BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**1567 of 2025**
Date of complaint	**:**	**25.03.2025**
Date of order	**:**	**08.08.2025**

Aarti Taneja,
Both R/o:- OD-62, First Floor, Malibu Town, Sector- 47, South City-2, Gurugram, Haryana- 122003 — **Complainant**

Versus

Manglam Multiplex Pvt. Ltd.
Regd. Office at: Cabin-1, LGF, F-22 Sushant Lok Phase-1, Gurugram, Haryana- 122002 — **Respondent**

CORAM:
Arun Kumar — **Chairman**

APPEARANCE:
Gaurav Bhardwaj (Advocate) — Complainant
Shriya Takkar (Advocate) — Respondent

ORDER

1. The present complaint has been filed by the complainant/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. **Project and unit 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. No.	Particulars	Details
1.	Name of the project	"M3M 65th Avenue", Sector 65, Gurugram, Haryana
2.	Project area	14.4125 acres
3.	Nature of the project	Commercial unit
4.	RERA registered/not registered	Registered vide registration no. 32 of 2023 dated 02.02.2023
	Validity status	01.05.2024
5.	DTPC License no.	15 of 2017 dated 02.05.2017
	Validity status	01.05.2025
6.	Welcome letter dated	12.01.2018 [Page 57 of complaint]
7.	Provisional allotment letter	12.01.2018 [Page 58 of complaint]
8.	Unit no.	R7 1 32, 1sst floor, Block 7 [Page 58 of complaint]
9.	Unit admeasuring	307.93 sq. ft. (carpet area) 138.43 sq. ft. (super area) [Page 58 of complaint]
10.	Date of execution of buyer's agreement	27.06.2018 [Page 68 of complaint]

11.	Possession clause	**DEFINITIONS** **(I) "Commitment Period"** shall mean June, 2022 notified by the promoter to the authority, at the time of registration of the project under the Act, for completion of the Project, or as may be further revised/approved by the authorities. [Page 74 of complaint]
12.	Due date of possession	30.12.2022 [30.06.2022 + 6 months on account of COVID-19]
13.	Total consideration	Rs.46,78,278/- [As per clause 1.2 of agreement on page 77 of complaint]
14.	Amount paid by the complainant	Rs. 24,81,718/- [As alleged by the complainant on page 17 of complaint and as per letter dated 01.03.2025, page 149 of complaint]
15.	Occupation certificate	30.09.2021 [on page 97 of complaint]
16.	Offer of possession	25.10.2021 [Page 114 of complaint]
17.	Pre cancellation letter dated	25.11.2021 [Page 122 of complaint]
18.	Cancellation	10.12.2021 [Page 110 of reply]
19.	Letter retuning the cheques in respect of the refundable amount after cancellation dated	01.03.2025 Rs.11,94,403/- was refunded, Page 149 of complaint

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

i. That the complainant Aarti Taneja is a respectable and law-abiding citizen currently residing at OD-62, First Floor, Malibu Town, Sector-47, South City-II, Gurugram, Haryana- 122018.

ii. That the complainant is an allottee. The respondent company, M/s Manglam Multiplex Pvt Ltd, is a private limited company that is in the business of providing real estate services to its customers.

iii. That the respondent advertised its new project, namely "M3M 65th Avenue", a part of the mixed land use development located at Gurugram-Manesar Urban Complex, Sector-65, Gurugram, Haryana. The said respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project will be a landmark that offers a richly diverse mix of living, shopping and leisure activities reflecting class and eminence.

iv. That believing the false assurances and misleading representations of the respondent in their brochure and relying upon the goodwill of the respondent company, the complainant booked a commercial unit in the said project of the respondent company by paying the requisite amount of Rs. 24,81,718/- vide dated 20.12.2017 which is inclusive of the preferential location charges thereby making payment as per the schedule against the total sale consideration of Rs. 43,39,350/-.

v. That subsequently, a welcome letter cum allotment letter dated 12.01.2018 was issued to the complainant, thereby allotting a commercial unit bearing no. R7-132, 1st floor, located in block-7 ad-measuring super area 307.93 sq. Ft.

