

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

Complaint no.: 6076 of 2022
Date of filing: 14.09.2022
Date of decision: 20.05.2025

Melvyn Rozario & Mildred Mithu Ethel
Rozario

Both RR: C-9, Lower Ground Floor, Jangpura
Extension, New Delhi

Complainants

Versus

1. M/s AMB Infrastructure Pvt. Ltd.
2. **Regd. office:** Plot no 15, ground floor,
sector 44, Gurugram 122002
3. Square Yards Group
Regd. office: Good Earth Business Bay, 9th
Floor, Sector-58, Gurugram, Haryana-
122011

Respondents

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairperson
Member
Member

APPEARANCE:

Mr. Venket Rao (Advocate)
Mr. Ishaan Dang (Advocate)
Ms. Neha Pamnani (Advocate)

Counsel for Complainants
Counsel for Respondent no. 1
Counsel for Respondent no. 2

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 allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"AMB Selfie Street", Sector 92, Gurgaon
2.	Nature of the project	Commercial colony
3.	DTCP License	10 of 2015 dated 18.09.2015
		Valid up to- 17.09.2020
	Project area	3.175 acres
	Name of the licensee	Sunil Janki Das Goyal
4.	HRERA registered/ not registered	Registered Vide registration no. 80 of 2017 dated 23.08.2017
		Valid up to- 21.08.2022
5.	Welcome letter dated	18.09.2019 (pg. 109 of complaint)
6.	Multiplex area	PVR, Audi 02 (pg. 59 of reply by R1)
7.	Area admeasuring	3620 sq. ft. (pg. 59 of reply by R1)



8.	Date of builder buyer agreement	Not executed
9.	Possession clause	<p>Clause 16.1 of sample BBA</p> <p><i>The Company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the unit <u>within thirty-six (36) months computed from the date of execution of the Buyers Agreement, excluding additional grace period of twelve (12) months, subject to force majeure circumstances and reason beyond the control of the company (commitment period).</u> In case of failure of the allottee to make Timely payments of any of the instalments as per the payment plan along with other charges and use as applicable or otherwise payable in accordance with the payment plan as per the demands raised by the company from time to time in this respect or any failure on part of the allottee to abide by any of the terms and conditions of this agreement the time period mentioned in this clause shall not be binding upon the company with respect to the girls handing over of the position of the unit regardless of the fact that the company has accepted interest on delay payments.</i></p>
10.	Due date of possession	NA
11.	Total sale consideration	TSC after NPV discount- Rs. 3,44,58,927/- (pg. 69 of reply by R1)
12.	Amount paid	Rs. 1,25,00,000/-

		(As per cancellation letter dated 11.03.2020 at pg. 72 of reply by R1)
13.	Cancellation letter dated	11.03.2020 (pg. 72 of reply by R1)
14.	Legal notice dated for refund	17.03.2021 (pg. 185 of complaint)
15.	Reply to such legal notice	07.04.2021 (pg. 73 of reply)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - a. That the Respondent No. 1 and 2 have joint & several liabilities towards the Complainants (hereinafter referred as '**Respondents**'). That the Respondent No. 1 along with the land owner procured the license from the Town and Country Planning Department, Government of Haryana vide License No. 10 of 2015 on 18.09.2015 to develop a commercial project on 3.175 acres of land in Sector 92, Gurugram, Haryana. The Respondent No. 1 has entered into Collaboration Agreement/ Development Agreements, etc with the land owner to develop, market and sell the units in the Project.
 - b. That the Complainants were approached by the Respondent No. 2, through its representative and agent, representing that the Respondent No. 2 is an active agent in the real estate space in India and painted a rosy picture about the Project of Respondent No.1 to lure the Complainants into booking a space in the Project. That the Respondent No.2, on behalf of Respondent No.1, represented and advertised that there was a lucrative investment opportunity and that the Complainants could purchase a space in the cinema hall/auditorium in PVR Cinema-

plex and earn returns on the sales made by the cinema and the food court associated with it, situated in the Project being developed by the Respondent No. 1.

