

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

Complaint no.:
Date of decision:

2789 of 2024
10.12.2025

1. Ratandeep Jain
2. Arti Jain

Both R/o:- A-118, A Block, Phase-I,
Ashok Vihar, North West Delhi, Delhi-110052.

Complainants

Versus

M/s Gentle Realtors Private Limited.

Registered Office at: LGF-C-34, Sushant Shopping
Arcade, Sushant Lok, Phase-1, Gurugram-122002.

Respondent

CORAM:

Ashok Sangwan

APPEARANCE:

Mukul Kaushik (Advocate)

Shriya Takkar (Advocate)

Member

Complainants

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.No.	Particulars	Details
1.	Name of the project	"M3M IFC International Financial Centre"
2.	Nature of the project	Retail unit in commercial complex
3.	Location of the project	Sector-66, Village Badshahpur, Gurugram.
4.	HRERA Registered	Registered Vide registration no. 39 of 2022 dated-23.05.2022
5.	DTCP license	License No. 165 of 2008 Dated-08.09.2008
6.	Allotment letter	22.08.2022 (As on page no. 38 of complaint)
7.	Unit no.	R3-110, Type-Café, Floor no.-1, Block-03

		(As on page no. 41 of complaint)
8.	Unit area	102.26 sq.ft. [carpet Area] 1136.01 sq.ft [Super Area] (As on page no. 41 of complaint)
9.	Agreement For Sale	01.09.2022 (As on page no. 60 of reply)
10.	Possession clause	<p>Clause 7 POSSESSION OF THE COMMERCIAL UNIT:</p> <p>7.1 Schedule for possession of the said unit-</p> <p>(ii) <i>The Promoter assures to offer possession of the Unit i.e., 31.12.2024 along with right to use car parking space (if any) as per agreed terms and conditions unless there is delay due to Force Majeure Event, Court orders, Government Policy/guidelines, decisions affecting the regular development of the Project. If, the completion of the said Unit is delayed due to the above conditions, then the Allottee(s) agrees that the promoter shall be entitled to the extension of time for delivery of possession of Unit along with right to use car parking space (if any) as may be approved by the competent authorities.</i></p> <p>[Emphasis supplied]</p> <p>(As on page no. 77 of complaint)</p>
11.	Due date of possession	31.12.2024

12.	Total sale consideration	Rs.90,26,724/- (As on page no. 41 of complaint)
13.	Amount paid	Rs.90,26,724/
14.	Tri-partite agreement	04.11.2022 (As on page no. 80 of complaint)
15.	Offer for lease	30.03.2023 (As on page no. 117 of reply)
16.	Lease Agreement	17.04.2023 (As on page no. 137 of reply)
17.	Occupation certificate	18.12.2020 (As on page no.42 of reply)
18.	Offer of possession	08.09.2022 (As on page no. 105 of reply)
19.	Pre Cancellation Notice	10.10.2022 (As on page no. 111 of reply)
20.	Conveyance deed	Not executed

B. Facts of the complaint:

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

1. That in the month of July 2022, the representatives of respondent no. 1 company approached the complainants and informed that the company have develop a commercial project in the name of "M3M IFC International Financial Center", Sector-66, Village Badshahpur, District

Gurugram. The representatives also assured that all the plans have been sanctioned and the respondent would hand over the possession of the unit within 2-3 months.

- II. That the complainants believing upon the assurance of the representative booked a retail unit/ cafe no- R3 1 10, 1st Floor, Block - 3, having super area of 1136.01 sq. ft. for a total consideration of Rs.90,26,724/- along with all charges. The complainants also paid a sum of Rs.5,00,000/- as earnest money.
- III. That the respondent issued an allotment letter dated 22.08.2022 regarding retail unit/ cafe and issued receipt no. 00369 dated 05.07.2022 printed on 22.08.2022 against the booking amount.
- IV. That the complainants paid a sum of Rs.90,26,724 to the respondent no. 1 upto the month of November 2022, after taking a loan of Rs.42,00,000/- from Kotak Mahindra Bank. At the time of payment of the total sale consideration, the officials of respondent no. 1 informed the complainant that the leasing team of the respondent no. 1 will find the prospective lessee for abovementioned retail unit/café of the complainants at a minimum rental amount Rs.120 per sq.ft. per month.
- V. That the respondent no 1 sent an e-mail on 02.02.2023 and 02.03.2023 to complete the formalities regarding the possession of abovementioned retail unit/café and added holding charges. The respondent no 1 also want the complainants to execute documents like Indemnity Bond, Conveyance Deed, Facility Agreement, Special Power of Attorney. The contents of these documents shows that the respondent no. 1 by way of these documents want the complainants to give you all the rights to lease out the abovesaid unit/cafe, to receive rent as per their wishes but the complainants have no intention to give