vi. That after a delay of 5 months, on 27.06.2018, the respondent executed builder buyer agreement in favour of the complainant for the commercial unit bearing no. R7-132, 1st floor, located in block-7 ad-measuring super area 307.93 sq. ft., to which the complainant raised several objections to various terms and conditions of the said buyer agreement, but the respondent clearly stated that the execution of the buyer agreement is merely a formality. Deposing faith upon the respondent, the complainant agreed to the said buyer agreement.

vii. That as per clause 7.2 of the BBA, the respondent undertook to handover possession within a period of 3 months from the date of issue and receipt of occupancy certificate. Additionally, after a delay of 6 months, the respondent company sent a notice for offer of possession on 25.10.2021 to the complainant.

viii. That upon receiving the offer of possession dated 25.10.2021 for the unit in question, the complainant visited the location of the said unit to take the possession but to the utter shock and dismay, the complainant discovered that the respondent company had constructed four additional shops directly in front of the unit in question which was not the part of initial layout plan as per the BBA. This unexpected development has caused significant distress and mental agony to the complainant. It is pertinent to mention here that the respondent company kept on sending reminders for making full and final payment without taking any action against the illegal construction of four shops in front of the unit in question. Resultantly, the respondent company on 25.11.2021 sent a pre-cancellation letter to the complainant.

ix. That the complainant was in regular touch with the representative of the respondent company from October 2021 and had been in touch telephonically and through messenger media concerning the units purchased by the complainant.

x. That the respondent through an e-mail dated 10.11.2021 gave an intimation to the complainant to illegally cancel the unit in question without even clearing the skepticism of the complainant in regard with the addition of the illegal units in the question and also the respondent never initiated the discount on the total sales consideration of the unit and gave an intimation to further illegally cancel the unit in question as the project has been mortgaged with primal housing. The respondent again, on 28.11.2021 again mailed the same mail to the complainants to raise illegal demands.

xi. That the complainant wrote to the respondent on 11.12.2021 in reply to the mail dated 25.11.2021 sent by the respondent in which the complainant had mentioned the delay in making the said payment as there was an issue in regard with the units booked by the complainant which needed to be resolved amicably but no one from the personnel of the respondent were coming forward to resolve the matter, though the complainant was in a constant touch with Mr. Summit Sinha but the matter was needed to be resolved through higher authorities of the respondent. The revert of the mail dated 11.12.2021 was received by the complainant on the same day, wherein the respondent assured the complainant that they are in the process of getting approval for your case. Once received, they will update the complainant and proceed further.

xii. That on 28.12.2021, the complainant contacted the respondent company and spoke with Mr. Gaurav Jain, who is a representative of the respondent company, raising objections regarding the illegal construction of the four shops and requested him not to cancel the unit. The complainant expressed that this new construction was obstructing the visibility of the unit in question, for which she had paid PLC. However, despite raising these concerns, Mr. Gaurav disregarded the complainant's objections and showed no interest in addressing the issues raised. In an effort to resolve the matter, the Complainant reached out again on 12.01.2022, requesting Mr. Gaurav to arrange a meeting to discuss the issue further. Thereafter, Mr. Gaurav agreed to the meeting and scheduled it for 14.01.2022. Unfortunately, when the scheduled date arrived, Mr. Gaurav failed to attend the meeting, and despite multiple follow-up requests from the Complainant, he did not show up or offer any explanation for his absence. This lack of responsiveness has left the complainant in a state of uncertainty and frustration, as the issues raised by her remain unresolved.

xiii. That consequently on 15.01.2022, the Complainant once again reached out to Mr. Gaurav and requested to host a meeting. In response, Mr. Gaurav informed the complainant that the meeting was scheduled for the upcoming Monday and suggested coordinating with Mr. Sumit Sinha. However, the complainant clarified that he had already met with Mr. Sumit, but unfortunately, the issue had not been resolved. Despite this, the complainant continued to stay in contact with Mr. Gaurav, raising the issues in an effort to find a resolution. This led to several meetings between the two parties, but to no avail. It is pertinent to mention that due to constant disregard for the complainant's concerns and dilly-dally practice of the respondent company, the complainant faced significant harassment, mental distress and undue inconvenience.

