

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

Complaint no. :	1011 of 2024
Date of complaint :	20.03.2024
Date of order :	27.08.2025

1. Jitender Kumar,
R/o: - 1A, Krishna Complex, NH8,
Near PNB, Manesar, Gurugram.
2. Ved Prakash,
R/o: - Village Manesar, Mohan Patti, Gurugram.

Complainants

Versus

M/s Mascot Buildcon Private Limited
Regd. Office at: 294/1, Vishwakarma Colony,
Opposite ICD MB Road, Lal Kuan, Mehrauli,
Badarpur Road, New Delhi-110044.

Respondent**CORAM:**

Ashok Sangwan

Member**APPEARANCE:**

Krishna Saroff (Advocate)
Gulshan Sharma (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations,

responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"Oodles Skywalk", Sector 83, Gurugram
2.	Project area	3.03 acres
3.	Nature of the project	Commercial Colony
	DTCP license no. and other details	8 of 2013 dated 05.03.2013 Valid up to- 04.03.2017 Licensee- Dharam Singh
4.	RERA Registered/ not registered	Registered vide no. 294 of 2017 dated 13.10.2017 Valid up to- 31.12.2019
5.	Unit no.	G-5A, Ground floor
6.	Unit area admeasuring (super area)	350.10 sq. ft.
7.	Date of execution of buyer's agreement	18.01.2016
8.	Possession Clause	38. The "Company" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months (refer d. 37 above) of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction.

9.	Date of start of construction	Not on record
10.	Due date of possession	18.04.2019 (Calculated as 36 months from date of execution of BBA as date of start of construction is not available on record along with Grace period of 3 months)
11.	Total sale consideration	Rs.49,43,412/- (Exclusive of applicable taxes and charges)
12.	Amount paid by the complainant	Rs. 24,67,683/-
13.	Occupation certificate	26.10.2023 (as per DTCP website)
14.	Cancellation	17.09.2022 (page 33 of complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions: -
 - I. That the complainant had filed a complaint bearing no. CR/369/2020 against the respondent before this Authority inter alia seeking possession of the allotted unit along with delayed possession charges along with interest.
 - II. That the said complaint was disposed of by this Authority during covid time on 08.10.2020 in the absence of the parties and held the following:
 - a) The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e 18.04.2019 till the offer of physical possession of the allotted unit.

- b) The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and subsequent interest to be paid on/ before 10th of every months.
 - c) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - d) The Six months period on account of Covid 19 is excluded from the delayed possession charges.
 - e) Interest on the due payments from the complainants shall be charged at the prescribed rate 9.30% per annum by the promoter which is same as being granted to the complainant in case of delayed possession charges.
- III. That the complainant visited the office of the respondent for the purpose of making payment of the outstanding amount along with interest as per the order.
- IV. That one Mr. Sahu on behalf of the respondent refused to accept payment and informed the complainant that they would revert to him as soon as the occupation certificate was obtained by them and the pending account would be settled at that time in accordance with the order passed by this Authority.
- V. That the complainant was anticipating to hear from the respondent but was astonished to receive a sum of Rs.19,80,974/- in his account from the respondent on 17.09.2022 and received a letter of same date inter alia alleging that the respondent had cancelled the booking of the said allotted unit on the ground that it had issued two separate letters dated 13.11.2020 and 29.12.2020 demanding payment of the outstanding dues from the complainant. The respondent further alleged that in view of the fact that the complainant had failed to make

payment, the respondent cancelled the buyer agreement and refunded Rs.19,80,974/- out of the sum of Rs.24,67,683/- paid by the complainant.

- VI. That the respondent did not comply with the order passed by the Authority and wrongfully cancelled the allotted unit. Hence, the complainants were forced to file an execution petition before the Adjudicating Officer, which is still pending.
- VII. That the respondent made payment of Rs.67,383/- being the interest payable by respondent to the complainant.
- VIII. That on one hand the respondent refused to accept the balance amount from the complainant and on the other hand has wrongfully cancelling the allotted unit on the ground of non-payment of balance amount.
- IX. That the respondent has made false statement in the reply filed to the execution petition that it had issued demand letters dated 13.11.2020 and 29.12.2020 to the complainant. The respondent has failed to provide any postal receipts or any other proof to confirm that the said letters were dispatched by them.
- X. That the complainant never received any of the said letters and requested the respondent to show the postal receipt as proof of their contention. However, the respondent failed to provide the postal receipts.
- XI. That it is evident that the respondent has neither issued the said alleged letters of demand and has intentionally refused to accept the balance payment from the complainant.
- XII. That the respondent never intended to handover the allotted unit to the complainant and was solely interested in raising money for

funding the said project. The respondent has taken diverse sums from a number of buyers and have now refused to hand over possession to all of them on different grounds. The complainant is not even aware whether the OC has been granted to the respondent till date.

- XIII. That the respondent illegally cancelled the allotted unit of the complainant because the value of the real estate has escalated and they can sell the property to someone else for a premium value.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- I. Direct the respondent to set aside cancellation, accept balance amount, handover possession and to pay delay possession charges.