- e. That the Respondent No. 2, through its representative, further advertised that the said opportunity shall provide the Complainants with immediate and periodic assured returns and that the due diligence towards the Project had been carried out by the team of Respondent No. 2 both in India as well as in Doha, Qatar. The Respondent No. 2 further assured that the Project was fully compliant with all the laws in India. That the Respondent No. 2 arranged for discussions with the Respondent No. 1 through its representative and expressed a sense of urgency in making the bookings.
- d. Accordingly, the representatives of Respondent No. 2 met with the Complainants on 22.08.2019 and the Complainants were ushered through the 'Application Form for Provisional Booking' in one of the PVR cinema screens without any detailed explanation of the terms and conditions of the booking thereof. The Complainants were only made to understand that 'this is a flexible investment plan' and that Complainants had up to 18 months to pay around 80% of the investment and that the Complainants would be earning assured returns of 11% p.a. on the amount paid until the cinema was operational and thereafter a minimum of Rs. 57/- per square feet or 15% of total revenue from tickets + F&B sales (whichever is higher). To further convince the Complainants, the Respondent No.2 provided a Power Point Brochure containing all the claims so made by them.
- e. That to further substantiate the claims of the Respondents an email dated 10.09.2019 was sent by the Respondent No.2 whereby sharing the

updated Cost Sheet for purchasing a Space in the Project along with other details which included details of NPV discount of 18% on the base price rate of Rs. 9500/- per sq. feet, and also confirming that the Complainants will be allotted 3620 square feet area in one of the PVR cinema screen proposed to be constructed in AMB Selfie Street Mall i.e., the Project of the Respondent No.1. The email further clarified that the Complainants will be entitled to flexible dates for payments.

- f. That falling into the trap and thus believing the misleading representations and false assurances made by the Respondents, the Complainants on 11.09.2019 made a payment of INR 10,00,000/- (Rupees Ten Lakhs Only) to the Respondent No. 1 as an advance deposit / booking amount for provisional booking for allotment of 3620 square feet area in one of the PVR cinema screen (hereinafter referred to as "Space") proposed to be constructed in AMB Selfie Street Mall of the Respondent No.1
- g. The Respondent No. 1 further assured that it will issue specific details pertaining to the identification of the Space and other details shall be indicated in the Builder Buyer's Agreement (hereinafter referred as the 'BBA') which it will be executed subsequently. It is pertinent to mention herein that, at this juncture, the Complainants were led to believe by the representative of the Respondent No. 2 that the Complainants would get the draft BBA including the above terms and conditions, for execution, upon payment of 10% of the Sale Consideration of the Space. Also, the draft Memorandum of Understanding (hereinafter referred as the 'MOU') containing the terms and conditions of payment of assured return would be shared with the Complainants for execution along with the BBA.

- h. That the Complainants received the welcome letter dated 18.09.2019 and the acknowledgment receipt for the payment of INR 10,00,000/- from the Respondent No. 1 vide email dated 18.09.2019. That replying to the email, on the same day, the Complainants requested the Respondent No. 1 to provide with all the necessary legal paperwork, including the BBA and MOU for the Space booked by the Complainants. The Complainants requested the execution of the necessary documents, as legally required to be done, and that the Respondent should facilitate the same at the earliest. However, to the utter shock and disbelieve, the Respondent No.1's response to the request for execution of the legal paperwork was that the same will be processed only after the Complainants have paid 25% of their Sale Consideration payable against the booked Space. It is submitted that the Sale Consideration of the space booked by the Complainants is Rs. 3,44,58,927/-.
- i. It is humbly submitted that the Complainants on multiple occasion requested for the necessary execution of the BBA & MOU, however, despite the specific request from the Complainants the Respondent No. 1, continued to illegally state that the BBA and the MOU for payment of assured return would be executed only upon clearance of the 25% of the Sale Consideration of the Space. It is also humbly submitted that the Respondent No. 2 had represented and assured the Complainants that the BBA and other requisite legal paperwork/agreements will be executed between the Complainants and the Respondent No. 1 on the payment of the provisional booking amount of INR 10,00,000/-. That such an assurance by the Respondent No.2 is absolutely false and misleading and liable to be punished for undertaking unfair trade practices.

- j. That a bare perusal of the facts clearly establish that the Respondents have utterly violated Section 12 of the RERA Act. The Respondents are liable to compensate the Complainants for causing loss and damage by stating incorrect and false statements. It is also to be noted that since the Complainants are affected by such incorrect and false statements of the Respondents, the provisions of the RERA Act have bestowed the Complainants with the right to withdraw from the proposed project and the Respondent Promoter is liable to return the Complainants entire investment along with interest.
- k. It is submitted that to the utter surprise and disbelief, within 15 days of receiving the booking amount of INR 10,00,000/-, the Respondent No.1 vide email dated 27.09.2019 raised a huge demand of INR 1,00,00,000/- (Rupees One Crore Only) from the Complainants towards instalment amounts payable against the booking of the Space. It is pertinent to mention herein that the said demand was raised without executing any BBA or providing the Complainants with the legal paperwork towards the booking.
- l. That the Complainants, once again vide email dated 01.10.2019 were constrained to ask Respondent No. 1 to provide the proposed MoU and BBAs for their perusal. However, the same was never provided to the Complainants. It is most humbly submitted that the demands of the Respondent No.1 were absolutely illegal and contrary to the representations made while fraudulently luring the Complainants into booking of the space. Infact, despite raising illegal demands the Respondent No.1 started threatening the Complainants of cancellation and forfeiture of the Booking amounts paid. In such a situation, the Complainants vide email dated 03.10.2019 were compelled to request

for time for making the said payments towards the illegal demands raised by the Respondent No. 1 under the threat of forfeiture and cancellation.

