cancel the agreement of sale cum construction agreement.
- ix. That accordingly the complainant herein was constrained to issue a notice dated 01.09.2023 to the respondents thereby seeking the cancellation of the unit and seeking the refund of the earnest money paid by the complainant to the respondent.
- x. The complainant is no longer interested in taking possession of the unit in question due to personal reasons and difficulties; therefore he seeks cancellation of flat and consequential refund, however the builder has failed to process the refund of the complainant and the bank. Hence, the present complaint.

C. Relief sought by the complainants:

- 4. The complainants have sought the following relief(s):
 - i. Direct the respondent to cancel the booking of the complainant in Flat No. G-703, 2 BHK, Seventh Floor, Tower-G in the project "The Melia", situated at Sector-35, Sohna, District Gurugram in the above-mentioned project of the builder.

- ii. Direct the respondent to refund a sum of Rs. 18,65,000/- paid by the complainant to developer on account of the payment towards flat in question along with an interest @ 24% per annum from the date of cancellation.
- iii. Direct the respondent to pay a sum of Rs. 62,83,605/- to the ICICI Bank Limited on account of home loan of the Complainant along with all interest, penalties, charges etc. OR Direct the respondent to pay a sum of Rs. 62,83,605/- to the complainant on account of home loan of the complainant along with all interest, penalties, charges etc so that the said amount can be paid by complainant to the bank.
- iv. Direct the respondent to pay sum of Rs. 15,00,000/- for physical pain and mental agony, which the complainant suffered due to the respondent's negligent, criminal and malafide act.
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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has made the following submissions:
 - i. the respondent is a company incorporated under the Companies Act, 1956 having its registered office at 506, 5th Floor, Time Square Building B - Block, Sushant Lok - I, Gurugram, Haryana- 122002 and is developing a residential group housing complex approximately spread over 17.418754 Acres of land situated in village Mohamadpur Gujjar, Sector 35, Sohna, Gurugram (Haryana), privately named as "The Melia" ("the Said Project"). The respondent has obtained license from Director General, Town and Country Planning Department, Government of Haryana ("DTCP") for development of the Project vide license No. 77 of 2013.

- ii. The complainant has approached the respondent and submitted an application dated 17.06.2019 for booking of a 2 BHK apartment admeasuring 1350 sq. ft. at the basic sale price of Rs. 5,100/- per sq. ft. plus other statutory charges and taxes, as applicable in the aforesaid project, for the total sale consideration of Rs. 92,11,991/- (inclusive of taxes and other charges). The complainant has agreed and signed the payment plan for payment of instalments dues as per construction linked plan.
- iii. Pursuant to the application dated 17.06.2019, the respondent allotted the complainant a flat bearing no. G-703 on 7th floor of Tower-G.
- iv. the complainant was aware and acutely understood his obligation to make the timely payment, and hence, the complainant herein applied for a home loan facility with ICICI Group Enterprise for the purchase of the unit in question, upon mortgaging the same with the bank.
- v. Thereafter, on 22.06.2019, the complainant entered into agreement for sale for the said unit no. G-703 admeasuring 1350 sq. ft. with the respondent. The said agreement was executed by the complainant out of his own free will without any coercion or undue influence and therefore the same is binding upon the parties hereto.
- vi. Accordingly, the respondent herein vide its letter dated 22.06.2019 addressed to ICICI Bank expressed its no objection upon the complainant herein mortgaging the unit in favour of the bank by way of security for repayment of the said loan.
- vii. As per section 19(6) of the Act, 2016, the complainant is under obligation and responsibility to make necessary payments in the manner and within the time as specified in the said agreement to sell. In the event of default thereof, the complainant is liable to pay interest, at the rate as prescribed



in the agreement to sell, for any delay in payment towards any amount or charges to be paid.

- viii. Clause 7 of the aforesaid agreement to sell dated 22.06.2019 provides for the time and manner of handing over possession of the said unit to the complainant. The said clause 7.1 expressly provides that the unit shall be handed over on 25.10.2021 unless there is a delay due to 'Force Majeure', court orders, government policy/guidelines, decisions affecting regular development of the real estate project. Furthermore, it provides that if there is a delay due to above stated conditions, the respondent shall be entitled to extension of time for delivery of possession of the apartment.
- ix. The timeline for the offer of possession was subject to force majeure circumstances and circumstances beyond the control of the respondent including but not limited court orders, government policy/guidelines, decisions affecting regular development of the real estate project.