- respondent no 1 any such authority. The complainants refuse to execute such documents because the complainants do not want to give their rights over the retail unit/café to the respondent no 1.
- VI. An employee of respondent no 1, namely Suchita Devrani, Assistant Manager – Retail Leasing sent an email to the complainants regarding a detail of proposed tenant “Kosmic Kindgom” for a monthly rent of Rs.66,497/- i.e. Rs.58.53/- per sq ft along with other terms like lease term, lock-in period, etc and requested the complainants to give their confirmation on the proposed lease terms as mentioned below in the said mail. The complainant no 1 personally visited the office of the complainant and refuse to lease out the unit/cafe to respondent no 2. Even after the refusal, neither the respondent no 1 nor its employee Suchita Devrani responded to the complainants instead respondent no 1 went ahead with the lease with respondent no 2 without the approval or permission from the complainants which is totally illegal, unlawful which amounts to criminal breach of trust by respondents.
- VII. That in the month of March 2023, the respondent no 1 illegally handed over the possession of the abovementioned retail unit/café to respondent no 2 and when the complainants came to that the respondent no 2 illegally, unlawfully, without the permission of the complainants, started the fit out/ renovation in the retail unit/ café of the complainants. The complainants informed the respondent no 1 and its employees to stop the fit out in the retail unit/café of the complainants as the same was totally illegal but respondents did not paid any heed to the just and fair request of the complainants.
- VIII. That respondent no 1 sent various e-mails on 04.04.2023, 01.05.2023, 07.06.2023, 05.07.2023, 01.08.2023 to the complainants to complete

the formalities regarding the possession of the abovementioned retail unit/café. Further, in the month of March 2023, the respondent no. 1 illegally handed over the possession of the abovementioned retail unit/café to respondent no 2. Thus, the respondents, in collusion with each other, are not only playing fraud with the complainants but also trying to extort money from the complainants in the name of holding charges.

- IX. Moreover, the respondent no 1 already handed over the possession of retail unit/café of the complainants to respondent no 2. Therefore, the abovementioned emails sent by the respondent no 1 to the complainants have no legally sanctity as respondent no 1 already committed fraud and criminal breach of trust by handing over the possession of abovementioned unit/cafe to respondent no 2.
- X. On 01.08.2023, the complainants sent an email to the employees to the respondent no 1 mentioning the grievances of the complainants and also objected the illegal leasing out the unit/café of the complainants to respondent no 2 but respondent no. 1 never replied to the said grievances and illegal act of leasing of the unit/café of the complainants to respondent no 2 without any authorization from the complainants.
- XI. That the complainants sent various emails dated 25.08.2023, 30.11.2023, 04.12.2023, 06.12.2023, 18.12.2023 to respondent no. 1 about the illegal leasing of unit/café but it did not response to the email of the complainants and even after being cheated by the respondent no 1, the complainants had have several rounds of meeting with the official of the respondent no 1 in past one year to amicably get the actual physical possession of the abovementioned unit which is

under illegally possession of respondent no 2.

- XII. That the respondent no. 2 is illegally operating a cafe in the name and style "Kosmic Kingdom" in the complainants unit without their consent and any legal lease deed executed between the complainants and the respondent no. 2. On 02.04.2024, the respondent no. 1 again issued an e-mail to complete the formalities of possession and demanded Rs.9,75,689/- as holding charges, Rs.68,080/- as interest, Rs.30,678/- as IFMS and Rs.1,06,067/- as maintenance charges, the said act and conduct is not only illegal but also amount to fraud played by both the respondents upon the complainants. The respondent no 1 has been illegally receiving rent, CAM(common Area maintenance) charges from respondent no 2 against the unit of the complainants as admitted by the respondent no 2 in email dated 05.04.2024. In the said email, the respondent no 1 stated that the complainants had granted it the rights and authority to identify a suitable lessee for the unit which itself means that the right to refuse and acceptance of lease out unit/café of the complainants to the lessee identified by the respondent no 1, is with the complainants.
- XIII. That the respondent no.1 can only inform the complainants about the lessee which the respondent no 1 think is suitable but the decision as to whether lease or not the unit/cafe of the complainants to such lessee is always within the preview of the complainants as the complainants never granted or executed any Special Power of Attorney(SPA) in favour of respondent no 1 and the respondent no 1 illegally lease out the unit/cafe to respondent no 2 without any legal right granted by the complainants. The respondents colluded with each other and play fraud with the complainants.

