BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**6101 of 2024**
Date of complaint	:	**18.12.2024**
Date of order	:	**12.11.2025**

Sweety Sejwal,
R/o: - F-41, Lado Sarai, South Delhi, Delhi-110030. **Complainant**

Versus

M/s Orris Infrastructure Private Limited.
Regd. Office at: RZ-D-5, Mahavir Enclave,
South West Delhi, New Delhi-110045. **Respondent**

CORAM:
Ashok Sangwan **Member**

APPEARANCE:
Sukhbir Yadav (Advocate) Complainant
Charu Rustagi (Advocate) 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 there under 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 of the project	"Floreal Towers", Sector 83, Gurugram, Haryana
2.	Project area	Commercial colony
3.	Nature of the project	9.052 acres
4.	DTCP license no.	260 of 2007 dated 14.11.2017
	License validity status	Valid up to 24.11.2024
	Name of licensee	Seriatim Land & Housing Pvt. Ltd.
5.	RERA Registered/ not registered	Not registered
6.	Unit no.	1704, 17th floor, Tower A (As per page 59 of reply)
7.	Unit area admeasuring	1000 sq. ft. (super area) (As per page 59 of reply)
8.	Date of execution of Space Buyer's Agreement	11.08.2017 (Page 66 of complaint)
9.	Possession clause	***11A. Schedule for Possession of the said Unit*** The company based on its present plans and estimates and subject to all just exceptions, contemplates to handover the possession of the Building/said Unit within the period of **36 months from the date of execution of the Space Buyer Agreement by the Company** unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (13.1). (13.2) and Clause (35) or due to failure of Allottee(s) to pay in time the price of the said Unit along with all other charges and dues in accordance with the schedule of payments given in Annexure B or as per the demands raised by the

		Company from time to time or any failure on the part of the Allottee(s) to abide by any terms or conditions of this Space Buyer Agreement. [Page 87 of complaint]
10.	Date of commencement of construction	Not on record
11.	Date of sanction of building plans	Not on record
12.	Due date of possession	11.02.2021 (Calculated from date of execution of buyer's agreement as neither the date of commencement of construction nor date of approval of building plan is on record + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020) (inadvertently mentioned as 11.01.2021 vide proceedings dated 08.10.2025)
13.	Total sale consideration	Rs.48,01,279/- (As per SOA on page 113 of complaint)
14.	Amount paid by the complainant	Rs.37,18,000/- (As per SOA on page 113 of complaint)
15.	Occupation certificate /Completion certificate	16.08.2017 (Page 39 of reply)
16.	Offer of constructive possession	25.04.2018 (Page 45 of reply)
17.	Notice	20.11.2019 (page 55 of reply)
18.	Pre-cancellation letter	25.11.2023 (page 57 of reply)
19.	Cancellation letter	15.12.2023 (page 59 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions: -

I. That in July 2008, the complainant received a marketing call from a real estate agent/broker namely 'Arora Associates' for booking in the commercial project being developed by the respondent in the name of "Floreal Towers", situated in Sector – 83, Gurugram. The said real estate agent/broker showed a rosy picture of the said project and allured the complainant through lucrative advertisements.

II. That being relied on representation and assurances of the respondent and the real estate agent/broker, the complainant submitted two booking applications dated 10.07.2008, each for two office spaces in the respondent's project. Along with each application, the complainant made two payments of Rs.18,59,000/-. It is germane to highlight here that the complainant has booked both commercial units/office spaces under the assured return payment plan.

III. That on 05.08.2024, a memorandum of understanding was executed between the respondent and the complainant. As per Clause 1 of the said MoU, the respondent allotted an office space on the 6th Floor, with a super area of 500 sq. ft. in the 'Floréal Towers' project, for a total consideration of Rs. 18,59,000/-. Clause 2 of the said MoU stipulates that, upon receipt of the aforementioned consideration, the respondent shall provide an investment return of Rs. 68/- per sq. ft. per month, amounting to Rs. 34,000/-, effective from 01.09.2008 for each unit. This return shall be paid on or before the 7th day of each month for 36 months after the building's completion or until the office space is leased, whichever occurs earlier. As per Clause 3 of the said MoU, the respondent acknowledged receipt of Rs.18,59,000/- against the booking of one commercial unit. Notably, the complainant paid the entire consideration at the time of booking, as acknowledged by the respondent. Consequently, the complainant is entitled to receive the

investment return, in the form of assured returns, from 01.09.2008 onwards against both units.