xiv. That after a significant delay in responding to the complainant's concerns, on 01.02.2022, Mr. Gaurav stated that the respondent company was willing to offer a discount of Rs. 8,00,000/- on the final demand raised, as per the payment schedule that had been mutually agreed between both parties. The Complainant, on 17.02.2022, intimated the representative of the respondent, Mr. Gaurav Jain that she is ready to make the full payment of the unit in question as she had arranged the amount as discussed by both parties after the discount mentioned. In an effort to move the said deal forward, the complainant repeatedly requested updates from Mr. Gaurav, but to no avail. Furthermore, on 19.02.2022, the Complainant informed Mr. Gaurav that she would make the final discounted payment in a few days. In response, Mr. Gaurav suggested scheduling a meeting on the same day i.e. 19.02.2022, with Mr. Sumit to discuss the payment details. The complainant had revisited the office of the Respondent on 22.02.2022 in order to make the payment of the said unit but to an utter shock, the complainant had waited for hours at their reception but no body showed up at the office. The complainant, despite facing repeated inconvenience, visited the location for the scheduled meeting, but unfortunately, no one showed up. Consequently on 28.02.2022, the Complainant raised another query, stating that Mr. Sumit is asking for a payment of Rs. 21,00,000/- instead of the agreed amount of Rs.

13,00,000/- after the previously discussed discount of Rs. 8,00,000/- and is also unaware of the discount offered by the respondent company. It is pertinent to mention that throughout this period, the complainant endured significant mental anguish and distress due to the continuous harassment, delays, and confusion caused by the respondent company. The respondent's actions caused undue emotional strain and inconvenience, leaving the complainant in a prolonged state of uncertainty and frustration.

xv. That the Complainant once again approached Mr. Gaurav on 01.03.2022 whereby she expressed in detail the immense frustration and distress caused by the unresponsive and neglectful behaviour of the respondent company's representatives. In response, Mr. Gaurav offered no meaningful solution or consideration of the complainant's repeated requests. This further exacerbated the complainant's mental anguish, leading to both severe emotional distress and financial hardships. Despite this, on 02.03.2022, the complainant assured Mr. Gaurav that she had already applied for a loan to proceed with the purchase of the unit in question and requested to hold the said unit.

xvi. That the complainant wrote an email dated 06.06.2023 to the respondent raising the concerns wherein the complainant had mentioned that the delay in making the payment is due to the sole reason of unresolved issue between the complainant and the respondent, wherein the respondent never addressed the issue of building four new units in front of the units owned by the complainant. The complainant had also mentioned the discount given by the representative of the respondent i.e. Mr. Gaurav Jain and how the same was neglected by the other representative of the respondent i.e. Mr. Summit Sinha.

xvii. That the respondent wrote to the complainant on 23.05.2024 in regard with the cancellation of the unit in question and further wrote to refund the amount. It stated that the as per the BBA, the refundable amount was Rs. 1,46,282/-; however, the company is willing to refund an amount of Rs. 12,09,468/- after applicable deductions of 10.5% of TCV.

xviii. That the complainant has written several emails to get clarification in regard with the illicit demands and admonitory cancellation of the unit in question. In one such mail sent by the complainant on 05.06.2024 to the respondent, the complainant clearly mentioned their grievances to the respondent, stating that the complainant was shocked to see four new shops built in front of the shop of the complainant without prior knowledge or consent of the complainant. The issue of building new shops was under discussion with the complainant and the respondent, but the respondent, without clearing the dilemma of the complainant in regard with the new shops and gave an ultimatum to the complainant in regard with the cancellation of the unit in question and refund the amount paid by the complainant.

xix. That the complainant even complained to the Respondent to the concerned SHO, Police Station 65, Gurugram, to raise the grievance against the respondent in question, but to no avail because the concerned SHO did not take any action against the respondent company.

xx. That the complainant had received a call from the respondent threatening the same to withdraw the tweets made to a social media platform named "X" against the respondent and further threatened to cancel the unit in question. Subsequently, the respondent had maliciously issued a cheque bearing no. 018873 dated 25.02.2025 of the ICICI bank in the name of the complainant of an amount of Rs. 11,94,403/- (Rupees Eleven Lakhs Ninety-Four Thousand Four Hundred Three only) to illegally cancel the unit before the adjudication, the same before the Authority.

xxi. That the present complaint has been filed to declare the cancellation of the unit as null and void, being illegal and arbitrary malafide and further to direct the respondent to reinstate the unit of the complainant to its original state and further to raise a demand as per RERA, Act.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s):

   I. Declaration to the effect that the act of cancellation of the unit of the complainant is null and void, being arbitrary and illegal;