- XIV. That in the email dated 05.04.2024, the respondent no. 1 alleged that the complainants have failed to complete possession formalities, due to which the respondent no. 1 is unable to release the lease rentals to the complainants. However, the respondent never had any intention to handover possession of the said retail unit/cafe to the complainants because respondent no 1 in collusion with respondent no 2 have already been running "Kosmic kingdom" restaurants in the retail unit/cafe of the complainants.
- XV. Further, on 09.04.2024, the respondent no 1 delivered several documents like Indemnity Bond, Conveyance Deed, Facility Agreement, Special Power of Attorney at the residence of the complainants. The complainants had gone through the contents of those documents which clearly shows that the respondent no 1 had dishonest intention as by way of Facility Agreement, Special Power of Attorney, the respondent No 1 want the complainants to give you all the rights to lease out the above said unit/cafe, to receive rent as per their wishes but the complainants have no intention to give any such authority to respondent no 1. Therefore, the respondent no 1, abusing its dominant position and in collusion with respondent no 2 are trying to harass the complainants by firstly illegally handing over the possession of the unit/café to respondent no 2 and secondly, illegally claiming holding charges, maintenance charges, etc from the complainants whereas respondent no 1 is unlawfully getting unjust enrichment by collecting rent from respondent no 2 without having any right, title and interest or authority to do so. Further, the status of both the respondents are of the trespassers in the aforesaid unit/café of the complainants.
- XVI. The complainants served a legal notice to the respondents on

01.05.2024 through his counsel to handover the vacant, peaceful, actual and physical possession of the unit/cafe to the complainants and also pay the damages @ Rs 400/- per sq ft per month. The respondents neither replied to the said legal notice nor vacated the unit/cafe, which itself prove that the respondents intentionally delaying the handing over of possession to the complainants.

XVII. Despite several attempts of the complainants, the respondents are not interested to handover the possession of the complainants. The complainants had paid the sale consideration from their hard-earned money. The complainants are moving pillar to post to get the actual physical possession of the unit/cafe but the respondents intentionally harassing the respondent intentionally by not handing over the possession to the complainants and by demanding illegal, unlawful CAM charges with interest, holding charges, etc. The complainants being left with no other alternative, are forced to file the present complaint.

C. Relief sought by the complainants:

4. The complainants have filed the present complaint for seeking following reliefs:
 - i. Direct the respondent to handover the possession of the retail unit to the complainants and register the conveyance deed in favour of complainants.
 - ii. Direct the respondent to pay delayed possession charges @18% per annum (compoundable) from the date of each payment made by the complainants. The respondents be jointly and severally directed to pay the damages @ Rs 400/- per sq ft per month for the illegal possession period from March 2023 till

date of vacation of the retail unit/café and also held liable to pay Rs.10,000/- per day as penalty along with the damages from 16.05.2024 till handing over the actual, physical and peaceful possession of the retail unit/café to the complainants.

- iii. Direct the respondent to pay cost of present litigation amounting to Rs.1,00,000/- in favour of the complainants and against the respondent.
5. On the date of hearing, the Authority explained to the respondents /promoters about the contravention 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 filed by respondent:

6. The respondent has contested the present complaint on the following grounds:
 - I. That the respondent no.1 is engaged in the business of construction and development of real estate projects and has carved a niche for itself in the real estate sector. The Occupation Certificate for the present phase was granted by the competent Authorities on 18.12.2020 after due verification and inspection. The complainants after conducting market research and after assessing the state of development showed interest in booking of a ready to move in commercial unit in the project "M3M International Financial Centre" which is being developed as a commercial colony being undertaken by respondent no.1.
 - II. In due consideration of the commitments by the complainants to comply with the terms of the Application Form and make timely payments of demands, the complainants were allotted commercial unit

bearing no. R3 110 vide allotment letter dated 22.08.2022. The cost of the unit for an area admeasuring 102.26 sq. ft. carpet area was fixed at Rs.90,26,724/- plus other charges.