IV. That pursuant to the execution of another MoU dated 21.08.2008, the respondent allotted another office space unit to the complainant. This unit was also located on the 6th floor, having a super area of 500 sq. ft. The terms and conditions of this MOU remain identical to those in the previous MoU dated 05.08.2008. The total consideration for the second office space amounts to Rs.18,59,000/-, which the complainant paid in full at the time of booking, as acknowledged by the respondent in Clause 3 of the MoU dated 21.08.2008. It is germane to highlight here that the complainant is entitled to receive the investment return, in the form of assured returns, from 01.09.2008 amounting to Rs.34,000/- for this second office space unit as well.

V. That the complainant, having paid the full sale consideration of Rs.37,18,000/- for both office spaces (Rs.18,59,000/- + Rs.18,59,000/-), therefore requested on 03.06.2015 to the respondent to merge these two units into one at one floor. Notably, the respondent agreed to this request and allotted a single commercial unit/office space with a super area of 1000 sq. ft. to the complainant, replacing the two previous units with a super area of 500 sq. ft. each.

VI. That on 03.06.2015, the respondent issued an allotment letter to the complainant for a new office space, resulting from the merger of the two previous office spaces. Specifically, the respondent allotted office space/commercial unit No. 1704, located on the 17th Floor of Tower-B, with a super area of 1000 sq. ft. It is pertinent to note that, prior to the merger, the complainant was receiving assured returns of Rs.34,000/- (exclusive of TDS deduction) per month for each of the two office spaces. Consequently, following the merger of the two 500

sq. ft. office spaces into a single 1000 sq. ft. office space, the complainant became entitled to receive an assured return of Rs.68,000/- (exclusive of TDS deduction) per month.

VII. That the complainant has fulfilled her financial obligations by paying the full consideration of Rs.37,18,000/- for the office space allotted to her, with no pending dues or liabilities. However, despite this, the respondent unilaterally stopped paying the assured returns to the complainant from September 2016. This abrupt cessation of payments has caused significant financial hardship to the complainant. It is germane to highlight here that as per the MoU dated 05.08.2008 and 21.08.2008 executed between the respondent and the complainant, the respondent is obligated to pay assured returns of Rs.68,000/- per month until the building's completion or until the complainant's unit is leased. Since neither of these conditions has been met, the respondent's cessation of assured returns is unjustified and a clear breach of their contractual obligations.

VIII. That on 11.08.2017, a pre-printed, arbitrary, unilateral, and ex-facie SBA was executed inter-se the respondent and the complainant for office space/commercial unit No. 1704, located on the 17th Floor of Tower-B, with a super area of 1000 sq. ft. It is pertinent to mention here that as per the possession clause of the said SBA i.e., Clause 11 A, the respondent was obligated to give possession of the said commercial unit within 36 months from the date of execution of the SBA. The total sale consideration of the allotted unit as per the payment plan (Annexure A) annexed with the said SBA is Rs.37,18,000/- which has already been paid by the complainant in full.

IX. That the complainant repeatedly requested the respondent to make payment of the assured returns, but her pleas fell on deaf ears. Despite

numerous attempts, the respondent ignored the complainant's requests and failed to provide a satisfactory response.

X. That the respondent remained silent on the payment of assured returns, but instead, the respondent issued a constructive offer of possession for the complainant's office space on 25.04.2018. However, this offer is not legally valid, as it was not accompanied by an occupancy certificate, a crucial document required prior to taking possession. Moreover, the respondent also sought an indemnity cum undertaking from the complainant, a demand that is not only contrary to the law but also makes their demand unlawful. Furthermore, despite having received the full consideration of Rs.37,18,000/- from the complainant, the respondent has unjustifiably raised an additional demand of Rs.8,99,679/-. It is further pertinent to mention here that the respondent demanded illegal charges of Rs.5,00,000/- under the head utility charges, Rs. 1,00,000/- as one time electricity connection charges and Rs.1,25,000/- as IFMS.

