

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

Complaint no: 1634 of 2025
Date of filing: 31.03.2025
Date of Order: 05.08.2025

Mamta Jain and Prabhat Kumar Jain
Both R/o : C-2/183, Lodhi Colony,
New Delhi – 110003

Complainants

Versus

Union Buildmart Private Limited
Regd. Office at: 41st Floor, Tower-1, M3M
International financial center, Sector-66,
Badshahpur, Gurgaon, Haryana

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

Chairman
Member

APPEARANCE:

Shri Prabhat Kumar Jain
Ms Shriya Takkar (Advocate)

In Person
Respondent

ORDER

1. This order shall dispose of complaint titled as above filed on 31.03.2025 before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

A. Project and unit related details.

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

S.no.	Particulars	Details
1.	Project name and location	'M3M MANSION', Sector 113, Village Chauma, Gurugram, Haryana.
2.	Nature of the project	Mixed Use
3.	a) DTCP license no	229 of 2023 dated 02.11.2023
	b) License valid up to	01.11.2028
	c) Name of the licensee	Union Buildmart Pvt Ltd and Ors
	d) Area	10.2250 acres
4.	a) RERA registered/not registered	Registered 29 Of 2024 dated 18.03.2024
5.	Unit no.	M3M-TW-J-1902 in Tower-J at 19 th Floor
6.	Unit admeasuring	1285 sq. ft.
7.	Date of execution of the flat buyer's agreement	22.05.2024 (As per pg no. 76 of the reply)
8.	Possession Clause	7.1 Schedule for possession of the said Apartment <i>(ii) The Developer proposes to offer possession of the Apartment on or before 31.03.2030 along with car parking space (if</i>

		<i>any) or such extended time granted by the concerned authority ...</i>
9.	Total sale consideration (inclusive of Basic Sale Price, IDC, EDC)	Rs. 4,51,81,052/- (As per pg no. 90 of the reply)
10.	Total amount paid by the complainants	Rs. 90,36,210/- (20% of TSC) (As per complaint)
11.	Demand Letters 1. 06-02-2025 2. 20-03-2025	1. Rs. 90,79,239/- 2. Rs. 90,79,239/- + 25,101/- (Interest)
12.	Pre-Cancellation Notice due to payment defaults.	27.03.2025
13.	Due date of delivery of possession	31.03.2030
14.	Occupation certificate	N/A
15.	Offer of possession	N/A

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint: -

- i. That the complainant, after his superannuation, was looking for safe avenues to invest his retirement funds and came across the residential project "M3M Mansion" situated at the then recently inaugurated and much-hyped Dwarka Expressway, Gurugram.
- ii. That on making preliminary searches on the internet, the respondent company obtained the complainant's details and, through telecalls, invited him to their gallery at Sector-113, Gurugram, Haryana.
- iii. That the complainant, lured by the heavy front-page advertisements and

online promotions, coupled with the persuasive tactics of senior employees of the respondent namely, Sh. Pawan Tandon and Sh. Gaurav Sehgal, was promised assured high returns of at least 20-25% within a short period of time.

- iv. During the initial meetings, the said officials further represented that the price of the project was going to be revised upwardly after receipt of RERA permission and that early booking would fetch substantial premium.
- v. That the complainant was offered a unit costing approximately ₹4.5 Crores. However, considering his limited financial capacity, the complainant expressed his inability to proceed.
- vi. That thereafter, the respondent's officials persuaded the complainant by offering him the 20:20:60 payment plan, whereby he was required to pay approximately ₹90 Lakhs within three months, the same amount the following year, and thereafter nothing until the grant of Occupancy Certificate.
- vii. That despite repeatedly clarifying his inability to make further payments after the first installment, the complainant was induced by false assurances. The respondent's officials categorically promised that by the time of the second tranche, the complainant would have the option either to (a) transfer the booking at a premium without transfer charges, or (b) avail buyback by the company at a price higher than his investment.
- viii. That relying on these assurances, the complainant paid a booking amount of ₹10 lakhs on 12.03.2024 through cheque. Upon requesting a copy of the terms and conditions and draft Builder Buyer Agreement (BBA), the complainant was informed that since RERA registration was awaited, the documents could not be shared. They further assured that the BBA was

only a standard format and contained nothing adverse.