- m. That being under the burden of payment of such a huge amount of money at a short span of time, the Complainants were unfortunately forced to sell off their properties in India in order to try and arrange funds to meet the illegal demands being raised by the Respondent No. 1. That the Respondent using its dominant position continued to raise demand illegal and in the first week of December 2019 again a demand of INR 25,00,000/- (Twenty-Five Lakhs Only) to the Respondent No. 1 without executing the requisite legal paperwork including BBA and MoU. That the Complainants out of fear of cancellation of the Booking paid the said INR 25,00,000/- illegally demanded by end of December 2019. It is pertinent to mention herein that throughout this period, the Complainants kept on requesting the Respondent No.1 to execute the necessary documents including the BBA. However, all the requests of the Complainants fell on deaf ears of the Respondent.
- n. That the Complainants being committed towards the Project and having invested huge amount of their life savings, the Complainants in order to save their hard-earned money, had no other option but to succumb to the illegal demands of the Respondent No. 1 and continue making payments despite the fact that the Complainants, at the time of making the booking, were assured that the management for the Respondent No. 1 will be flexible with the payment schedule. That the demands raised by the Respondent No.1 are absolutely contrary and in violation of the provisions of the RERA Act. As per Section 13(1) of the RERA Act, the Respondent No.1 cannot accept any sum of money exceeding 10% of the

cost of the Space being sold to the Complainants without first entering into a written agreement to sale i.e., BBA and register the said BBA under the prevailing laws. In furtherance of the illegal design, the Respondent No. 1 forced the Complainants to part with INR 1,25,00,000/- by the end of December 2019 without entering into Builder Buyer's Agreement. The Respondent No. 1, without providing any requisite legal paperwork even after receiving a sum of INR 1,25,00,000/- to the Complainants started to raise further demand of payment of remaining sum of INR 1,84,92,916/- on or before 25.02.2020 and balance payment of INR 32,00,000/- on or before 20.04.2020 vide email dated 13.02.2020.

- o. That the Complainants under constant threat of cancellation and forfeiture of the deposited amount were again constrained to seek time from the Respondent No. 1 to organize funds to pay against its illegal demands. Thereafter, the Respondent No. 1, in a complete erroneous and illegal manner cancelled and terminated the booking of the Complainants vide email dated 11.03.2020 and sought to forfeit the amounts so paid by the Complainants. It is humbly submitted that the said purported termination, cancellation and forfeiture was wholly illegal and contrary to the provisions of law. The Respondent has vehemently tried to cheat and defraud the Complainants of their hard-earned money.
- p. It is reiterated that the Respondent No. 1 in very deficient, unfair, and wrongful manner terminated the booking of the Complainants. It is submitted that the Respondent No. 1 has forfeited an amount of INR 87,79,272/- out of INR 1,25,00,000/- paid by the Complainants towards the Sale Consideration of the Space. It is pertinent to note that right from the time the Respondents approached and lured the Complainants into

booking in the Project of the Respondent No.1, the Respondents had a preconceived plan of misappropriating the Complainants hard-earned life savings, while seeking to cancel the booking on a frivolous pretext. It is pertinent to note that the Respondent No. 1 had still not shared the copy of the Builder Buyer's Agreement or the MoU or any other necessary legal paperwork, even at the time of cancelling the booking of the Space. That out of fear that the Complainants will lose all their hard-earned income, the Complainants again vide email dated 16.03.2020 were constrained to seek time from the Respondent No. 1 in view of the Covid-19 pandemic and lockdown of the country. However, the Respondent No.1 in furtherance of its illegal scheme vide email dated 17.03.2020 sought to cancel the booking made by the Complainants disregarding all the requests made by the Complainants.

