

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

Complaint no.	:	7907 of 2022
Date of Filing:		03.01.2023
Date of decision	:	31.10.2025

1. Mridul Jain 2. Gautam Jain Address: - House no. 756, Ward no. 29, Near Shri Ram Mandir, Sector-4, Gurgaon, Haryana	Complainants
Versus M/s K.S Propmart Pvt. Ltd. Office at: - Plot no. 14, Sector-44, Institutional Area, Gurgaon, Haryana - 122003	Respondent

CORAM: Shri Arun Kumar	Chairman
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APPEARANCE: Sh. Anshul Sharma Sh. Jagdeep Yadav	Advocate for the complainants Advocate for the respondent
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ORDER

1. The present complaint dated 03.01.2023 has been filed by the complainants/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 provision 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Park Street" at sector 85, Village Badha, Tehsil-Manesar, Gurgaon, Haryana
2.	Nature of the project	Commercial
3.	Project area	2.85 acres
4.	Rera registered or not	Registered Vide no. 41 of 2019 issued on 30.07.2019 upto 31.12.2019
5.	Plot No.	G-01, Ground Floor (page no. 33 of complaint)
6.	Unit area admeasuring	412.69 sq. ft. of super area (page no. 34 of complaint)
7.	Date of MOU	25.05.2022 (page no. 72 of reply)
8.	Allotment Letter	01.06.2022 (page no. 26 of complaint)
9.	Date of agreement to sell	03.06.2022 (page no. 30 of complaint)

10.	Final opportunity before cancellation letter by respondent	29.08.2022 (page no. 64 of complaint)
11.	Legal Notice by complainants	05.09.2022 (page no. 66 of complaint)
12.	Reply of legal notice by respondent	29.09.2022 (page no. 70 of complaint)
13.	Intimation of termination	23.11.2022 (page no. 75 of complaint)
14.	Third party right created to the allotted unit to the complainants	16.12.2022 (page no. 133 of reply)
15.	Due date of possession	03.11.2027 (calculated from the date of agreement including grace period of 5 months being unqualified)
16.	Possession clause	<p>Possession of the Unit for Commercial Usage</p> <p>7.1 Schedule for possession of the said unit for commercial usage. The Promoter agrees and understands that timely delivery of the unit for Commercial usage along with parking (if applicable) to the Allottee (s) and the common areas to the association of allottees or the competent authority within a period of 60 months with additional grace of 5 months from the date of execution this agreement subject to such extension as may be permitted by terms and conditions of</p>

		this Agreement including the extension arising out of force majeure conditions or by the order of the competent authorities.
17.	Total sale consideration	Rs. 43,84,006/- (page no. 26 of complaint)
18.	Amount paid by the complainants	Rs 6,92,396/- (as alleged by complainants)
19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered

B. Facts of the complaint

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

- I. That the complainants on dated 20.06.2019 booked a commercial space on ground floor in the upcoming project of the promoter namely "Park Street" situated at Sector - 85, Gurgaon, Haryana - 122003.
- II. That the complainants approached the promoter and showed interest in their upcoming project. That the Builder / Promoter made many promises and towering claims in their brochures, advertising and newspapers.
- III. That the complainants made an application to book a commercial shop in the upcoming project of the promoter and paid Rs. 01,00,000/- at the time of booking of the said commercial shop in the said project as per the instructions of the promoter.
- IV. That after this, the complainants also paid Rs.4,56,396/- and Rs.1,36,000/- to the promoter on 18.10.2019.

- V. That after that no document was executed by the promoter with malafide intentions and ulterior motive to defraud the complainants and to grab the hard earned money of the complainants.
- VI. That the complainants made several requests time and again to the builder/ promoter and made periodic visits at the office of the builder / promoter requesting them to provide allotment letter and execute agreement for sale in favour of the complainants. But the builder / promoter, to the shock and surprise of the complainants, did not pay any heed towards the requests of the complainants for about 2 years and did not provide the complainants any document in regard to the commercial shop booked by the complainants.
- VII. That after that, the complainants were provided a provisional allotment letter dated 22.07.2021, wherein it was intimated that the complainants has been allotted 'Commercial Unit No. G - 01 admeasuring 358.87 sq. ft. on ground floor in the said project of the builder / promoter namely "Park Street" located at Sec-85, Gurgaon, Haryana.
- VIII. That after this the complainants enquired and requested for the agreement, then the builder / promoter executed an agreement for sale on dated 03.06.2022 which is registered in the office of Sub – Registrar, Manesar vide Vasika no. 2238 dated 03.06.2022. That the clause 7.1 of the said agreement to deliver the possession of the commercial unit within 60 months from the date of execution of the said agreement which comes to 03.06.2027.
- IX. That the builder / promoter never gave any payment plan to the complainants and it had been promised and unanimously agreed upon by both the complainants and the builder / promoter that the remaining amount of the total sale consideration of the commercial unit booked by