S. no.	Date of Order	Directions	Period of Restriction	Days affected
1.	24.07.2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.		30 days
2.	11.10.2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11.10.2019 whereby the construction activity has been prohibited from 11 th Oct/2019 to 31 st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11.10.2019 to 31.12.2019	81 days

3.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as " <i>MC Mehta vs. Union of India</i> " completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	04.11.2019 - 14.02.2020	102 days
4.	3 rd week of Feb 2020	Covid-19 pandemic	Feb 2020 to till date	To date (3 months Nationwide lockdown)
			Total days	303 days

- x. Furthermore, in accordance with clause 7 of the agreement, if there is a delay due to above stated conditions, the respondent shall be entitled to extension of time for delivery of possession of the apartment.
- xi. From the facts indicated above, it is comprehensively established that a period of 303 days was consumed on account of circumstances beyond the power and control of the Respondent, owing to the passing of Orders by the statutory authorities and the covid-19 pandemic. All the circumstances stated hereinabove come within the meaning of *force majeure*, as stated above. It is relevant to mention here that post Covid period there was labor shortage which delayed the construction on the project site, until the respondent was completely operational and could proceed at full speed. That 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 timeline for handover of possession. That vide application dated

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- 17.08.2023 before DTCP the respondent herein has already applied for occupation certificate for towers A, D, E & F of the said project and will possibly apply for the remaining towers of the said project.
- xii. As on date, payment of Rs. 62,83,605/- is received to the respondent towards the sale consideration of the unit which is duly disbursed by the bank against the loan availed by the complainant against the said unit. The complainant is not entitled to any equitable relief on the ground that he has sought for cancellation of the allotment done in his favor due to his personal constraints. The Complainant has not approached this Hon'ble Authority with clean hands and is trying to take advantage of his own wrong, and has committed a material breach of its obligations under the agreement and has filed the present complaint in a *malafide* and vexatious manner.
- xiii. The complainant himself specifically admits in the present complaint that he sought cancellation of the allotment from the respondent herein on account of personal and monetary reasons/ difficulty. Therefore, the cancellation of the unit has been requested by the allottee for reasons outside the scope of the agreement, and not on account of any default whatsoever on part of the answering respondent.
- xiv. The present complaint is nothing but an arm-twisting tactic adopted by the complainant herein to wriggle out from his obligations under the terms and conditions of the agreement to sell dated 22.06.2019, and has been filed only to extort money from the respondent herein.
- xv. It is a settled position of law that parties to a contract are bound and governed by the terms and conditions agreed thereunder, and cannot travel beyond the scope of such agreement. The complainant herein has sought cancellation of the agreement on account of personal reasons, which is impermissible under the agreement, and therefore, the present



complaint is devoid of any merit and is liable to be dismissed with heavy costs.

- xvi. The respondent has not terminated the allotment of the complainant but the complainant has himself sought the cancellation/ surrender of his unit. That in such circumstances the clause of the agreement for sale is very clear. As per clause 7.5 when the complainant seeks to withdraw from the project, the respondent is entitled to forfeit the booking amount and the interest on delayed payment.
- xvii. The complainant has falsely stated that the respondent was liable to pay any EMI on behalf of the complainant to ICICI Bank with respect to the allotment in his favor. That the Respondent had only given permission to the complainant to mortgage the said unit to ICICI Bank Ltd. vide letter dated 22.06.2019. The respondent has not undertaken any agreement with the complainant to make timely and regular payments of all the EMIs of the apartment to the complainant which would then be deducted by the Bank as EMI. There is no tripartite agreement entered into between the Bank, the complainant and the respondent and therefore no liability can be fastened upon the respondent for making payments of the EMI to the loaning bank and the same is purely between the complainant and the banker.
- xviii. The respondent cannot be saddled with responsibility to grant refund to such unscrupulous allottees with dishonest intentions, which are clearly outside the scope of the stipulated terms and conditions of the agreement to sell. It must also be kept in perspective that completion of the entire project suffers immensely on account of such requests raised by allottees who do not honor the terms and conditions of the builder agreement to sell and seek to withdraw from the project with ulterior motives. The consequent effect of granting such refunds would have a direct impact on

the financial stability of the respondent herein and its ability to complete the project in a time bound manner and will ultimately deter it to fulfill its obligations qua other allottees of the said project.

xix. The respondent shall be unjustly wronged if the present complaint is allowed since it had already allotted the said unit to the complainant, and has consequently lost the opportunity of allotting the said unit to another buyer who not only would have made all timely payments towards the sale consideration, but would also have continued with the project.