   II. Direct the respondent to re-allot the unit in the name of the complainant by receiving the amount of Rs. 15,13,835/- from the complainant along with the fresh demand and further to raise demands as per law;

   III. Direct the respondent to give a valid offer of possession;

   IV. Direct the respondent to levy the prescribed rate of interest upon the delayed payments, if any

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

a) The present complaint was filed by the Complainant on 17.03.2025 i.e. after a period of 3 years, 3 months and 8 days from the date of cancellation dated 10.12.2021.

b) The unit of the Complainant was cancelled vide cancellation letter dated 10.12.2021 due to non-payment of outstanding dues despite issuance of various reminders and a pre-cancellation letter.

c) The present complaint is time barred. It is submitted that the present complaint filed by the complainant is filed beyond the period prescribed in Articles 113 and 137 of the Limitation Act, 1963. The complainant has raised the claims, which are hopelessly time barred, and it is settled law that the limitation for filing of the complaint shall start from the day the cause of action has accrued. Admittedly, the present complaint had been filed before this Authority in March 2025, i.e., after expiry of the prescribed period of limitation for filing the present complaint, hence the same is liable to be dismissed on this ground alone. It is settled law that when a special Act or local law does not prescribe the period of limitation, the limitation period prescribed under the Limitation Act, 1963 shall be applicable. Accordingly, the period of limitation as prescribed under Article 113 of the Limitation Act applies to the present complaint. Admittedly, the present complaint is barred by limitation and is liable to be dismissed on this ground alone. That, since the Complainant had been left with no remedy under civil law, the complainant has filed the present complaint to abuse the process of law. It is submitted that the cancellation of allotment cannot be challenged at this belated stage. Further, it is well settled that the correspondences, representations and legal notice do not extend the time of limitation. Thus, the present complaint is barred by limitation.

d) A perusal of the complaint would show that the affidavit attached to the complaint is neither notarized by the Notary Public nor attested by the Oath Commissioner. It is submitted that as per the settled law laid down by the Hon'ble Supreme Court, an improperly verified and an unsigned affidavit without even having the notary seal or the attestation by the Oath Commissioner is bad in law and cannot be admitted in evidence. The Supreme Court has laid down the importance of verification by "stating that the test of genuineness and authenticity of allegations, and also to make the deponent responsible for allegations contained in verifications and in the absence of proper verification, affidavits could not be admitted in evidence". Thus, an improperly verified affidavit without the notarization or attestation by the Oath Commissioner makes the complaint defective and therefore, the complaint should be dismissed at the outset.

e) The complainant, after conducting her own due diligence and independent market research, applied for booking of a unit in the Project "M3M 65th Avenue", commercial component of the mixed land use development being undertaken by the respondent company vide application form and paid part booking amount of Rs. 1,00,000/- towards the same on 23.06.2017. It is submitted that the complainant, on account of her own free will and understanding and after having read and understood all the terms of the application form, duly signed the application form.

f) In due consideration of the part booking paid by the complainant and her commitments to comply with the terms of the booking/allotment and make timely payments of demands, the complainant was allotted a commercial unit bearing no. R2 143 in 'M3M 65th Avenue', commercial component of mixed land use development of the respondent company vide allotment letter dated 23.06.2017. It is submitted that the complainant, being the allottee, on her own free will and after due understanding of the legal import and effect, had opted for the specific payment plan.

g) The complainant and other allottees, as well, were intimated about the change in building plan, as the earlier approved building plan bearing DTCP memo no. ZP-1147/SD(BS)/2017/11857 dated 01.06.2017 had been revised to ZP-1147/SD(BS)/2017/31514 dated 08.12.2017 and with reference to unit no. R2 143 was also requested to submit her objections, if any. However, the Complainant did not raise any objections with respect to the same. It is submitted that the said letter was duly sent to the complainant vide registered post. It is submitted that the Competent Authority approved the revised building plans after following the due process of law.

h) A revised allotment letter dated 12.01.2018 was issued by the respondent company for the commercial unit no. R7 132 on First Floor in "M3M 65th Avenue" instead of the earlier provisional allotment letter for the commercial unit no. R2 143. It was further informed to the complainant that the allotment of her commercial unit in "M3M 65th Avenue" stands substituted / varied / revised/altered, and henceforth the allotment of the complainant would be referred to as commercial unit no. R7 132 on the same terms and conditions as per the schedule of payments to be made as earlier. The cost of the unit admeasuring 138.43 sq. ft. of carpet area was fixed at Rs. 43,39,350/- plus other applicable charges. It is submitted that the complainant, being the allottee, on her own free will and after due understanding of the legal import and effect, had opted for the possession-linked payment plan. It is submitted that the complainant collected a copy of the buyer's agreement for due execution at her end from the office of the respondent company.

i) The respondent company offered a monthly pre-handover amount to the complainant as a comfort gesture of the respondent company's commitment to deliver the unit on time. It is submitted that an amount to the tune of Rs. 8,53,380/- has been paid to the complainant as pre-handover amount with effect from 01.02.2018 to 01.10.2021. The buyer's agreement was executed between the parties on 27.06.2018. The buyer's agreement contains the rights and liabilities of both parties. The said buyers' agreement was duly registered vide vasika no. 3361, and the same was intimated to the complainant vide cover letter dated 18.07.2018.

j) The complainant had earlier expressed her interest in the booking of a unit in one of the projects of the associate company and had paid an amount of Rs. 23,57,904/- towards the same. Thereafter, the Complainant approached the respondent company and requested that the amount paid by her towards the booking of a unit in the project of the Associate Company be transferred towards the unit in "M3M 65th Avenue". On the request of the Complainant and post discussion with her, the respondent company facilitated the transfer of funds towards the unit in question on 18.07.2018. The complainant further paid an amount of Rs. 23,814/- on 06.10.2018, which has been duly acknowledged by the respondent company.

k) The respondent company received the occupation certificate from the competent Authorities on 30.09.2021 after due verification and inspection.

l) The unit was ready and the respondent herein vide letter dated 25.10.2021 offered possession to the complainant herein and requested the complainant to remit the outstanding amount towards the remaining basic sale price, service tax, cess, stamp duty charges, etc. on or before 24.11.2021. It is submitted that all the charges in the offer of possession were raised as per the agreed terms of the buyer's agreement. Thus, the construction of the project was completed much before the prescribed commitment period i.e., June 2022 and there is no delay in offering possession of the unit to the complainant. The respondent company vide email dated 10.11.2021 requested the complainant to come forward and clear her dues, but to no avail.

m) The Complainant, in violation of her contractual obligations, failed to remit any amount towards the dues communicated vide the offer of possession, therefore the respondent company was constrained to issue a pre-cancellation notice dated 25.11.2021. The said pre-cancellation letter was duly intimated to the complainant vide email dated 28.11.2021.

n) Despite the issuance of the aforesaid pre-cancellation letter, the complainant yet again failed to come forward to clear her dues, constrained by which the respondent company, having been left with no other option, issued a cancellation notice dated 10.12.2021 in accordance with the terms and conditions of the buyer's agreement. The said cancellation letter was duly intimated to the complainant vide email dated 15.12.2021. The Complainant had deposited an amount of Rs. 24,81,718/- towards the unit in question. It is submitted that the respondent has incurred various losses/damages on account of the breach of the terms of the buyer's agreement by the complainants, which the complainants are liable to pay as per the terms of the agreement.

o) Thus, the total loss calculated comes to Rs. 16,34,090/- (approx.), which includes earnest money deduction @10% to the tune of Rs. 4,33,935/-, pre-handover amount of Rs. 8,53,380/-paid to the complainant from 01.02.2018 to 01.10.2021, loss of Rs. 4,63,612/- towards taxes deposited, brokerage of Rs. 3,17,098/-. It is submitted that the complainant is raising these frivolous issues as an afterthought to unjustly enrich herself.

p) Post the cancellation of the unit, the complainant vide her email dated 18.02.2024 had herself requested for refund for the amount deposited against the unit in question. Thus, it is clear that the cancellation of allotment was duly accepted by the complainant, and the same cannot be challenged at this belated stage; hence, this complaint is the consequence of an afterthought and an attempt to extract undue money out of the respondent company.

q) The respondent company, without prejudice to its rights, to close the matter and in furtherance of the request of the complainant, had refunded the amount of Rs. 11,94,403/- post deductions of earnest money and pre-handover amount to the complainant vide cheque bearing no. 018873 drawn on ICICI Bank dated 25.02.2025 for an amount of Rs. 11,94,403/- in favor of Complainant vide cover letter dated 01.03.2025.