XI. That the respondent failed to fulfill their obligations, neither providing the assured returns as promised nor issuing a valid offer of possession. Ironically, the respondent sent a notice to the complainant on 20.11.2019, demanding compliance with the terms and conditions of the space buyer agreement and memorandum of understanding dated 05.08.2008, specifically regarding unit No. 1704 on the 17th Floor in Tower-A. It is essential to highlight that the respondent itself has breached the terms and conditions of the SBA and MoU. Moreover, the complainant's office space is actually located in Tower B, whereas the respondent's letter incorrectly mentions Tower A, further reflecting the respondent's negligence and lack of attention to detail. The respondent failed to provide physical possession of the unit by the due

date, 11.08.2020 and also neglected to pay the assured returns as stipulated in the MoU since October 2016.

XII. That on 05.09.2023, the respondent sent a reminder letter demanding Rs.2,13,965/- on the letter head of Saffron Infradevelopers Pvt. Ltd. towards outstanding maintenance charges for the complainant's office space/unit.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

   i. Direct the respondent to refund the entire amount deposited alongwith prescribed rate of 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 by filing reply dated 30.07.2025 on the following grounds: -

   i. That the complainant was allotted unit no. 1704, 17th floor, Tower A (Office space), admeasuring 1000 sq. ft. in the project 'Floreal Towers', located at sector-83, Gurugram, Haryana for a consideration of Rs.48,01,279/- as the said unit in question was subject to escalation.

   ii. That there are two Memorandum of Understanding which were executed between the parties on 05.08.2008 and 21.08.2008 and the space buyer agreement between the parties took place on 11.08.2017 wherein as per Clause 11A of the buyer agreement, the respondent was supposed to hand over the possession within a period of 36 months from the date of execution of the space buyer agreement.

iii. That the respondent vide letter dated 26.12.2014 informed that the construction of the project in question is complete and the payment of the assured return amount shall continue as per the MoU dated 11.09.2008 and also apprised the complainant that the respondent has engaged M/s Cushman & Wakefield to lease the unit of the complainant.

iv. That the respondent has acted in complete bona-fide manner but due to the internal working at the DTCP, the occupation certificate was issued with delay.

v. That despite all these obstructions, the unit in question was made ready and available for the complainant and the respondent had obtained the occupation certificate on 16.08.2017.

vi. That the complainant made a request vide written letter dated 03.06.2015 in favour of the respondent requesting the respondent to merge her two separate units and grant her one unit together admeasuring 1000 sq. ft. subsequent to which, the respondent issued with an allotment letter dated 03.05.2015 for unit No. 1704, 17th floor, Tower-A, admeasuring 1000 sq. ft. in the project "Floreal Towers".

vii. That the complainant vide written note/letter on 15.09.2017 in favour of the respondent, requested the respondent to refund the consideration paid by the complainant against the unit in question.

viii. That since the project in question was complete and OC was received, the respondent requested the complainant to take the possession of the unit in question instead of seeking refund, wherein the complainant was offered constructive possession vide letter dated 25.04.2018 along with statement of account for remittance of the outstanding amount accrued upon the complainant.

ix. That immediately after the receipt of the OC, the complainant was apprised about the fact that the OC has been duly received by the respondent and the complainant were thereby offered possession vide letter dated 25.04.2018 and requested the complainant to comply with all the possession formalities and execution of the conveyance deed. The complainant was provided with a statement of account bearing the outstanding the amount of Rs.8,99,679/- which was accrued outstanding on the part of the complainant wherein the assured return for the months January to March 2017 were adjusted in the total outstanding amount.

x. That it is pertinent to note that the project in question was completed by 14.03.2014 and the respondent had the liability of making the payment of the assured return 36 months after the completion of the building and thus, the respondent had completely complied with its part of the contract and given the payment of the assured return from September 2008 till March 2017.

xi. That since the complainant were not approaching the respondent in order to take the possession of the unit in question and also to execute the lease related documents, including but not limited to GPA, execution of conveyance deed, etc., and therefore, the respondent issued a notice for compliance dated 20.11.2019 in favour of the complainant with respect to the unit in question.