the complainants in the said project of the builder / promoter shall be paid by the complainants at the time of possession.

- X. That the builder / promoter had neither provided any floor plan or payment plan to the complainants since the date of booking of the said unit nor they have annexed in the agreement for sale dated 03.06.2022.
- XI. That after this, the builder / promoter threatened the complainants by sending him a letter to grant final opportunity before cancellation dated 29.08.2022 and threatened the complainants to cancel the said commercial unit booked by the complainants, despite of the fact that the complainants had already paid Rs.6,92,396/- to the builder / promoter at the time of booking but the builder / promoter still asked the complainants to make the full remaining payment of Rs.26,49,404/- to the builder / promoter in regard to the said commercial unit booked by the complainants.
- XII. That the said payment demand of the builder / promoter is arbitrary and without any sufficient cause because the said demand has not been in compliance with any registered / sanctioned / unanimously agreed payment plan. That the said payment demand was also came so early within few months from the date of agreement for sale dated 03.06.2022.
- XIII. That after this, the complainants replied to the said payment demand letter by sending a legal reply on dated 05.09.2022 requesting the builder / promoter to not to cancel the unit of the complainants.
- XIV. That after this, the complainants received a reply dated 29.09.2022 from the builder / promoter. The builder / promoter has admitted in para 5, 6 and 7 that "it was an honest mistake of the builder / promoter to annex a blank document in agreement for sale dated 03.06.2022" and

that "the company somehow missed to affix the payment schedule and the company admits it".

XV. That in the meanwhile, the cancellation letter dated 23.11.2022 was issued intimating the cancellation of the commercial unit no. G-01 admeasuring 412.69 sq. ft. on ground floor booked by the complainants in the project of the builder / promoter namely "Park Street" situated at Sec-85, Gurgaon.

XVI. That the builder / promoter has never issued a payment plan to the complainants till date in regard to the commercial unit booked by the complainants.

XVII. That as per the section 11 (5) of the RERA Act, 2016, 'the promoter may cancel the allotment only in terms of the agreement for sale. Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause'. Hence, it is evident that the cancellation of the unit is not in accordance with the terms of agreement and also without any sufficient cause.

XVIII. That the complainants are aggrieved persons who have been defrauded by the builder/ promoter and has been cheated on the hands of the builder who not only has cancelled the allotment of the commercial unit booked by the complainants but also harassed the complainants since day 1 from the date of booking.

XIX. That the complainants have given all their hard earned money to the builder and booked the said commercial unit which has been cancelled by the builder who is dominating his position and abusing such power over the complainants and today the complainants are standing

nowhere without any money and property as he has been a victim of fraud on the hands of the builder / promoter.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s)
 - I. Direct the respondent to revoke the cancellation of the commercial unit allotted to the complainants.
 - II. Restraine the respondent from alienating/transferring/mortgaging the said commercial unit allotted to the complainants, to any other person and not to create any third party interest on the said unit.
5. On the date of hearing, the authority explained to the respondent /promoter on 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 by the respondent

6. The respondent contested the complaint on the following grounds. The submission made therein, in brief is as under; -
 - I. That the complainants made an application for provisional allotment of a retail shop bearing no. G-01 located on ground floor in the project developed by the respondent known as Park Street vide an application form. Further it is submitted that a Memorandum of Understanding dated 25.05.2022 was executed between the parties for the unit G-01 and the agreement to sale was executed between the parties on 03.06.2022.
 - II. That as per clause 7.1 of the agreement to sale the possession of the unit has to be offered within a period of 60 months with a grace period of 5 months from the date of execution of the agreement to sale i.e. 65 months from 03.06.2022 and the same is subject to force majeure conditions. The

due date of possession comes out to be 03.11.2027. But in the present case, the allotment of the complainants has been terminated vide termination letter dated 23.11.2022 owing to the wilful default of the complainants in clearing their dues and hence the complainants have no right whatsoever over the unit.