r) Pursuant to cancellation of the unit, the respondent had re-allotted it to one Ms. Urmila Ghildiyal way back in April, 2022 vide allotment letter dated 07.04.2022 28.04.2022 and thus, the complainant has no privity of contract with the answering respondent and has no right, title or interest in the unit in question and neither is the allottee of the same and therefore the complaint is an infructuous and malafide petition. Thus, the present complaint is liable to be dismissed at the outset.

s) The due date of possession as per the terms of the buyer's agreement was 30.06.2022 or as may be further revised/approved by the authorities. The relevant clauses of the buyer's agreement are reproduced below for the ready reference of this Authority. It is submitted that despite adverse circumstances like NGT orders, the COVID-19 pandemic completed the construction of the retail component and applied for the grant of an occupation certificate on 30.04.2021. The occupation Certificate was granted by the competent authorities on 30.09.2021 after due verification and inspection. The possession was offered to the complainant vide notice of offer of possession dated 25.10.2021, much before the agreed time limit. Thus, no case under Sec 18 of RERA Act, 2016 is made out.

t) The complainant has failed to fulfil her contractual obligations stated in the terms of the buyer's agreement executed between the parties and has filed the present complaint to take advantage of her own wrongs. Despite being well aware that timely payments is the essence of the transaction, the complainant failed to make payments despite issuing reminders. That under Section 19(6) RERA states that the allottee is responsible to make necessary payments in the manner and within time as specified in the Agreement.

u) The respondent company post receipt of completion certificate vide letter dated 25.10.2021 offered possession of the unit to the complainant and requested her to remit the outstanding amount towards the remaining basic sale price, taxes, cess, stamp duty charges etc. It is submitted that the complainant was well aware of her obligation to take possession of the unit in accordance with section 19(10) of RERA Act, 2016, however failed to clear her dues and take possession of the unit in question. It is submitted that the complainant failed to make the complete payment of the outstanding dues as per the terms of the buyer's agreement, along with interest, and is in default of her contractual obligations as well as her obligation under Section 19(10) of RERA Act, 2016.

v) The respondent company has complied with all its contractual obligations. The complainant, being a defaulter, is not entitled to get any relief from this Authority.

w) The Complainant has not approached the Authority with clean hands. It is submitted that the Complainant is attempting to raise non-issues in order to acquire benefits for which the Complainant is not entitled in the least. the Complainant has willfully agreed and consented to the terms and conditions of the Allotment and now at this belated stage is seeking reliefs which she is not entitled to.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be

decided on the basis of these undisputed documents and submission made by the complainants.

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 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.*

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 refund the paid-up amount along-with interest.

F.II Declaration to the effect that the act of cancellation of the unit of the complainant is null and void, being arbitrary and illegal;

F.III Direct the respondent to re-allot the unit in the name of the complainant by receiving the amount of Rs. 15,13,835/- from the complainant along with the fresh demand and further to raise demands as per law.

F.IV Direct the respondent to give a valid offer of possession;

F.V Direct the respondent to levy the prescribed rate of interest upon the delayed payments, if any

11. The above-mentioned reliefs sought by the complainant are being taken together, as the findings in one relief will necessarily affect the outcome of the others and the same being interconnected.

12. In the present matter, the complainant was allotted a commercial unit bearing No. R7-1-32, situated on the 1st Floor, Block 7, admeasuring a carpet area of 307.93 sq. ft. and super area of 138.43 sq. ft. in the project of the respondent titled "M3M 65th Avenue," Sector 65, Gurugram, Haryana. The total sale consideration of the said unit was ₹46,78,278/- as reflected in Clause 1.2 of the buyer's agreement executed on 27.06.2018. The complainant paid a total amount of ₹24,81,718/- to the respondent towards the said unit.

13. It is an undisputed fact that occupation certificate was issued on 30.09.2021, and the respondent thereafter issued a notice of offer of possession dated 25.10.2021 to the complainant. The respondent's record further reveals that a Pre-Cancellation Notice was issued on 25.11.2021, followed by a Cancellation Letter dated 10.12.2021, whereby the allotment

of the subject unit was cancelled on account of failure of the complainant to clear the outstanding dues within the stipulated period. Subsequently, the respondent refunded a sum of ₹11,94,403/- to the complainant on 01.03.2025.

14. Upon consideration of the submissions and documents available on record, the Authority observes that the payment schedule and obligations of the complainant-allottee were explicitly set out in the buyer's agreement dated 27.06.2018. As per the terms of the said agreement, the complainant was under a contractual obligation to make timely payments as per the construction-linked plan agreed between the parties. The Authority notes that the respondent had issued a series of communications including the pre-cancellation letter dated 25.11.2021, providing the complainant with a reasonable opportunity to remedy the default and make payment of the outstanding dues. Despite such notice and the availability of ample time to comply, the complainant failed to make the required payment.

Payment Plan

Name of instalment	Payment plan	Instalment	Applicable tax	Total
On or before 31st January 2018 (subject to signing of builder buyer agreement)	Rs.22,30,089 of BSP + Rs.1,51,275 of DC	Rs.23,81,364/-	Rs.1,00,354/-	Rs.24,81,718/-
Within 30 days of notice of possession	43.44% of BSP + 41.31% of DC+ 100% of electricity installation charges + 100% of power back up + 100% of IFMS + 100% of stamp duty charges + 100% registration	Rs.19,57,986/-	Rs.2,38,575/-	Rs.21,96,561/-

	charges + 100% of other charges			
Total				Rs.46,78,278

15. Section 19(6) of the Real Estate (Regulation and Development) Act, 2016 casts a statutory obligation upon the allottee to make the necessary payments as per the agreement for sale. The Authority further observes that in all such matters, where cancellation is effected for non-payment of dues, the validity of such cancellation is determined by examining whether the promoter has provided adequate notice, reasonable time for compliance, and acted in accordance with the agreed payment plan. In the present case, the respondent appears to have fulfilled these procedural obligations prior to the cancellation of the allotment.

> ***Section 19(6) of the Real Estate (Regulation and Development) Act, 2016 provides as under:***
> *"The allottee shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any, in accordance with the terms and conditions of the agreement for sale."*

16. Accordingly, the Authority holds that the cancellation of the unit vide letter dated 10.12.2021 was made in accordance with the terms and conditions of the buyer's agreement dated 27.06.2018, and in conformity with Section 19(6) of the Act.

17. The Authority notes that the deductions made from the complainant's deposited amount must conform to the legal principles settled by the *Hon'ble Supreme Court in Maula Bux v. Union of India [(1970) 1 SCR 928] and Sirdar K.B. Ram Chandra Raj Urs v. Sarah C. Urs [(2015) 4 SCC 136]*, wherein it was held that any forfeiture of amount in case of breach of contract must be reasonable and cannot be in the nature of penalty unless actual loss is

demonstrated. This principle has been consistently followed by the Hon'ble National Consumer Disputes Redressal Commission in Ramesh Malhotra v. Emaar MGF Land Limited (CC/435/2019, decided on 29.06.2020), Mr. Saurav Sanyal v. M/s IREO Private Limited (decided on 12.04.2022), and Jayant Singhal and Anr. v. M3M India Limited (CC/2766/2017, decided on 26.07.2022).

18. In pursuance of these precedents and in accordance with Regulation 11(5) of the Haryana Real Estate Regulatory Authority (Forfeiture of Earnest Money by the Builder) Regulations, 2018, the Authority reiterates that the forfeiture amount towards earnest money shall not exceed 10% of the basic sale consideration of the unit. Any clause in the buyer's agreement that provides for forfeiture beyond this prescribed limit shall be void and not binding on the allottee.

19. Thus, in the present case, while the respondent-promoter has validly exercised its right to cancel the allotment due to continued non-payment, it is equally bound to refund the balance amount to the complainant after deduction of only 10% of the basic sale consideration as earnest money.

G. Directions of the authority

20. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

    i. The respondent-promoter is directed to refund the balance paid-up amount of ₹24,81,718/-, after deducting 10% of the total sale consideration of ₹46,78,278/- as earnest money, along with interest at the rate of 10.90% per annum (SBI MCLR + 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., 10.12.2021 till the actual realization of the amount. The amount already paid by the respondent shall also be deducted from the refundable amount.

ii. A period of 90 days is granted to the respondent to comply with the above directions, failing which statutory consequences under the Act shall ensue.

21. The complaints stand disposed of.

22. Files be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.08.2025