- III. Thereafter, the respondent no.1 vide covering letter dated 22.08.2022 dispatched the triplicate copies of the Buyers Agreement for due execution at the complainant's end. The Buyers Agreement was executed between the parties on 01.09.2022. Clause 7.1 of the agreement, dealing with the due date of possession is reproduced below:

7 POSSESSION OF THE COMMERCIAL UNIT:

7.1 Schedule for possession of the said Unit-

- (i) *The Promoter agrees and understands that timely delivery of possession of the said Unit along with right to use car parking space (if any), as provided under Rule 2(1)(t) Rules, 2017, is the essence of the Agreement.*
- (ii) *The Promoter assures to offer possession of the Unit i.e. 31.12.2024 along with right to use car parking space (if any) as per agreed terms and conditions unless there is delay due to Force Majeure Event, Court orders, Government policy/guidelines, decisions affecting the regular development of the Project. If, the completion of the said Unit IS delayed due to the above conditions, then the Allottee (s) agrees that the Promoter shall be entitled to the extension of time for delivery of possession of Unit along with right to use car parking space(if any) as may be approved by the competent authorities.*

[Emphasis supplied]

- IV. That the unit was ready and respondent no.1 vide letter dated 08.09.2022 offered possession to the complainants and requested the complainants to remit the outstanding amount towards the remaining basic sale price, taxes, cess, stamp duty charges etc. before 08.10.2022. It is pertinent to mention herein that the construction of the project was completed prior to the prescribed commitment timeline i.e., December 2024 and there is no delay in offering possession of the unit

to the complainants. Thus, no case under Section 18 of RERA Act, 2016 is made out.

- V. That the complainants in violation of their legal obligations miserably failed to remit the amount due towards the dues communicated vide the offer of possession, therefore the respondent no.1 was constrained to issue pre-cancellation notice dated 10.10.2022.
- VI. Subsequently, the complainants wanted to avail a loan facility from Kotak Mahindra Bank against the purchase of said unit. Accordingly, a Tripartite Agreement dated 04.11.2022 was executed between the complainants, Kotak Mahindra Bank and the respondent no.1.
- VII. Thereafter, the respondent no.1 vide email dated 04.11.2022 had sent the possession related documents for due execution at the complainant's end. The complainants met the officials of the respondent no.1 and requested them to lease out their unit. Accordingly, the respondent no.1 made efforts and vide email 30.03.2023 had sent a proposal of leasing terms to the complainants herein. Thus, it is an admitted position that the unit of the complainants was leased out by the respondent at their own specific request. The complainants have failed to disclose the above facts to the Authority.
- VIII. That the respondent no.1 on various occasions vide emails dated 02.02.2023, 02.03.2023, 04.04.2023, 01.05.2023, 07.06.2023, 05.07.2023, 01.08.2023, 02.02.2024, 16.02.2024, 05.04.2024 and 02.04.2024 requested the complainants to come forward and complete the possession related formalities and take possession of the unit in question as per agreed terms. Subsequently, the "Agreement to Lease" was executed between the respondent no.1 and M/s. K Square

Entertainment on 17.04.2023 for leasing out the unit to conduct its operations and the said Brand is operational since the past one year i.e. 16 June 2023.

- IX. Vide email dated 05.04.2024, the respondent had informed the complainants that it was the complainants who had approached the respondent for leasing out the unit in question. Accordingly, the respondent based on the authority granted for leasing of the unit identified a suitable tenant i.e. Kosmic Kingdom. The complainants were very well aware that the unit in question along with other units is being leased out to the brand. Further, there is no documentary evidence appended by the complainants to substantiate their claim that they had objected to the leasing terms between March, 2023 to July, 2024.
- X. That the respondent no.1 had categorically informed the complainants that the Company will not be able to release the lease rental, as and when received from the brand to the complainants if the complainants did not come forward to complete the possession formalities. Further, since the complainants even after giving the leasing consent to the respondent were raising issues qua the lease therefore, the respondent as a goodwill gesture had agreed to refund the entire amount deposited by the complainants without any deductions. The relevant portion of email dated 05.04.2024 is reproduced herein below for ready reference:

I hope this email finds you well. We are writing to you with respect to the possession formalities of the Unit bearing No. R3 110 in the project M3M IFC. The Unit booked by you on 10th August 2022 was in a ready to move in condition as the Occupation Certificate for the same had been granted on 18th December 2020. Being a commercial property, you had at the time of booking communicated that you wished to



have the Unit leased out and had granted the Company the rights and authority to identify a suitable lessee for the Unit.