- q. That at this point of time the Complainants vide email dated 29.04.2020 sought explanation from the Respondent No. 2, that being the real estate agent what steps have been taken by it to protect the investment of INR 1,25,00,000/- done by the Complainants in the Project till date. That the Complainants made a total payment of INR 1,25,00,000/- (One Crore Twenty-Five Lakhs Only) to the Respondent No. 1 as part of the Sale Consideration against the booking of the Space. That against payment of such a huge amount the Complainants only received a welcome letter. That the Complainants were led to believe by the Respondent No. 2 that the Complainants would receive the BBA including the agreed terms and conditions as have been represented by the Respondents, during the time of booking. However, the same was never provided to the Complainants and the Respondents jointly committed act of coercion

- and undue influence thereby duping the Complainants of further payments without providing legal paperwork as per agreed upon terms.
- r. Thereby, after receiving the booking amount, the Respondent No. 1 started insisting upon a huge payment completely turning the mutual understanding arrived between the parties, inasmuch as the legal paperwork and compliances as were sought by the Complainants were also completely ignored. Further the assured flexibility in payments, as was promised, had unilaterally been changed by the Respondent No. 1 and the Respondent No.1 stated to send continuous threat of cancellation and forfeiture of monies already paid for the Space. That despite the specific and repeated request from the Complainants regarding the legal paperwork towards the said provisional booking, the Respondent No. 1, sought to illegally state that the BBAs and the MoU for the Space shall be processed upon clearance of the 25% dues.
- s. That finally on 10.05.2020, after receiving the letter for purported cancellation, and for the first time a draft MoU and Builder Buyer's Agreement was shared by the Respondent No.1. It is humbly submitted that the Complainants were in shock to see the terms and conditions of the draft BBA and MOU. The terms and conditions mentioned in the drafts were in a complete contrast to the assurances and promises given by the Respondents to the Complainants at the time of booking. That the Complainants felt cheated and mocked by the Respondents upon the receipt of the draft BBA and MOU. Therefore, the Complainants were again constrained to issue a detailed email dated 15.07.2020 through which the Complainants sought applicable assured rental returns agreement, agreement to sale, sale deed and lease agreement, copy of RERA registration, copy of legal papers of the property and title

verification report, copy of sanction plans for property and copy of the joint development agreement between the Respondent No. 1 and the land owner. It was further categorically stated by the Complainants that once this information was received, the Complainants will resume the payment and move further with the investment. The Complainants also stated in the email that if the Respondent No. 1 wishes to cancel the Space booked by the Complainants and release it for resale, the Complainants are willing to cooperate with the Respondent, provided that the entire amount paid towards this booking of the Space by the Complainants is refunded along with the applicable interest.

- t. The Complainants further sent an email dated 17.07.2020, inter alia calling upon the Respondent No. 1 to send the draft documents duly filled with the details specific to the Complainants' Space and mentioning the clear terms agreed between the Complainants and the Respondents. It was further mentioned that the Complainants never expressed the intent to withdraw or discontinue payment, however, it was surprising to note that even after payment of a sum of INR 1,25,00,000/- by the Complainants, the Respondent No. 1 was seeking to sell the Space to someone else. That it is most humbly submitted that the Respondent No.1 has been in the practice of floating such Ponzi schemes in the form of Assured Return, to lure innocent allottees into booking and making investment out of their hard-earned money into the Project which can be categorized as Collective Investment Scheme (hereinafter referred to as "CIS"). These collective investment scheme have been floated by the Respondent No.1 without obtaining the certificate of registration from the Securities and Exchange Board of India.

- u. It is also to be noted that the total area of Audi-2 is 6839 sq. ft. and the Respondent No.1 sold only 3620 sq. ft. out of the 6839 sq. ft. to the Complainants under the collective investment scheme, without having itself registered with SEBI as Collective Investment Management Company and without obtaining a certificate of registration. Therefore, the said act of Respondent no.1 constitutes to unfair trade practices. It is submitted that the Complainants never expressed the intent to withdraw or discontinue payment, however, even after payment of a sum of INR 1,25,00,000/- by the Complainants, the Respondent No. 1 was seeking to sell the Space to someone else and thus create third party rights. That the said act of the Respondent No. 1 constitutes to unfair practice and irregularities thus, the Ld. Authority is empowered under Section 7(1) to revoke the registration granted under Section 5 of the RERA Act, 2016 to the Respondent.
- v. It is worthwhile to mention here that the Respondent No.1 has sold undivided share to the Complainants in its Project. That the Complainants have been allotted an undivided space admeasuring 3620 sq. ft in Audi – 2 which in total admeasures 6839 sq. ft. That the remaining 3620 sq. ft area of the Audi may have been allotted to some allottee/allottees, who are completely strangers to the Complainants. That these other allottees are not the joint owners. These allotments invariably mean that the Complainants are owners of a smaller space on a larger space which is not demarcated. That there may be many other allottees who have been allotted similar smaller space in the same larger space. That the allotted space to the Complainants can never be physically handed over to them nor the said space is separately registerable or identifiable for the purposes of registration and

conveyancing therefore such an act is itself in violation of the approvals issued by the DGTCP, Haryana. Further, as per RERA Act an Apartment/Unit - means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces. And as per The Haryana Apartment Ownership Act, 1983 an Apartment/Unit means a part of any property, intended for any type of independent use, including one or more rooms or enclosed spaces, with a direct exit to a common area. Therefore, as per the scheme of the transaction contemplated in this Complaint, the Space sold cannot be determined as a Unit as it is not sperate/self-contained, nor enclosed or intended for independent use. Hence, such a sale is in gross violation of legal provisions.