D. Reply by respondent:

5. The respondent put in appearance through Advocate and marked attendance on 22.05.2024, 17.07.2024 and 21.08.2024. Despite specific directions for filing of reply, it failed to comply with the orders of the Authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding filing of written reply. Therefore, in view of above, vide proceedings dated 21.08.2024, the defence of the respondent was struck off. However, in the interest of justice, vide proceedings dated 23.04.2025, the respondent was given a liberty to file written submissions within a period of two weeks. Accordingly, the respondent has submitted its written submission on 24.04.2025 vide which the respondent has contested the complaint on the following grounds:
- i. That the total sale consideration of the unit in question as per signed agreement dated 18.01.2016 was Rs.49,43,412/- excluding taxes and

- other charges, out of which complainant only paid a sum of Rs.24,67,683/-.
- ii. That, the complainant had previously filed a complaint bearing no. 369/2020 in January 2020 before this Authority, wherein an order dated 08.10.2020 had been passed by this Authority for DPC after adjustment of due payments. After which respondent intimated for payment of Rs.29,92,811/- after adjustment of DPC vide letter dated 13.11.2020. Due to non-payment of dues, respondent cancelled the unit and refunded the amount of Rs.19,80,974/- after deduction as per SBA on dated 17.09.2022. After which complainant initiated a fresh of execution vide case no. 7953/2022 before Adjudicating Officer for refund of entire amount with interest. By order of Adjudicating Officer dated 22.02.2024 respondent had already paid a sum of Rs.67383/- through demand draft to complainant on 22.02.2024 and the case is listed on 23.05.2025 before Adjudicating Officer for fresh calculation by applicant. Thus, in view of the fact that refund has already been made along with interest, after cancellation of unit in question, the present case seeking recovery of possession of the unit in question does not arise at all and thus the present complaint is not maintainable in the eyes of law.
- iii. That as per order dated 08.10.2020 passed by this Authority, the respondent raised the demand of Rs.29,92,811/- through letter dated 13.11.2020 however, due to non-payment/clearance of the said amount, the unit in question stands cancelled and amount has already been refunded to the complainant in the Year 2022 and, after refund, the said unit in question has already been sold out to the third party. Thus, the present Complaint, seeking possession of the unit in

question, is not maintainable. Moreover, the execution petition, filed by the complainant, is pending before the Adjudicating Authority, wherein the complainant has after receiving the refund amount, is now fighting for the interest part, which is pending adjudication before the Adjudicating Authority, wherein the next date of hearing is 23.05.2025.

6. 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.

E. Jurisdiction of the authority:

7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings on the relief sought by the complainants:

F.I Direct the respondent to set aside cancellation, handover possession and to pay delay possession charges.

11. The complainants were allotted a unit bearing no. G-5A, Ground floor in the project of the respondent named "Oodles Skywalk", Sector 83, Gurugram vide apartment buyer's agreement dated 18.01.2016. The background of the complaint is that the complainants had previously filed a complaint bearing no. 369/2020 before the Authority and the same was disposed of vide order dated 08.10.2020, vide which delay possession charges (DPC) @9.30% from due date of possession i.e. 18.04.2019 till offer of possession was allowed to them. As per DTCP website, the occupation certificate was obtained by the respondent on 26.10.2023. However, the respondent cancelled the unit on 17.09.2022.

Therefore, in order to execute the order dated 08.10.2020, the complainants filed an execution petition bearing no. 7953/2022 before the Adjudicating Officer on 03.01.2023 and in view of judgment passed by **Hon'ble High Court of Punjab and Haryana, Chandigarh in CWP No. 14937-2024 (O&M) titled as M/s. Vatika Ltd vs Union of India and Ors.** decided on 24.04.2025, the said execution petition was returned to the Authority for execution and the same is still pending.

12. Now the complainants have filed the present complaint seeking direction for setting aside of cancellation letter dated 17.09.2022 issued by the respondent/promoter and further directing the promoter to handover possession and to pay delay possession charges.
13. The complainants have submitted that after passing of order, the complainant visited the office of respondent and met one Mr. Sahu for the purpose of making payment of the outstanding amount along with interest as per the order, but he refused to accept payment and informed the complainants that they would revert to them as soon as the occupation certificate was obtained by them and the pending account would be settled at that time in accordance with the order passed by this Authority. However, the complainants were shocked to receive a sum of Rs.19,80,974/- in their account from the respondent on 17.09.2022 and also received a letter of same date inter alia alleging that the respondent had cancelled the booking of the said allotted unit on the ground that it had issued two separate letters dated 13.11.2020 and 29.12.2020 demanding payment of the outstanding dues from the complainant, which were never received by them.
14. The respondent has submitted that as per order dated 08.10.2020 passed by this Authority, the respondent raised the demand of

Rs.29,92,811/- through letter dated 13.11.2020 however, due to non-payment of dues, respondent cancelled the unit and refunded the amount of Rs.19,80,974/- after deduction as per SBA on dated 17.09.2022 and after refund, the said unit in question has already been sold out to the third party. Moreover, the execution petition, filed by the complainant, is still pending before the Authority.

15. After considering the factual as well as legal circumstances of this case, the Authority observes that this Authority cannot re-write its own orders and lacks the jurisdiction to review its own orders. Further, Section 40(2) of the Act, 2016 prescribes that if any Adjudicating Officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do an act, or refrain from doing any act, which it is empowered to do under that Act or rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed. Furthermore, Rule 27 of the Rules, 2017 prescribes that every order passed by the Adjudicating Officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, under the Act or Rules and the Regulations made thereunder, shall be enforced by an Adjudicating Officer or the Regulatory Authority or the Appellate Tribunal in the same manner as if it were a decree or a order made by a civil court in a suit pending therein.
16. In the instant case, the complainants have already filed an execution petition bearing no. E/7953/2022 for executing the order dated 08.10.2020 and the same is still pending before the Authority. Thus, in view of the factual as well as legal provisions mentioned above, the present complaint stands dismissed being not maintainable. However,

the complainants are at liberty to approach the executing Authority for redressal of their grievance.

17. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 27.08.2025



HARERA
GURUGRAM