7. 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:

8. 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

9. 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 the entire Gurugram District for all purposes 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

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities, and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

11. Hence, given 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 relief sought by the complainants:

- F.I Direct the respondent to cancel the booking of the complainant in Flat No. G-703, 2 BHK, Seventh Floor, Tower-G in the project "The Melia", situated at Sector-35, Sohna, District Gurugram in the above-mentioned project of the builder.
- F.II Direct the respondent to refund a sum of Rs. 18,65,000/- paid by the complainant to developer on account of the payment towards flat in question along with an interest @ 24% per annum from the date of cancellation.
- F.III Direct the respondent to pay a sum of Rs. 62,83,605/- to the ICICI Bank Limited on account of home loan of the Complainant along with all interest, penalties, charges etc. OR Direct the respondent to pay a sum of Rs. 62,83,605/- to the complainant on account of home loan of the complainant along with all interest, penalties, charges etc so that the said amount can be paid by complainant to the bank.
- F.IV Direct the respondent to pay towards mental harassment and agony caused along with litigation charges Rs. 15,00,000/- and inflammation charges.
12. The complainant was allotted a unit in the project of respondent "The Melia" in at sector 35, Gurgaon vide allotment letter dated 17.06.2019 for a total sum of Rs.92,11,991/-. By virtue of clause 7.1 of the agreement dated 22.06.2019, the possession of the subject unit was to be delivered by 25.10.2021. However, the occupation certificate of the buildings/towers where allotted unit of the complainants is situated is still not received till date. Hence, the present

complaint has been filed before the Authority for seeking refund of the amount paid along with interest.

13. During proceedings on 07.08.2025, the counsel for the complainant stated that the complainant is seeking refund of the deposited amount and direct the respondent to pay Rs. 62,83,605/- to ICICI Bank or to the complainant on account of home loan. Further, after seeking telephonic confirmation from the complainant, the counsel for the complainant stated that the cheques mentioned in the receipt on annexure C-3 page 75 of complaint has not been encashed and rather subsequently paid in cash however, the receipt for the same is not available. On the contrary, the counsel for the respondent states that the amount which is paid by the complainant till date is not paid by the complainant himself but has been disbursed by the financial institution towards the unit as the complainant took loan from the bank. Also, the amount which is remaining to be paid to the complainant or to the financial institution needs to be verified from the company which respondent will be clarifying till next date of hearing.
14. Further during proceeding on 11.09.2025, the counsel for the respondent draws attention towards SoA at Annexure R6 as per which the amount received is Rs.6283605/- and entire amount has been received from the financial institution, who is to be refunded by the promoter alongwith applicable rate of interest under Tri-partite Agreement (TPA) and no amount has been received from the complainant-allottee who has been given opportunity to file payment details, if any, paid to the promoter from his own account. But neither any proof has been filed till date.
15. Further, as per annexure C4 at page no.76 of the complaint which is a statement issued by ICICI Bank as per which the amount disbursed is Rs.6283605/-, which is the amount shown as received against the unit in SoA.

16. Upon a comprehensive examination of the documents placed on record, as well as the submissions advanced by the counsels for both parties, this Authority finds that the complainant has failed to furnish any documentary evidence to substantiate the claim that any payment was made by the complainant directly to the respondent. The material on record clearly indicates that all payments towards the unit in question were disbursed by the ICICI Bank. In light of the foregoing, the claim of refund by the complainant is found to be untenable and is accordingly dismissed.
17. Notwithstanding the above, considering the facts and circumstances of the case, this Authority is of the considered view that the respondent is under an obligation to refund the amount received from ICICI Bank along with interest towards the said unit under Tri-partite Agreement within a period of 90 days from the date of this order failing which the Bank is at liberty to effect its recovery as per the applicable laws. The respondent, in view of the above, shall after clearing all the dues of the Bank including interest will obtain a No Dues Certificate from the Bank and its copy shall be supplied to the Complainant in next 30 days.
18. Complaint stands disposed of.
19. File be consigned to the Registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.09.2025