- ix. The after receiving the draft BBA, the complainant noticed several onerous clauses such as deduction of 10% of Total Consideration Value (TCV) in case of non-payment, levy of interest on delayed payments, and restriction on free transfer. Upon raising objections, he was assured that the company, being reputed, would not invoke such clauses and would honour its verbal promises of buyback/refund.
- x. That relying upon such assurances, the complainant signed the BBA and paid the due installments within the first three months of booking.
- xi. That in february/march 2025, the respondent demanded payment of the second tranche and even offered unsolicited assistance for bank loans. This was in complete contradiction to earlier promises.
- xii. That on 10.03.2025, the complainant personally met Sh. Pawan Tandon, who suggested that the complainant write an email to senior officials citing emergency and requesting refund, assuring that the request would be approved. However, on 13.03.2025, the respondent rejected the request outright.
- xiii. That instead of honouring their commitments, the respondent started threatening the complainant with forfeiture of 10% of TCV (approx. ₹45 Lakhs) along with other penalties for non-payment of further installments.
- xiv. That one of the complainants, a retired person, invested his entire pensionary funds of around ₹1 Crore in the respondent's project purely based on false promises, misrepresentations, and deceitful assurances. The acts of the respondent amount to unfair trade practices, misrepresentation, and violation of the Real Estate (Regulation and Development) Act, 2016.

- xv. That the complainants being aggrieved persons, are filing the present complaint under Section 31 of the RERA Act before the Authority for violation/ contravention of provisions of the RERA Act.
- xvi. That the Hon'ble Authority has jurisdiction to entertain the present Complaint since the project is situated in Gurugram which is well within the jurisdiction of this Hon'ble Authority

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s):
- I. Direct the respondent to refund the Complainants' hard-earned money of approximately ₹1 Crore along with interest thereon from the date of deposit till realization.
 - II. Direct the respondent not to create any third-party rights in the said unit till final realization of the total amount paid along-with interest.
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 respondent i.e., M/s. Union Buildmart Pvt. Ltd. is engaged in the business of construction and development of real estate projects and has carved a niche for itself in the real estate sector. The present reply for and on behalf of the respondent is being filed by Ms. Shiney Saha, who has been duly authorized by the board of directors of the respondent company to sign and verify the present reply and to do all such acts ancillary thereto.

- ii. That the present complaint has been filed by the complainants with malafide intent to extract and extort illegal and unlawful benefits from the respondent. It is submitted that the complainants after conducting their due diligence and market research approached the respondent company for booking of a residential apartment in the Phase 1 of the mixed land use project under the name and style of M3M Mansion being developed within the licensed land in Sector 113 Gurugram, Haryana vide application form and deposited an amount of Rs.1,26,819/- towards booking amount.
- iii. That due consideration of the commitments by the complainants to make timely payments, the respondent allotted residential apartment bearing no. MM-TW-J-1902, on the 19th floor for sales consideration of Rs.4,51,81,052/- plus other charges vide allotment letter dated 02.05.2024. It is submitted that the complainants on their own free will and understanding of the legal import and effect opted for a specific payment plan.
- iv. That respondent company as per payment plan opted by the complainants vide demand letter dated 02.05.2024 raised the demand due "within 5 days of booking" and requested the complainants to pay an amount of Rs. 8,73,181/- The said demand was payable on or before 07.05.2024.
- v. The thereafter, the respondent vide its demand letter dated 03.05.2024 raised the second demand payable on or before 10th May 2024 for an amount of Rs. 35,18,104/- and also requested the complainants to pay the previous dues of Rs. 8,73,181/-.

- vi. That the respondent vide demand letter dated 04.05.2024 raised the third demand that was due on or before 11th June, 2024 for an amount of Rs.45,18,105/-. Vide the aforesaid demand letter the respondent company requested the complainants to pay their previous outstanding dues of Rs.43,91,285/.
- vii. That respondent company vide cover letter dated 06.05.2024 sent three copies of the Buyers Agreement to the complainants for due execution at their end.
- viii. That complainants deposited an amount of Rs. 1,72,118/- on 10.05.2024 towards the pending dues. The aforesaid amount was duly acknowledged by the respondent Company.
- ix. That complainants earlier had approached the associate company M/s. metro education and welfare Pvt. Ltd. expressing their interest towards booking of an apartment in the project M3M Crown and had paid an amount of Rs. 10,00,000/- and Rs.31,76,138 vide cheques dated 12.03.2024 and 11.04.2024 respectively. The complainants, -thereafter, submitted a request to the respondent company for the transfer of the entire amount of Rs.41,76,138/- paid by them in relation to the expression of interest towards an apartment in M3M Crown be transferred towards the unit in question without any deductions.
- x. That after constant follow ups with the complainants, the buyer's agreement was executed between the parties on 22.05.2024 and the same was duly registered. The buyer's agreement contains the rights and liabilities of both the parties.