- w. It is noted herein that in all the communications being provided by the Respondent No.1, it is mentioned that the Space booked by the Complainants are on the 3rd Floor. However, after going through the floor plans as mentioned in the e-brochure available on the official website of the Respondent No. 1 it came to the knowledge of the Complainants that the Space allotted in Audi 2 is actually on the 4th floor. Therefore, the Respondents have mis-represented to the Complainants about the layout plans. This being the reason that even after repeated request of the Complainants, the Respondents failed to provide all the necessary documents to the Complainants. It is submitted that the Complainants have paid the Respondent No.1 Rs. 10,00,000/- (Rupees Ten Lakhs Only) as the booking amount on 11.09.2019. Thereafter, the Complainants requested the Respondent No.1 to excute the BBA and MOU along with all the other documents

however, the Respondent No.1 paid no heed to the request made by the Complainants.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - a. To direct the respondent no.1 to refund the money i.e., total amount paid by the complainants amounting to ₹1,25,00,000/- along with interest calculated at the rate of MCLR + 2% P. A. from the date of receipt of the payment by the respondent no.1 till the date of actual refund;
 - b. Take cognizance under section 7 of the RERA Act, 2016 and investigate the respondent no.1 for its involvement in unfair trade practice and revoke the license thereof.
 - c. Take cognizance under section 35 (1) the RERA Act, 2016 and initiate an inquiry against the respondent no. 1 and respondent no.2 for its involvement in the aforementioned fraud and cheating committed by both the respondents.
 - d. Take cognizance under section 38 of the RERA Act, 2016 and impose penalty on both the respondents for contravention of their respective obligations cast upon the promoters, and the real estate agent, under the RERA Act, 2016 or the rules and the regulations made thereunder.
 - e. Refer the matter to security and exchange board of India and/or ministry of corporate affairs and/or to such competent authorities, in the interest of justice.
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 no. 1.

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

- a. That the complainants approached respondent no 2 and evinced an interest in an investment opportunity in the commercial colony being developed by the Answering Respondent under the name and style of "AMB Selfie Street" situated in Sector 92, Gurugram (hereinafter referred to as "said project"). The complainants were interested in booking commercial space in the multiplex/Cinema area admeasuring 3620 sq ft super area in the said project. The complainants had unconditionally agreed that the Answering Respondent shall be exclusively entitled to lease the multiplex area to a suitable tenant on such terms and conditions that the Answering Respondent may deem fit and proper in its discretion, on behalf of the complainants. The complainants further agreed to receive rent/revenue share from the Answering Respondent upon finalisation of such lease of the space in question and to execute a memorandum of understanding (MOU) /term sheet/letter of intent (LOI) etc with the Answering Respondent setting out the terms and conditions of rent/revenue share arrangement et as the case may be. The complainants further agreed that in the event the terms and conditions of the MOU, LOI, term sheet, were not acceptable to the complainants, the complainants would be entitled to change of allotment to another unit in the same project, preferably in the same floor of the building on best effort basis by the Answering Respondent.
- b. That prior to executing the application form, the complainants had independently satisfied themselves with regard to all aspects of the project, including but not limited to the capacity/capability of the answering respondent to undertake conceptualization, promotion, development and construction of the same. Thereafter, the

complainants took an independent and informed decision to purchase a unit in the said project.

- c. That the complainants booked commercial unit bearing number Audi - 02, located on Third Floor, AMB Selfie Street, Sector 92, Gurugram measuring 3620 square feet (Super Area). At the time booking, the complainants had paid a sum of Rs. 10 lakhs through online transfer on 11th of September 2019. Actually, as per the applicable payment plan, 95% of the total sale consideration amount was required to be paid by the complainants within 30 days of booking. However, the complainants had requested the Answering Respondent to grant them additional time in this regard and under these circumstances post-dated Cheque in the sum of Rupees One Crore dated 2nd of October 2019 and another post-dated cheque for Rs. 2,41,99,706/- dated 2nd of February 2020 had been handed over by the complainants to the Answering Respondent.
- d. That the answering respondent had dispatched Welcome Letter Dated 18th of September 2019 to the complainants. Receipt pertaining to payment made by the complainants had also been emailed to the complainants on 18th of September 2019. It had been conveyed to the complainants by the Answering Respondent that Builder Buyers Agreement/Memorandum of Understanding would be shared with the complainant's post clearance of balance dues. As a measure of abundant caution, email dated 27th of September 2019 had been sent to the complainants by the Answering Respondent intimating the complainants that the post-dated cheque for Rupees One Crore would be presented for encashment on 2nd of October 2019 and accordingly, the complainants should make arrangements for its payment.