- III. That as per the MOU dated 25.05.2022 the basic sale price of the unit was Rs. 41,40,519/- . The basic sales price as mentioned under the MOU was exclusive of taxes, EDC, IDC, Power Back Up Charges, IFMS, IFCRF, FFC, AC, ECC, PLC, taxes and such other charges extra as applicable and more particularly defined under the agreement. As per the payment plan opted by the complainants, attached with the MOU as schedule 1, the complainants were supposed to make a payment of Rs. 17,43,658/- plus taxes at the time of completion of retail super structure.
- IV. That the payment plan was not annexed with the agreement to sale but the same was annexed with the MOU dated 25.05.2022 executed between the parties. The complainants have intentionally not disclosed the fact that an MOU dated 25.05.2022 was also executed by them which duly had the payment plan. It is reiterated that as per schedule 1, the complainants were supposed to make a payment of Rs. 17,43,658/- plus taxes at the time of completion of retail super structure. It was well within the knowledge of the complainants that at the time of the signing of the MOU, the retail super structure was already completed in September 2021 and therefore, they were liable to make payment as per Schedule-1 of the MOU dated 25.05.2022.
- V. That in view of the Schedule-1 of the MOU, the respondent company along with the MOU raised a demand dated 25.05.2022 towards payment of Rs. 17,43,658/- being balance of the agreed sales consideration plus

taxes. That the demand letter dated 25.05.2022 was handed over to the complainants by hand at the time of execution of the MOU itself.

VI. That despite regular follow ups, the complainants failed to come forward to clear their dues, due to which the respondents were constrained to issue a last and final opportunity letter dated 29.08.2022 to the complainants, requesting them to come forward and clear their dues. That instead of coming forward to clear the dues, the complainants rather chose to send a legal notice dated 05.09.2022 to the respondent. The respondent duly replied to the said legal notice vide response dated 29.09.2022. The respondent in its response letter dated 29.09.2022 specifically mentioned that the payment plan is duly attached with the MOU dated 25.05.2022 and requested the complainants to come forward and clear their dues as per the payment plan attached with the MOU.

VII. That timely payment was the essence of the contract and in case of failure to do so, the respondent is liable to cancel the allotment and forfeit the earnest money along with interest component on delayed payment and non-payment of any due payable to the promoter and other applicable charges. That on account of the wilful breach of the terms of the MOU and the agreement to sale by failing to clear the outstanding dues despite repeated requests, the respondent company was constrained to terminate the allotment of the unit.

VIII. That the unit being cancelled there is no privity of contract between the parties and the complainants have no right, title or interest in the unit in question and neither are allottees of the same and therefore the complaint is infructuous. That in furtherance of the cancellation of the subject unit, the respondent company has allotted the unit to one Mr. Pankaj Singh vide allotment letter dated 16.12.2022. That post allotment,

the allottee Mr. Pankaj Singh has also made substantial payment towards the booking.

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 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 The Town and Country Planning Department, Haryana 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

10. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainants.

- I. Direct the respondent to revoke the cancellation of the commercial unit allotted to the complainants.
- II. Restrain the respondent from alienating/transferring/mortgaging the said commercial unit allotted to the complainants, to any other person and not to create any third party interest on the said unit.

11. In the present complaint, the complainants seeks relief w.r.t the revocation of cancellation of the allotted unit vide letter dated 23.11.2022 and further in relation to the prevention of the creation of third-party rights over the unit allotted to them. The complainants were allotted unit bearing no. G-01, situated on Ground floor of the project titled "Park Street", located at Sector-85, Gurugram, pursuant to an allotment letter dated 01.06.2022. The Memorandum of Understanding (MOU) was executed between the parties on dated 25.05.2022 followed by the execution of an agreement to sell between the parties on dated 03.06.2022.