- xi. That vide letter dated 06.06.2024, the respondent offered the complainants about the Timely Payment Rebate (TPR) of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) from the sale consideration subject to the terms and conditions stated thereinunder i.e. timely payments of all demands raised.
- xii. That the respondent company as per agreed payment plan, raised the next demand vide demand letter dated 06.02.2025 that was due on or before 13th March, 2025 for an amount of Rs. 90,36,210/-. Further, vide aforesaid demand letter the complainants were also requested to clear their previous outstanding dues of Rs.43,029.62/- and the same was payable immediately.
- xiii. That since, the complainants failed to make good the pending amounts therefore, the respondent company issued reminder I/ demand II dated 20.03.2025 requesting the complainants to pay the amount due of Rs.90,79,239.62/- along with interest of Rs. 25,101.22/-.
- xiv. That issuance of the reminder letter, the complainants did not come forward to clear their outstanding dues, therefore the respondent left with no other option, issued a pre-cancellation letter dated 27.03.2025 to the complainants, finally calling upon the complainants to make payment of Rs. 90,79,239/- along with further interest of Rs.45,396/- within 7 days from the date of the notice, failing which the company shall be constrained to cancel the booking/ provisional allotment of the unit, as per the terms of the buyer's agreement.
- xv. That complainants despite being well aware that timely payment is the essence of the transaction failed to come forward and clear their pending dues. Thus, the complainants are in default of their contractual

obligations and are not entitled to any relief whatsoever. The complainants till date have deposited an amount of Rs.89,93,179.38/- towards the apartment in question.

xvi. That complainants have approached this Hon'ble Authority by way of the present complaint seeking refund of the entire amount deposited by them as they are facing a financial difficulty. It is submitted that refund if any can only be allowed post deduction of earnest money, brokerage, deduction of benefits/incentive/vouchers given and interest component as stated in clause 7.5.1 of the Buyers Agreement.

7. 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

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 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.

10. 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.

11. 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.

12. 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. 2021-2022(1) R.C.R. (Civil) 357 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."

13. 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 relief sought by the complainants.

F.I Direct the respondent to refund the complainants' hard-earned money of approximately ₹1 Crore along with interest thereon from the date of deposit till realization.

14. The complaint has been filed under Section 31 of the Act, 2016 seeking refund of the amount deposited by the complainants in respect of apartment No. MM-TW-J-1902, 19th Floor, Tower-J, in the project "M3M Mansion", Sector 113, Gurugram, developed by the respondent company. The complainants admittedly executed the Buyer's Agreement dated 22.05.2024, which clearly provides for payment obligations, default consequences, and possession schedule.

15. As per the clause 7(i) the buyer's agreement dated 22.05.2024, the due date of handing over possession of the apartment is on or before 31.03.2030. The relevant portion of the clause is reproduced below –

*7(i) The Developer proposes to **offer possession of the Apartment on or before 31.03.2030 along with car parking space** (if any) or such extended time granted by the concerned authority as per the Act/Rules, for residential usage, unless there is delay due to "Force Majeure Event", affecting the regular development of the real estate project. If, the construction/development of the Project is delayed due to the above reason, then the Allottee agrees that the Developer shall be entitled to the extension of time for delivery of possession of the Apartment along with right to use car parking space (if applicable).*

16. It is established from the record that the complainants defaulted in payment of instalments and failed to honour multiple demand notices dated 20.03.2025 and 27.03.2025. The Complainants despite being aware that timely payment is the essence of the transaction, failed to clear their pending dues.

17. The buyer's agreement (clause 7.5.1 of the builder buyer agreement) expressly permits forfeiture of earnest money (10% of total consideration), brokerage, and other benefits/incentives in case of cancellation without default by the developer. The complainants cannot claim entire refund contrary to the agreed terms. And the allegations of oral assurances and buy-back schemes are unsupported by any documentary evidence and are therefore rejected. The relevant clause of the BBA is extracted below:

7.5 Cancellation by Allottee —

*7.5.1 Provided that where the Allottee proposes to cancel/withdraw from the Project without an event of default by the Developer which entitles the Allottee to cancel / terminate the Agreement, **then the Developer herein are entitled to forfeit (i) the Earnest Money (being 10% of the Total Consideration) paid for the allotment along with the interest and penalties / damages received or due on any delayed payment / non-payment by the Allottee** (in terms of Clause 9.3 hereinafter) at the rate prescribed under the Act and Rules,*

18. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as ***Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022***, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

19. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder cannot retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 10.90% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date i.e. 8.90%)+2% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II Direct the respondent not to create any third-party rights in the said unit till final realization of the total amount paid along-with interest.

20. Since the complainants have only paid 20% of the total sale price and have failed to make payments according to the agreed payment schedule, yet is seeking a refund of the entire paid-up amount and directions for restraining the respondent from creating third-party rights over the subject, the relief being sought is unreasonable and unjustified, the Authority cannot accede to the above sought relief.

G. Directions of the authority.


21. 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 functions entrusted to the authority under section 34(f):




- I. The respondent is directed to refund the paid-up amount i.e. Rs. 90,36,210/- to the complainants after deducting 10% of the total consideration as earnest money along with interest at the prescribed rate i.e., 10.90%, from the date of filing of this complaint i.e., 31.03.2025 till the date of realization of payment.
- 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.

22. The complaint stands disposed of.

23. Files be consigned to registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 05.08.2025