- e. That the complainants had sent email dated 1st of October 2019 to the Answering Respondent calling upon it to desist from presenting the post-dated cheque for Rupees One Crore for encashment. The Answering Respondent had called upon the complainants to apprise it about revised timelines for presentation of the aforesaid cheque. The complainants had sent email dated 3rd of October 2019 conveying that the revised timelines would be communicated by the complainants pursuant to discussions with their financial advisor.
- f. That the complainants had sent email dated 5th of October 2019 to the Answering Respondent conveying that the complainants could only pay a sum of Rs. 1.5 – Rs.1.6 crores by mid of November 2019 and that the balance payment of sale consideration amount would be paid by the complainants within 4 months of booking in a staggered manner. A copy of the said email is annexed as Annexure C9 to the complaint. The said revised timelines were not acceptable to the Answering Respondent and this fact was communicated to the complainants by the Answering Respondent vide email dated 6th of October 2019. The complainants had once again called the Answering Respondent to reconsider the revised timelines communicated by the Answering Respondent while categorically admitting in their email dated 6th October 2019 that as per the payment plan, the complainants were to remit Rs 1 crore within one month of the initial payment.
- g. That it had been explicitly communicated to the complainants by the Answering Respondent on 7th of October 2019 that the revised timelines were not acceptable to it and the allotment of the unit be cancelled. Even on 14th of October 2019, the Answering Respondent had reiterated its decision to decline the complainants request for

acceptance of revised timelines for payment. That on 2nd of November 2019, upon the complainant's request and also the request made by the complainant's agent, the modalities of payment were revised and it had been mutually agreed that the amount of Rupees One Crore would be paid by the complainants between 10th to 15th November 2019 and another payment of Rs. 50,00,000/- would be made between 15th of November to 21st November 2019. It had been mutually agreed as per revised timelines that balance payment would be made within a period of 4 months from the booking date. Confirmation in this regard had been received through email from the complainant's broker.

- h. That email dated 4th of November 2019 had been sent by the Answering Respondent and the complainants broker/channel partner had also been informed that the same was final extension approved by the management of the Answering Respondent which had been acknowledged by the channel partner. It had further been intimated that the complainants would be bound to clear the dues as per approval given on 4th of November 2019. It had been claimed by the complainants that the complainants had got some other property which the complainants would be selling to make payment of consideration in respect of the property referred to above developed by the Answering Respondent. The complainants had conveyed to the Answering Respondent that the complainants would pay a sum of Rs. 25 Lacs to the Answering Respondent by the 1st week of December 2019. It had been represented by the complainants that the complainants would pay a sum of Rs. 1.1 to Rs. 1.2 crores by 2nd week of December 2019 between 16th to 18th of December and the balance amount of Rs. 2 crores by the 1st week of February 2020.

- i. This request was reiterated by the complainants vide email dated 27th of November 2019. In the meantime, a sum of Rs. 10 lakhs had been paid by the complainants to the Answering Respondent on 3rd of December 2019 and another amount of Rs. 15 Lacs had been paid by the complainants to the Answering Respondent on 4th of December 2019. In this manner a sum of Rs. 35 lakhs had been paid by the complainants to the Answering Respondent towards part consideration in respect of the commercial unit referred to above. Email dated 19th of December 2019 had been sent by the Answering Respondent to the complainants whereby it was explicitly communicated to the complainants that as per commitment made by them a sum of Rs. 1.1 to Rs. 1.2 crores were required to be remitted up to 18th of December 2019, but the said payment had not materialized.
- j. That the Answering Respondent had conveyed to the complainants that its management understood their concerns and had approved extensions of time at the complainant's behest and instance so as to accommodate the complainants. However, it was communicated to the complainants by the Answering Respondent that the very objective of sale of the multiplex screens would be defeated in the event of delay in payments as the amount was required for construction of the project. That the complainants had reverted on 21st of December 2019 and had represented that the complainants would be making the payment of Rs. 90 Lacs to the Answering Respondent immediately and in this manner a sum of Rs. 1.25 crores would have been paid by the complainants. It had further been represented by the complainants that the complainants would pay a sum of Rs. 1.6 crores by February, 2020 from sale of another

property. The complainants had requested for acceptance of flexible payment schedule for the remainder payment.