12. The complainants contends that the respondent arbitrarily cancelled the allotment of the unit on 23.11.2022 on the ground of non-payment of outstanding dues. The complainants further submits that the respondent did not annexed the payment plan in the agreement to sell due to which they were not able to make payments. They stated that due to non-availability of the payment plan the complainants also sent legal notice dated 05.09.2022 to provide the payment plan.

13. The respondent on the other hand, submits that the payment plan were duly annexed in the Memorandum of Understanding (MOU) dated 25.05.2022 and the payment demands were raised in accordance with

the payment plan annexed with and the respondent has issued demand letter dated 29.08.2022 and thereafter several reminders were also issued. Due to continued non-payment the respondent proceeded to cancel the allotment of the unit vide letter dated 23.11.2022. Now the question before the authority is whether the cancellation issued vide letter dated 23.11.2022 is valid or not.

14. Upon consideration of the documents placed on record and the submissions made by both the parties, the Authority is of the view that an examination of the payment plan is essential in order to determine the respective obligations of the parties and to assess the validity of the cancellation of the unit. The payment plan is reproduced below for ready reference:

S. No.	Payments to be made
(i)	EDC/IDC as and when demanded
(ii)	PLC charges- as applicable
(iii)	Rs. 17,43,658/- being balance of agreed sales consideration Plus Taxes at the time of completion of Superstructure of Retail Block.
(iv)	Rs. 17,43,658/- being balance of agreed sales consideration Plus Taxes at the time of Application of Occupation Certificate of Retail Block.
(v)	Power Back Up charges + Air Condition Charges + ECC+ FFC+ IFMS+ IFCRF+ Bulk Electricity + MCG+ Advance Maintenance and such other charges as per this MOU at the time of offer of possession of Retail Block.
(vi)	Registration Cost + Stamp duty and such other charges as per the Agreement for Sale.

15. It is observed that the total sale consideration of the unit in question was Rs. 43,84,006/-, out of which the complainants have paid a sum of Rs.

6,92,396/- to the respondent. As per the payment plan, the complainants were required to make the first payment towards the EDC/IDC as and when demanded thereafter, Preferential Location Charges (PLC) and the third instalment of Rs. 17,43,658/- was payable upon completion of the superstructure of the retail block. It is a matter of fact that the complainants have paid only Rs. 6,92,396/-. Therefore, the Authority observes that the demand raised by the respondent vide letter dated 29.08.2022 is valid. The complainants cannot evade or escape their obligation to make payment merely by taking the plea that there was no payment plan annexed. The respondent further for the payment of outstanding dues issued reminder dated 29.09.2022 but the complainants failed to honour its obligation to pay the amount on time. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit despite issuance of reminders, the complainants have failed to clear the outstanding dues. Therefore, the respondent cancelled the unit on 23.11.2022.

16. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainants are hereby declined as the complainants-allottee have violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainants after certain deductions as prescribed under law.
17. The paid-up amount shall be refunded after deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018.

18. The Hon'ble Apex court of the land in cases of *Maula Bux Vs. Union of India (1973) 1 SCR 928* and *Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136*, and followed by the National Consumer Dispute Redressal Commission, New Delhi in consumer case no. 2766/2017 titled as *Jayant Singhal and Anr. Vs. M/s M3M India Ltd.* decided on 26.07.2022, took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted 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. So, it was held that 10% of the basic sale price is reasonable amount to be deducted in the name of earnest money. Keeping in view, the principles laid down by the Hon'ble Apex court in the above mentioned two cases, rules with regard to forfeiture of earnest money were framed and known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides 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.

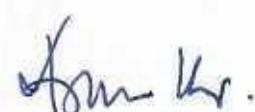
19. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondent is directed to refund the deposited amount of Rs. 6,92,396/- after deducting 10% of the sale consideration along with an interest @10.85% (the State Bank of India highest marginal cost of lending rate (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., 23.11.2022 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. Directions of the Authority

- i. The respondent builder is directed to refund the paid-up amount of Rs. 6,92,396/- to the complainants after deducting 10% of the sale consideration along with an interest @10.85% from the date of cancellation of allotted unit i.e., 23.11.2022 till the actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.
- ii. A period of 90 days is given to the respondent no. 1 to comply with the directions given in this order and failing which legal consequences would follow.

20. Complaint stands disposed of.

21. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 31.10.2025