While the possession of the Unit was duly offered to you vide the Notice of Offer of Possession dated 8th September 2022 however despite multiple follow ups and requests, till date the possession formalities have not been completed. While you are aware that in light of the authority granted by you for leasing the unit, the Company identified a lessee and leased the unit to the brand 'Kosmic Kingdom'; which was duly informed to you.

That till date you have failed to complete your possession formalities and due to the same the Company is unable to have the lease rentals released to you. However, it has now come to our attention that you have expressed objections to certain terms outlined in the lease, despite being fully aware of these terms at the time of booking.

The company being a customer centric organisation with a view to maintain a positive relationship with you, are willing to offer you the refund of the amounts paid by you towards the sale consideration of the Unit, without any deductions, as a gesture of goodwill to mitigate any inconvenience that may have been caused to you. We accordingly request you to kindly revert with respect to the above at your earliest convenience.

- XI. That the respondent has fulfilled its contractual obligations under the Buyers Agreement, despite that the complainants have failed to take the possession of the unit as per agreed terms. The complainants are in default of their contractual obligations and are raising these frivolous issues in order to escape their liability cast upon them by the virtue of the terms of the Buyers Agreement. Therefore, the complainants are not entitled to any relief whatsoever.
- XII. At the very outset, the respondent no.1 would like to draw the attention of the Authority to the contents of the emails dated 30.03.2023 and 05.07.2023 exchanged between the parties. The complainants met the officials of respondent no.1 and requested them

to lease out their unit. Based on the request of the complainants, the respondent no.1 and its leasing team negotiated the terms of the lease and lease rentals with the prospective brand on behalf of all the allottees and got all the allottees the best possible deal in the market.

- XIII. Accordingly, the respondent no.1 made efforts and vide email 30.03.2023 sent a proposal of leasing terms to the complainants herein. It is pertinent to mention here that the complainants vide email dated 05.07.2023 had given their consent to lease out the unit in question. In view thereof, the unit in question along with the other units was leased to the Brand. Thereafter, the lessee company had carried out the fit outs as required by the Brand.
- XIV. That the complainants had themselves agreed to lease out the unit which can be inferred from the email dated 05.07.2023 sent by the complainants. That the complainants if had any issue with the lease should have approached the Authority at that point of time when the leasing proposal was sent to them. The complainants being well aware that the brand is operational since the past one year have approached this Authority at this belated stage with the sole motive to arm twist the respondent and extract unlawful benefits from them.
- XV. That the leasing terms entered into with the Brand are absolutely favourable and all the other allottees are completely satisfied. It is only the complainants who have raised issues who with a malafide intention and to blackmail the respondent.
- XVI. The complainants have filed the present complaint is nothing but an afterthought of the complainants and an attempt to cause reputational damage to the respondent. The complainants booked a ready to move in unit and at the time of booking, complainants were aware that the

units are pre-lease and they will only get the symbolic possession of the unit in the light of the lease. Further, the interest of the other allottees whose units have been leased out to the Brand will be adversely affected.

- XVII. It is submitted that the respondent to bring closure to the matter is willing to refund the entire amount deposited by the complainants without any deductions.
- XVIII. That the terms of agreement were entered into between the parties on 01.09.2022 and, as such, the parties are bound by the terms and conditions mentioned in the said agreement. The said agreement was duly acknowledged by the complainants after properly understanding each and every clause contained therein. The complainants were neither forced nor influenced by respondent no.1 to sign the said Agreement. It was the complainants who after understanding the clauses signed the said Buyers Agreement in their complete senses and free will.
- XIX. It is pertinent to mention here that the complainants also maliciously filed a Police Complaint bearing no. 549-CAS dated 02.04.2024 before the SHO of Sector 65, Police Station pertaining to the same subject matter, with intent to defame the respondent no.1 and pressurize to succumb to the malicious intent and illegal demands of the complainants. The respondent no.1 has duly filed reply dated 24.04.2024 to the said Police complaint stating the true facts of the matter.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be

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

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

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;

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

which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

10. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the reliefs sought by the complainants:

F.I. Direct the respondent to handover the possession of the retail unit to the complainants and register the conveyance deed in favour of complainants.