- k. That the complainants had proceeded to pay a sum of Rs. 20 Lacs on 26th of December 2019, Rs. 20 Lacs on 27th of December 2019, Rs. 20 Lacs on 28th of December 2019, Rs. 20 Lacs on 30th of December 2019 and Rs. 10 Lacs on 31st of December 2019. The Answering Respondent had called upon the complainants on 2nd of January 2020 to pay the balance amount of Rs. 2,16,92,916/- which was due in February 2020. On 6th of January 2020 booking confirmation had been given to the complainants by the Answering Respondent to the complainant's channel partner.
- l. That the payment of Rs.1,25,00,000/- had been acknowledged by the Answering Respondent on 13th of February 2020. The Answering Respondent had reminded the complainants of their commitment to pay a sum of Rs. 1,84,92,916/- on or before 25th of February 2020 and the balance amount of Rs. 32,00,000/- on or before 20th of April 2020. The Answering Respondent had requested the complainants to keep funds available so that the complainants could fulfil their commitment of payment of consideration.
- m. That vide email dated 2nd of March 2020 the complainants had requested for grant of few more weeks to clear the instalment dues. However, the complainants were not willing to give any clear timelines for payment of the balance amount. On 5th of March 2020, the Answering Respondent had informed the complainants that it would not be in a position to accede to their request for further extension for clearance of outstanding dues. The complainants had been called upon by the Answering Respondent to clear dues on immediate basis without

any delay, failing which cancellation of the property would occur in accordance with terms/conditions contained in the application form. That from the chronology of events, it is comprehensively established that the complainants simply lacked the financial capacity to make payment of consideration in respect of the commercial unit referred to above. It is precisely for this reason that the complainants kept seeking time for remitting the agreed payments. The complainants were never ready or willing to perform their financial and contractual obligations arising out of the application form executed and submitted by the complainants at the time of booking of the commercial unit referred to above.

- n. That under these circumstances the booking made by the complainants was been cancelled and allotment made in their favour had been terminated by the Answering Respondent vide email dated 11th of March 2020. It had been specifically communicated to the complainants by the Answering Respondent that persistent defaults had been committed by the complainants in remitting payments notwithstanding grant of multiple extensions to the complainants. The complainants had sent email dated 16th of March 2020 to the Answering Respondent claiming that they would organize the balance payment by 31st of March 2020 or latest by 7th of April 2020.
- o. That in response to the aforesaid email it had been intimated by the Answering Respondent to the complainants on 17th of March 2020 that the booking made by the complainants had already been cancelled as there had occurred delay of more than 8 months in completing the entire payment. It had further been intimated to the complainants that in case the complainants were able to make arrangements for payment

of balance amount up to 7th of April 2020, the management of the Answering Respondent would take a decision with regard to revival of cancellation. That email dated 15th of July 2020 had been sent by the Answering Respondent to the complainants wherein it had been specifically mentioned that on account of the complainant's failure to remit agreed amounts in respect of the commercial unit referred to above, the allotment had been cancelled and the Answering Respondent had decided to release the said commercial unit for resale. It was explicitly communicated to the complainants that the complainants were not left with any right, title or claim in respect of the said commercial unit.

- p. The complainants have willfully refrained from disclosing to this Hon'ble Authority that the original sale price of the commercial unit in question was ₹4,11,25,940/-. However, the said commercial unit had been sold to the complainants at a discounted consideration of ₹3,44,58,927/-. The same had been done only to receive consideration in a timely manner with the objective of expeditiously raising construction of the commercial project. However, the deliberate, willful and conscious defaults committed by the complainants have caused huge loss to the Answering Respondent and have also delayed the construction of the project.
- q. That it is pertinent to mention hearing that the Respondent has got registered the said project under the provisions of RERA and the period of registration has been granted up till 21.08.2022. That insofar as the complainants are concerned, it is submitted that the complainants were conscious and aware that as per the terms and conditions forming part of the booking/application form, specifically clause 11 thereof, in the

event of defaults by the complainants, the answering respondent was entitled to terminate/cancelled the provisional booking and to forfeit the earnest money amounting to 15% of the total sale consideration and other charges, including but not limited to late payment charges and that upon such termination/cancellation of booking, the complainant shall not be left with any right, legal, interest or title in the unit allotted to them. Due to persistent and willful defaults by the complainants, despite periodic extension of time given by the answering respondent, the answering respondent was constrained to cancelled the allotment/booking in favor of the complainants on 11.03.2020.

- r. That it is evident that the complainants willfully refrained from fulfilling their contractual and financial obligations towards the answering respondent. Even after repeated reminders had been issued to the complainants to remit their outstanding dues after the expiry of time period to make the payments, the complainants willfully refrained from fulfilling their contractual obligations. The complainants have always been conscious and aware that timely payment of instalments was the essence of the contract between the respondent and the complainants. The consequences of continued default were also fully within the knowledge of the complainants.
- s. Therefore, it is evident from the entire sequence of events that no illegality can be attributed to the answering respondent. Thus, the allegations levelled by the complainants qua the answering respondent are totally baseless and do not merit any consideration by this Honorable Authority. The present complaint is nothing but an abuse of the process of law. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

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 these undisputed documents and submission made by the parties.
8. The written submissions filed by both the parties are taken on record. The authority has considered the same while deliberating upon the relief sought by the complainants.
9. Respondent No. 2 has submitted a reply stating that it's merely an agent responsible for selling and marketing of the project and have no role in the delay in the development of the said project. Upon consideration, the Authority holds that, in accordance with Section 18 of the Real Estate (Regulation and Development) Act, 2016, the liability for delay rests with the promoter and not the agent. Accordingly, the contention raised by Respondent No. 2 is accepted by the Authority.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

12. 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.

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

F. Findings on the relief sought by the complainants.

F.I. To direct the respondent no.1 to refund the money i.e., total amount paid by the complainants amounting to ₹1,25,00,000/- along with interest calculated at the rate of MCLR + 2% P. A. from the date of receipt of the payment by the respondent no.1 till the date of actual refund.

14. The complainant in the present matter applied for allotment of PVR Audi-2 admeasuring 3620 sq. ft. vide application form. Thereafter, respondent vide email dated 18.09.2019 confirmed the allotment of the said application of the complainant. The complainants agreed to pay the instalments as per the NPV payment plan agreed on 23.10.2019. The complainants had paid an amount of ₹1,25,00,000/- against the sale consideration of the unit. The BBA is not executed between the parties till date.

15. The respondent submitted that the complainants are defaulter and have failed to make payment as per the agreed payment plan. Various reminders and final opportunities were given to the complainant and thereafter the unit was cancelled vide letter dated 11.03.2020.
16. The authority before illustrating upon the relief sought by the complainants shall observe whether the cancellation letter dated 11.03.2020 issued by the respondent is valid or not?
17. The authority has gone through the payment plan, which was duly signed by the complainants. Furthermore, it is a matter of record that the complainants booked the aforesaid unit under the above-mentioned payment plan and paid an amount of ₹1,25,00,000/- towards total consideration of ₹3,44,58,927/-.
18. It is pertinent to mention here that as per the payment plan the complainants were obligated to make the payment of approx. 95% of BSP within 30 days of booking i.e., by 18.10.2019. The respondent after giving reminder emails to make the remaining payment has cancelled the said allotment on 11.03.2020. The complainant vide mail dated 01.10.2019 has also sought time to clear the dues as the amount to be paid was a huge amount. The respondent has given sufficient opportunity to the complainant before proceeding with termination of allotted unit. Further, the allottee is under obligation to make payments towards consideration of allotted unit as per the agreed payment plan under section 19(6) & 19(7) of Act of 2016.
19. Moreover, the complainant is liable to arrange the fund on its own before making the booking and agreeing to the payment plan. The respondent cancelled the unit of the complainant after giving adequate demands notices. Thus, the cancellation in respect of the subject unit is valid and the complainant-allottee has violated the provision of section 19(6) & (7) of Act

of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainant after certain deductions as prescribed under law.

20. 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 V/s Emaar MGF Land Limited* (decided on 29.06.2020) and *Mr. Saurav Sanyal V/s M/s IREO Private Limited* (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as *Jayant Singhal and Anr. V/s M3M India Limited* decided on 26.07.2022, held that 10% of basic sale price is a 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."

21. 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, the respondent/builder can't 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 complainants after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 11.10% (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, from the date of termination/cancellation 11.03.2020 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II. Take cognizance under section 7 of the RERA Act, 2016 and investigate the respondent no.1 for its involvement in unfair trade practice and revoke the license thereof.

F.III. Take cognizance under section 35 (1) the RERA Act, 2016 and initiate an inquiry against the respondent no. 1 and respondent no.2 for its involvement in the aforementioned fraud and cheating committed by both the respondents.

F.IV. Take cognizance under section 38 of the RERA Act, 2016 and impose penalty on both the respondents for contravention of their respective obligations cast upon the promoters, and the real estate agent, under the RERA Act, 2016 or the rules and the regulations made thereunder.

F.V. Refer the matter to security and exchange board of India and/or ministry of corporate affairs and/or to such competent authorities, in the interest of justice.

22. In lieu of the findings with respect to relief no. 1 the above-mentioned reliefs stand redundant as the interest of the complainant does not vest in the project.

G. Directions of the authority

23. 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):
- The respondent no. 1/builder is directed to refund the amount received from the complainants after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 11.10% (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, from the date of termination/cancellation 11.03.2020 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
 - 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.
24. Complaint stands disposed of.
25. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairperson



(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.05.2025