xii. That the respondent was constraint to issue pre-cancellation letter dated 25.11.2023 in favour of the complainant so that the complainant comply with the terms and clauses of the MoU dated 05.08.2008 and 21.08.2008 and SBA dated 11.08.2017, however the request of the respondent went to deaf ears of the complainant and the respondent was left with no option but to cancel the unit in

question which was allotted in the name of the complainant vide cancellation letter dated 15.12.2023. It is further submitted that the complainant was not willing to execute the conveyance deed, separate maintenance agreement and hence, the unit of the complainant was duly cancelled and after adjustment of the already paid amount of the assured return, the respondent was not under the burden of making refund to the Complainant on the basis of the clauses/terms of the MoU dated 05.08.2008 and 21.08.2008 and SBA dated 11.08.2017.

xiii. That the buyer's agreement was entered into between the parties and, as such, the parties are bound by the terms and conditions mentioned in the said agreement.

xiv. That several obstructions had taken place which hampered the pace of the construction wherein in the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. That thereafter, several obstructions had taken place which hampered the pace of the construction wherein in the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed framing of Modern Mineral Concession Rules. Reference in this regard may be had to the judgment of "Deepak Kumar v. State of Haryana, (2012) 4 SCC 629". The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said project became scarce in the NCR as well as areas around it. Further, the respondent was faced with certain other force majeure events

including but not limited to non-availability of raw material due to various stay orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby stopping/regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide order dated 02.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna Riverbed. These orders inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed above continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. That the above said restrictions clearly fall within the parameter "reasons beyond the control of the respondent as described under of clause 13.1 of the buyer agreement.

xv. That during that time, a writ petition was filed in the Hon'ble High Court of Punjab and Haryana titled as "Sunil Singh vs. Ministry of Environment & Forests Parayavaran" which was numbered as CWP-20032-2008 wherein the Hon'ble High Court pursuant to order dated 31.07.2012 imposed a blanket ban on the use of ground water in the region of Gurgaon and adjoining areas for the purposes of

construction. That on passing of the abovementioned orders by the High Court, the entire construction work in the Gurgaon region came to stand still as the water is one of the essential parts for construction. That in light of the order passed by the Hon'ble High Court, the respondent had to arrange and procure water from alternate sources which were far from the construction site. The arrangement of water from distant places required additional time and money which resulted in the alleged delay and further as per necessary requirements STP was required to be setup for the treatment of the procured water before the usage for construction which further resulted in the alleged delay.

xvi. That orders passed by Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity and directed use of only treated water from available sewerage treatment plants. However, there was lack of number of sewage treatment plants which led to scarcity of water and further delayed the project. That in addition to this, labour rejected to work using the STP water over their health issues because of the pungent and foul smell coming from the STP water as the water from the S.T.P' s of the State/Corporations had not undergone proper tertiary treatment as per prescribed norms.

xvii. That on 19.02.2013, the office of the executive engineer, HUDA Division No. II, Gurgoan vide memo no. 3008-3181, had issued instruction to all developers to lift tertiary treated effluent for construction purpose for Sewerage Treatment plant Behrampur. Due to this instruction, the respondent company faced the problem of water supply for a period of several months as adequate treated water was not available at Behrampur.

xviii. That as per Clause 13.1 of the SBA which clearly states that respondent shall be entitled to extension of time for delivery of possession of the said premises if such performance is prevented or delayed due to conditions as mentioned therein.

xix. That it is submitted that even otherwise the complainant cannot invoke the jurisdiction of the Hon'ble Authority in respect of the unit allotted to the complainant, especially when there is an arbitration clause provided in the space buyer agreement, whereby all or any disputes arising out of or touching upon or in relation to the terms of the said agreement or its termination and respective rights and obligations, is to be settled amicable failing which the same is to be settled through arbitration. Once the parties have agreed to have adjudication carried out by an Alternative Dispute Redressal Forum, invoking the jurisdiction of this Authority, is misconceived, erroneous and misplaced.

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 submissions made by the parties.

E. Jurisdiction of the authority

8. The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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, 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

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.

E. Findings on the objections raised by the respondent.

E. I. Objection regarding regarding complainant is in breach of agreement for non-invocation of arbitration.

12. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties

in the event of any dispute and the same is reproduced below for the ready reference:

> *"**35. Dispute Resolution by Arbitration***
> *"All or any disputes arising out of or touching upon or in relation to the terms of this Space Buyer Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration proceeding shall be governed by the Arbitration & Conciliation Act, 1996 or any statutory amendments/modifications thereof for the time bring in force. The arbitration proceedings shall be held at the corporate office of the Company alone at Gurgaon stated hereinabove by a Sole Arbitrator who shall be nominated by the Company. The Allottee hereby confirms that he/she shall have no objection to this appointment. The courts at Gurgaon alone and the Punjab & Haryana High Court at Chandigarh alone shall have the jurisdiction in all matters arising out of/touching and/or concerning this Space Buyer Agreement regardless of the place of execution of this Space Buyer Agreement which is deemed to be at Gurgaon."*

13. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying

same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

14. Further, in **Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017**, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. Further, while considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court **in *case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018*** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainant is well within his right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

E. II Objection regarding the project being delayed because of force majeure circumstances.

15. The respondent-promoter has raised the contention that the construction of the project has been delayed due to force majeure

circumstances such as orders/restrictions of the NGT as well as competent authorities, High Court and Supreme Court orders, shortage of labour force in the NCR region, ban on the use of underground water for construction purposes, heavy shortage of supply of construction material etc. The Authority observes that the due date of possession was 11.08.2020. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 11.02.2021. As far as other contentions of the respondent w.r.t delay in construction of the project is concerned, the same are disallowed as firstly the orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-promoter leading to such a delay in the completion. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter cannot be granted any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

F. Findings on the relief sought by the complainant.

F.I. Direct the respondent to refund the entire amount deposited alongwith prescribed rate of interest.

16. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

*"**Section 18: - Return of amount and compensation***
18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-
(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,
***he shall be liable on demand to the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed** in this behalf including compensation in the manner as provided under this Act:*
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."
(Emphasis supplied)

17. Clause 11A of the space buyer's agreement dated 11.08.2017 provides for handing over of possession and is reproduced below:

11A Schedule for possession of the Said Unit
"The company based on its present plans and estimates and subject to all just exceptions. contemplates to complete construction of the said Building / said Unit within the period of 36 months from the date of execution of the Space Buyer Agreement by the Company or Sanction of Plans or Commencement of Construction whichever is later, unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (13.1). (13.2) and Clause (35) or due to failure of Allottee(s) to pay in time the price of the said Unit along with all other charges and dues in accordance with the schedule of payments given in Annexure I or as per the demands raised by the Company from time to time or any failure on the part of the Allottee (s) to abide by any terms or conditions of this Space Buyer Agreement."

18. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and

uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the doted lines.

19. **Due date of handing over possession:** As per clause 11A of the buyer's agreement dated 11.08.2017, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of execution of the buyer's agreement or sanction of building plans or commencement of construction, whichever is later. As no document w.r.t the commencement of construction as well as sanction of building plans is placed on record. Accordingly, the due date of possession has been calculated from the date of execution of buyer' agreement. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 11.02.2021.

20. In the instant matter, the complainant was previously allotted two units admeasuring 500 sq.ft. each in the project of the respondent named "Floreal Towers", at Sector – 83, Gurugram vide MoUs dated 05.08.2008 and 21.08.2008 for a total sale consideration of Rs.18,59,000/- each and

the same was duly paid by the complainant at the time of booking. Clause 2 of the said MoUs stipulates that upon receipt of the aforementioned consideration, the respondent shall provide an investment return of Rs.68/- per sq. ft. per month, amounting to Rs.34,000/-, effective from 01.09.2008 for each unit. This return shall be paid on or before the 7th day of each month for 36 months after the building's completion or until the office space is leased, whichever occurs earlier. However, the complainant on 03.06.2015 requested the respondent to merge these two units into one at one floor. The said request of the complainant was accepted by the respondent and vide allotment letter dated 03.06.2015, a single commercial unit/office space bearing no. 1704, located on the 17th Floor of Tower-B, with a super area of 1000 sq. ft was allotted to the complainant in the said project. Thereafter, a space builder buyer's agreement against the unit in question was executed between the parties on 11.08.2017 and all the previous transactions between the parties stands superseded by the said agreement.

21. The complainant has submitted that the respondent remained silent on the payment of assured returns, but instead, the respondent issued a constructive offer of possession for the complainant's office space on 25.04.2018. Further, the respondent has failed to obtain occupation certificate for the tower and floor where the complainant's unit is situated. Furthermore, despite having received the full consideration of Rs.37,18,000/- from the complainant, the respondent has unjustifiably raised an additional demand of Rs.8,99,679/-. It is further pertinent to mention here that the respondent demanded illegal charges of Rs.5,00,000/- under the head utility charges, Rs.1,00,000/- as one time electricity connection charges and Rs.1,25,000/- as IFMS. The

respondent has submitted that immediately after the receipt of the OC on 16.08.2017, the respondent offered possession vide letter dated 25.04.2018 and requested the complainant to comply with all the possession formalities and execution of the conveyance deed. The complainant was provided with a statement of account bearing the outstanding the amount of Rs.8,99,679/- which was accrued outstanding on the part of the complainant. Since the complainant was not approaching the respondent in order to take the possession of the unit in question and also to execute the lease related documents, including but not limited to GPA, execution of conveyance deed, etc., and therefore, the respondent issued a notice for compliance dated 20.11.2019 in favour of the complainant with respect to the unit in question. Thereafter, on non-compliance, the respondent was constraint to issue pre-cancellation letter dated 25.11.2023 in favour of the complainant. However, the request of the respondent went to deaf ears of the complainant and the respondent was left with no option but to cancel the unit in question vide cancellation letter dated 15.12.2023. Now, the question before the Authority is whether the cancellation made by the respondent is valid or not.

22. On consideration of documents available on record and submissions made by both the parties, the Authority is of the view that as per the payment plan agreed between the parties, the complainants have paid an amount of Rs.37,18,000/- against the total sale consideration of Rs.48,01,279/- till date. The complainant has submitted that occupation certificate for the tower and floor where the subject unit is situated has not been obtained by the respondent. Therefore, the offer of possession was not a valid one. However, the respondent vide written submissions dated 29.10.2025 has submitted a letter dated 11.07.2018 sent to the

complainant vide which it has been clarified to her that the name of the Tower/Block has been wrongly mentioned as Tower/Block-B in the buyer's agreement and in offer of possession dated 25.04.2018. Instead, it should have been mentioned as Tower/Block-A as the Tower-A comprised of office spaces while Tower-B is comprised of retail etc. An affidavit to this effect has also been submitted by the respondent before this Authority. After considering the above, it is determined that the occupation certificate for the Tower and floor where the unit in question is situated was duly obtained by the respondent from the competent authority on 16.08.2017. Consequently, the offer of possession dated 25.04.2018 was a valid offer. The complainant has further submitted that the respondent has failed to pay the assured returns as stipulated in the MoUs dated 05.08.2008 and 21.08.2008 executed between the parties dated since October 2016 and has also not adjusted the same in the outstanding dues against the unit in question. However, the Authority is of the view that the afore said exchange of unit was made by the complainant at her free will vide letter dated 03.06.2015 which was duly accepted by the respondent and after execution of the buyer's agreement dated 11.08.2017, all the previous transactions between the parties comes to an end and stands superseded by the said agreement. Thus, no amount on account of assured return is liable to be paid/adjusted against the unit in question. Further, post offer of possession on 25.04.2018, the respondent vide letter dated 20.11.2019 requested the complainant to comply with her obligations as per the buyer's agreement by paying the outstanding dues and take possession. However, the complainant failed to act further and defaulted in making payment of the outstanding dues. Therefore, the respondent was constrained to issue pre- cancellation

letter dated 25.11.2023 giving last and final opportunity to the complainant to comply with her obligation to make payment of the amount due, but the same having no positive results and ultimately leading to cancellation of unit vide cancellation letter dated 15.12.2023. The Authority observes that Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Further, Section 19(10) of the Act obligates the allottee to take possession of the unit within a period of two months from the date of issuance of occupation certificate. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 11.08.2017 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. However, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land 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 farmed 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."*

23. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.37,18,000/- after deducting 10% of the sale consideration of Rs.48,01,279/- being earnest money along with an interest @10.85% p.a. (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 on the refundable amount, from the date of cancellation i.e., 15.12.2023 till actual refund of the amount within the timelines provided in Rule 16 of the Rules 2017.

H. Directions of the Authority:

24. 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):

i. The respondent is directed to refund the paid-up amount of Rs.37,18,000/- after deducting 10% of the sale consideration of Rs.48,01,279/- being earnest money along with an interest @10.85% p.a. (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 on the refundable amount, from the date of cancellation i.e., 15.12.2023 till its realization.

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.

25. Complaint stands disposed of.

26. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12.11.2025