F.II Direct the respondent to pay delayed possession charges @18% per annum (compoundable) from the date of each payment made by the complainants. The respondents be jointly and severally directed to pay the damages @ Rs 400/- per sq ft per month for the illegal possession period from March 2023 till date of vacation of the retail unit/café and also held liable to pay Rs.10,000/- per day as penalty along with the damages from 16.05.2024 till handing over the actual, physical and peaceful possession of the retail unit/café to the complainants.

12. In the present complaint, the complainants booked a retail unit/ café bearing no. R3 110, on First floor in Block-3 admeasuring 1136.01 sq.ft. super area in the project namely, "M3M IFC International Financial Centre" situated in Sector-66, Gurugram. The allotment letter was issued in favour of the complainants on 22.08.2022. The Agreement For Sale was executed between the parties on 01.09.2022. As per clause 7.1 of the Agreement dated 01.09.2022, the due date of possession of the unit was 31.12.2024. The sale consideration of the unit was agreed to be Rs. 90,26,724/- and the complainants have paid an amount of Rs. 47,30,678/- (as per payment receipts annexed on page 52-56 of complaint) till date to the respondent.
13. The complainants have contended that they had booked a retail/café unit in the project developed by the respondent; however, the respondent has failed and neglected to hand over possession of the said unit. It is submitted that the entire sale consideration was paid by the complainants from their own resources. Despite repeated efforts, the complainants have been compelled to approach various authorities to seek actual physical possession of the unit, but to no avail. The complainants allege that the respondent has deliberately

withheld possession and has subjected them to harassment by raising illegal and unlawful demands towards CAM charges along with interest, holding charges, and other such levies. It is further contended that the decision to lease or not lease the unit exclusively vests with the complainants, as they never executed or granted any Special Power of Attorney in favour of the respondent. Despite the absence of any such authority, the respondent is alleged to have unlawfully leased out the complainants' unit to M/s KIC Food Products Pvt. Ltd. The complainants have also alleged collusion between the respondent and M/s K Square Entertainment, which is operating the business under the name "Kosmic Kingdom," thereby committing fraud upon the complainants.

14. The respondent has submitted that the Occupation Certificate was duly granted by the competent authority on 18.12.2020 after due inspection and verification. It is stated that the complainants, after conducting market research and assessing the level of development in the project, had expressed interest in booking a ready-to-move-in commercial unit. According to the respondent, the unit of the complainants was leased out at their specific request. In this regard, a proposal outlining the leasing terms was communicated to the complainants vide email dated 30.03.2023. It is further submitted that the complainants, vide email dated 05.07.2023, conveyed their consent for leasing the unit in question. Pursuant thereto, the unit, along with other units, was leased to the concerned brand, and the lessee thereafter undertook fit-out works as per brand requirements. The respondent has asserted that the complainants had expressly agreed to the leasing of the unit, as evident from their email dated

05.07.2023, and that if the complainants had any grievance regarding the lease, they ought to have raised the same before the competent authority at the relevant time when the leasing proposal was communicated.

15. After considering the documents on record and the submissions made by the parties, the Authority observes that the respondent obtained the Occupation Certificate on 18.12.2020. The due date for possession in terms of Clause 7.1 of the Agreement dated 01.09.2022 was 31.12.2024. Clause 7.1 of the agreement dated 01.09.2022 is reproduced below:

7.1 Schedule for possession of the said unit-

(ii) The Promoter assures to offer possession of the Unit i.e., 31.12.2024 along with right to use car parking space (if any) as per agreed terms and conditions unless there is delay due to Force Majeure Event, Court orders, Government Policy/guidelines, decisions affecting the regular development of the Project. If, the completion of the said Unit is delayed due to the above conditions, then the Allottee(s) agrees that the promoter shall be entitled to the extension of time for delivery of possession of Unit along with right to use car parking space (if any) as may be approved by the competent authorities.

[Emphasis supplied]

16. The Authority is of the view that neither the Allotment Letter dated 22.08.2022 nor the Agreement for Sale dated 01.09.2022 contains any stipulation to the effect that only constructive possession of the unit would be offered to the complainants or that physical possession would not be handed over to them. Further, there is no clause in either the Allotment Letter or the Agreement for Sale by which the leasing rights of the unit were transferred to or vested in the respondent. Although the retail unit was admittedly purchased for commercial purposes, the right to lease the unit, including the selection of the lessee and determination of lease terms, exclusively vested with the

complainants. At no point was it agreed that such rights would be exercised or decided by the respondent.

17. The respondent has raised an objection regarding the jurisdiction of the Authority, contending that since the unit had already been leased out and no Conveyance Deed has yet been executed in favour of the complainants, the respondent continues to be the owner of the unit. It has further been contended that the consent of the complainants to the lease can be inferred from emails dated 01.08.2023 and 05.07.2023.
18. The Authority notes that the Lease Deed dated 17.04.2023 was executed between the respondent and M/s KIC Food Products Private Limited, to which the complainants were not parties. In the said Lease Deed, the respondent has projected itself as the owner of the subject unit and has expressly represented that it possessed absolute right and authority to grant the lease. The relevant extract of the Lease Deed reads as under:

"WHEREAS:

A. The Lessor hereby represents that:
i. The Lessor has absolute right and authority to grant lease of the Unit No. R1 105-108, R3 110, 111 admeasuring 5,373 sq. ft. of super area and 2,687 sq. ft. of covered area along with 5 car parking and 15 bike parking (hereinafter referred to as the 'Leased Premises' or 'Demised Premises'.

[Emphasis supplied]

19. Despite having received a substantial consideration from the complainants towards the sale of the unit, the respondent nevertheless claimed absolute authority to lease out the complainants' unit. Such conduct, in the considered opinion of the Authority, is mala fide in nature. The respondent proceeded to lease out the unit without any lawful authority. Although vide email dated 30.03.2023, the respondent sought the complainants' consent regarding the proposed lease with "Kosmic Kingdom," the complainants consistently raised

objections through multiple communications against leasing their unit without their express approval.

20. Instead of addressing the objections raised by the complainants, the respondent responded by alleging that the complainants had failed to execute possession-related documents, take physical possession of the unit, or have the Conveyance Deed executed in their favour. The record, however, contains numerous emails evidencing the complainants' persistent objections to the disputed lease with "Kosmic Kingdom." The Authority is, therefore, of the firm view that the respondent has illegally leased out the complainants' retail unit/café despite their unequivocal protest. Consequently, the complainants are entitled to interest on delayed possession of the retail unit/café from the due date of possession until the actual physical handover of the unit to the complainants.
21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants intend to continue with the project and are seeking delay possession charges. The proviso to section 18 provides 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 possession, as may be prescribed in this behalf. The Authority is of the view that the possession of the retail unit/café was not handed over to the complainants in terms of the Clause 7.1 of the Agreement dated 01.09.2022 and the retail unit/café was leased out without the consent of the complainants. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate

prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

22. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 10.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
Explanation. —For the purpose of this clause—
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
 - (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the

respondent/promoter which is the same as is being granted her in case of delayed possession charges.

26. The respondent is directed to provide an updated Statement of Accounts to the complainants within a period of 10 days of this order, after adjusting the delayed possession charges. The respondent is directed to execute Conveyance Deed in favour of the complainants within period of 90 days from the date of order. Further, the respondent is directed to pay interest at the prescribed rate of 10.85% p.a for every month of delay from due date of possession i.e., 31.12.2024 till the actual handing over of possession at the prescribed rate of interest i.e., 10.85% p.a. as per proviso to Section 18 (1) of the Act, 2016 read with rule 15 of the Rules.

G. Directions of the Authority:

27. 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) of the Act.

- i. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a for every month of delay from due date of possession i.e., 31.12.2024 till the date of actual handing over of possession, at the prescribed rate of interest i.e., 10.85% p.a. as per proviso to Section 18 (1) of the Act, 2016 read with rule 15 of the Rules.
- ii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the



allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent is directed to provide an updated Statement of Accounts to the complainants within a period of 10 days of this order, after adjusting the delayed possession charges.
- v. The respondent is directed to execute Conveyance Deed in favour of the complainants within period of 90 days from the date of order.
- vi. The respondent shall not charge holding charges from the complainants.
- vii. The respondent shall not charge anything from the complainants which is not the part of the agreement.
- viii. 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.

28. Complaint stands disposed of.

29. File be consigned to the registry.

Dated: 10.12.2025


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram