

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

Complaint no. : 3075 of 2024
Date of order : 10.10.2025

Neha Kiran Kumar
Both R/o:- D-41, Gulmohar Park,
New Delhi 110049, Delhi, India

Complainant

Versus

Manish Buildwell Pvt Ltd.
Regd. Office at: S-1, IInd Floor,
Usha Chambers, 37 & 38, Central Market,
Ashok Vihar, Delhi 110052

Respondent

CORAM:
Arun Kumar

Chairman

APPEARANCE:
Jagdeep Kumar (Advocate)
Garvit Gupta (Advocate)

Complainant
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.N.	Particulars	Details
1.	Name of the project	"Manish Gallaexie91" sector -91, Gurugram.
2.	Nature of the project	Commercial project
3.	Project area	3.725 acres
4.	DTCP License no.	28 of 2009 dated 24.06.2009
5.	RERA registered or not	382 of 2017 dated 12.12.2017 valid up to 11.12.2022
6.	Welcome Letter	29.07.2015 (on page 41 of complaint)
7.	Application form for allotment of unit	04.07.2015 (Page 26 of Reply)
8.	Date Agreement for sale between the respondent and the complainant	07.12.2022 (on page 43 of reply) :- the complainant alleges that the BBA was never executed by the developer
9.	Unit no.	Unit no. G-132, ground floor, 294 sq. ft.
10.	Total sale price	Rs. 39,49,155/- (as per BBA on page 51 of reply)
11.	Paid up amount	Rs. 16,00,000/- (as per receipt on page 43,45,46,47 of complaint) Last payment made on 03.10.2019 (on page 47 of complaint)
12.	Conversion of unit from retail to pre-leased anchor	Super area increased to 298 sq. ft.
13.	Possession clause	15. The Company, based upon its present plans and estimates, and subject to all

		<p><i>exceptions. proposes to handover possession of the Commercial Unit by end of 2021 ("Commitment Period"). Should the possession of the Commercial Unit not be given within the Commitment Period, the Allottee agrees to an extension of One Hundred and Eighty (180) days ("Grace Period") after expiry of the Commitment Period...</i></p> <p>(on page 61 of reply)</p>
14.	Due date of possession	31.06.2022 (on page 61 of reply) [Note: As per clause 15 of the Agreement to sell - By the end of 2021+ 180 days of grace period]
15.	Demand letter	07.06.2023 (on page 85 of reply) 20.06.2023 (on page 89 of reply) 23.06.2023 (on page 90 of reply) 27.06.2023 (on page 91 of reply)
16.	Pre-termination letter	30.06.2023 (on page 14 of reply)
17.	Possession letter	NA
18.	Occupation certificate	NA

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- i. The complainants - Ms. Neha Kiran Kumar is law abiding citizens of India, currently residing at house no. D-41, Gulmohar Park, New Delhi-110049, Delhi, India.
 - ii. That the respondent is a real estate development company incorporated under the Companies Act,1956, working in field of construction and development of residential as well as commercial projects across Delhi NCR Region of country in the name of M/s. Manish Buildwell Private

- Limited, having its registered office at S-1, 2nd Floor, Usha Chambers- 37 & 38, Central Market, Ashok Vihar, New Delhi – 110046..
- iii. That the real estate project named “manish gallexie91”, which is the subject matter of present complaint, is situated at sector-91 , Gurugram, therefore, the Authority do have the jurisdiction to try and decide the present complaint.
 - iv. That the respondent had advertised itself as a very ethical business group that lives onto its commitments in delivering its commercial projects as per promised quality standards and agreed timelines. That the respondent while launching and advertising any new commercial project always commits and promises to the targeted consumer that their dream retail space & shop will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them. They also assured to the consumers like complainant that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction such as licence no. 28 of 2009 dated 24.06.2009 & approval of zoning plan dated 31/10/2012 from Town & Country Planning Department, Haryana, NOC for Construction Purposes from office of Administration, HUDA, Gurgaon and Environment Clearance dated 31/07/2014 from Ministry of Environment, Forest & Climate Changes for completion of the real estate project sold by them to the consumers in general.
 - v. That the respondent was very well aware of the fact that in today's scenario looking at the status of the construction of commercial and housing projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed commercial space within the agreed and promised timelines and that is the prime factor which a

consumer would consider while purchasing his/her dream retail space/ commercial space. Respondent, therefore used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream retail space/ commercial space will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent for shop along-with the installments of loan like in the case of other builders in market.

- vi. That somewhere in the mid of 2015, the respondent through its business development associate approached the complainant with an offer to invest and buy a retail space/ commercial space in the proposed project of respondent, which the respondent was going to launch the project namely "Manish Gallexie91" in the Sector-91, Gurugram. On 04/07/2015 complainant had a meeting with respondent at the respondents branch office where the respondent explain the project details of "manish gallexie91" and highlight the amenities of the project. Respondent represented to the complainant that the respondent is a very ethical business house in the field of construction of residential and commercial project and in case the complainant would invest in the project of respondent then they would deliver the possession of proposed retail space/ commercial space on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured to the complainant that the respondent has already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on by end of 2018 with the promised quality and specification and all leading banks including icici & hdfc bank's are providing



commercial loan to this project as all sanctions are duly obtained by the respondent. The respondent had also shown the brochures and advertisement material of the said project to the complainant and assured that the builder buyer agreement for the said project would be issued to the complainant within one week of booking to made by the complainant. The complainant while relying upon those assurances and believing them to be true, complainant booked a retail space shop bearing Shop no. G-132, Manish Gallexie 91, Sector 91, Gurugram, Haryana in the proposed project of the Respondent measuring approximately super area of 294 sq. ft. in the commercial project to be developed by respondent. Accordingly the complainant have paid Rs. 5,00,000/- through cheque bearing No 000064 dt 05/07/2015 and Cheque No. 348804 dt 10/07/2015 as booking amount on 04/07/2015.

- vii. That in the said application form, the price of the said shop was agreed at the rate of Rs. 11900/- per Sq. ft. mentioned in the said application form. At the time of execution of the said application form, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said shop from the area or the price committed by the respondent in the said application form or agreed otherwise.
- viii. That as per the final discussion between the complainant & respondent the sales consideration for said shop was Rs. 39,30,045/- (which includes the charges towards Basic Price - Rs 34,98,600/-, Govt Charges - 1,39,650/-, Car Parking - Rs 0/-, IFMS Rs 29,400/- and PLC charges Rs 2,62,395/- exclusive of service tax and GST.

- ix. The respondent issued the welcome letter dated July 29, 2015 for confirming the booking of retail space shop no. 133, Ground Floor, Gallexi91, Sector 91, Gurgaon, Haryana. That complainant made an further payment of Rs 3,00,000/- through cheque no 000076 dated 25.12.2015 on account of part payment towards the consideration Value. That complainant made an further payment of Rs 3,00,000/- through cheque no 000082 dated 08.05.2016 on account of part payment towards the consideration Value.
- x. That complainant made an further payment of Rs 5,00,000/- through NEFT/RTGS between 26th September 2019 to 1st October 2019 on account of part payment towards the consideration Value. In total complainant already paid the amount of 16,00,000/- upto now, which is comes to 40% of consideration value, but respondent didn't issued the signed copy of BBA.
- xi. That complainant approached various financial institutions to get the commercial loan approved for her shop in the Project "Manish Gallexie91" but none of the financial institution process the file in want of allotment letter & builder buyer's agreement and various other credentials which respondent need to furnish before the financial institutions. Complainant visited the office of Respondent on 10/10/2016 to enquire the status of project and for obtaining the copy of allotment letter & buyers agreement on which respondent assured that before demanding next installment respondent will provide allotment letter and bba along with all necessary documents to avail the bank loan.

- xii. That complainant informed the respondent on 10/10/2016, that the respondent had built a certain level of trust in complainant by assuring that complainant need not to worry about funding the instant commercial project, upon being explained that complainant is a salaried woman and would require financial assistance from financial institutions. That respondent had promised that the respondent company has various connections and affiliations with the ICICI and working upon HDFC Bank from where, complainant can easily obtain finances for funding the instant commercial unit in said project of respondent. That the management of the respondent company had suggested various conditions to complainant which were only beneficial for the respondent company to extract money from our complainant. It is pertinent to mention here that certain conditions which led to a turmoil post the transfer of payments made by complainant were never even mentioned while at the time of booking of the instant commercial unit.
- xiii. That respondent got the project registered under the RERA Act on 12.12.2017 through registration No. 382 of 2017 dt 12.12.2017 and bound to fulfill all the obligation caste upon the Respondent under the RERA Act 2016. As per the RERA Registration Certificate the due date of completion of project was 11.12.2022 whereas at the time of booking respondent promised to handover the possession of commercial unit by end of 2021 with a grace period of 180 days.
- xiv. That the complainant received an email dated 23.04.2022 from Mr. Deepak Tuteja on behalf of Manish Buildwell Pvt Ltd, whereas it had been proposed that the nature of unit booked by complainant was to be

converted from “retail space” to that of a “virtual anchor” and the said proposal was subject to the explicit consent of complainant. The complainant immediately replied the said email of respondent on April 25, 2022 and informed the respondent that the complainant has first discuss with his family and only after that complainant will give his final answer.

- xv. That the complainant before proceeding with any correspondence regarding the conversation of basic aspect of shop from retail space to that of a virtual anchor space, complainant immediately contacted Mr. Deepak Tuteja over the phone call to register her grievance and to enquire the status of bba and fulfillment of formalities & documents which respondent need to furnish before the financial institutions or banks necessary to process loan / finance of commercial shops to allottees. However, pursuant to no positive response Complainant wrote an email dated 12.06.2022 to respondent requesting for a copy of the builder buyer agreement.
- xvi. That respondent through email dated 20.06.2022 the email of complainant was acknowledge by the respondent and complainant was promised by respondent that her concerns will be resolved and a copy of bba shall be provided to complainant.
- xvii. That pursuant to further in-action on part of respondent, complainant again wrote an email dated 31.08.2022 and asked respondent to provide a copy of the bba and rera registration in order to enable her to avail loan services and support for the financial assistance from bank / financial institutions as promised by the respondent while booking the commercial unit of complainant.

- xviii. That on 07.12.2022 through an email a copy of blank bba was provided on behalf of axon developers which contained no details regarding complainants credentials, consideration value and other vital details required to execute the bba. The email dated 07.12.2022 was done as perfunctory compliance of the issues raised by our Complainant through email dated 12.06.2022 & 31.08.2022.
- xix. The complainant has written multiple email correspondence on 09.02.2023 , 10.02.2023, 15.02.2023, 18.02.2023, 22.02.2023 and 26.03.2023 requesting for the proper bba which contains all the details regarding complainant's booking and other vital details, however all such requests fell on deaf ears.
- xx. That in order to fortify the mischievous and arbitrary conduct of respondent, complainant was provided with an undated letter on behalf of Mr. Prateek Jalan and a blank bba without any signature or stamp & date. by way of the said undated letter, the nature of the unit purchased by complainant was unilaterally changed from "retail space" to pre-leased space/ virtual anchor space without the consent of the complainant. it is noteworthy to mention that complainant was compelled to sign on the said undated letter however, the same was received by the complainant under the protest and complainant had made specific endorsement on the said undated letter stating that the said undated letter and blank unsigned and unstamped bba were received by complainant under protest.
- xxi. That despite of several email from complainant to respondent for obtaining allotment letter and builder buyer agreement to avail the loan facilities from banks for the commercial unit booked by complainant,



- respondent send an reminder letter dated 20th june 2023 through email on 20th june 2023 for payment of installment, which is against the provision of rera act, allotment letter and bba were required to be executed upon the payment of 10% of the total consideration, however despite of the payment of 40% of total consideration value, respondent shows reluctance to execute the bba and only demanding installments.
- xxii. That on 24 June 2023 complainant replied to the payment reminder letter of respondent dated 20 june 2023, complainant expressly denied the demand of respondent through email dated 24th june 2023, on the ground that the Respondent not yet confirmed the change in the unit size and did not provide the basic documents to process the bank loan.
- xxiii. That on 30 June 2023 respondent issued a pre-cancellation notice through email by neglecting provisions of rera act 2016 & all the emails sent by the complainant to provide the allotment letter and builder buyer agreement. respondent unilaterally taking decisions to suppress the rights of complainant & violating the provisions of rera act 2016, allotment letter and bba were required to be executed upon the payment of 10% of the total consideration.
- xxiv. That on 30 june 2023 complainant immediately replied to the pre-cancellation notice of respondent dated 30 june 2023, complainant informed the respondent that the complainant is continuously requesting the respondent for his allotment letter, bba and bank loan documents, but the respondent is not providing these documents for his ulterior motives, for this reason, to protect his interests, the complainant first wants the allotment letter, bba and bank loan documents. the complainant requests the respondent to follow a statutory procedure

and the complainant tells the respondent that being an allottee the complainant has made all the payments on time and he wants the respondent should also follow the statutory procedure of allotment and raising demands of balance payment only after issuing the allotment letter, bba copy and bank Loan documents.

- xxv. That complainant also revert the pre-cancellation email dated 30 june 2023 of respondent, on 01 july 2023 through her counsel " adab singh kapoor & associates" and demand the allotment letter & bba copy to pay further. Complainant already paid 40% amount whereas allotment letter and bba were required to be executed upon the payment of 10% of the total consideration. RERA Act barred builders to raise demand more than 10% before executing Builder Buyer agreement. Through reply complainant instruct respondent to not to change the principal aspect of shop from "retail space" from "pre leased space"/ "virtual anchor" space.
- xxvi. That subsequent to reply of pre cancellation letter dated 30th june 2023 submitted by the complainant through her counsel " adab singh kapoor & associates" on 1 july 2023, respondent approached the complainant through phones calls, after several discussions respondent's representative Mr. Harpreet inform complainant through whatsapp message that meeting with managing director of respondent company mr. manish is being arranged for 30th october 2023, respondent request complainant to visit the head office on 30th october 2023 for a meeting & to sign the bba documents. complainant attended the meeting with managing director mr. manish of respondent company on 30th october 2023, during the meeting complainant requested respondent to incorporate the change in the name of complainant which complainant

did in year 2017, complainant provide the copy of all relevant documents pertains to "change in name", such as gazette notification, updated pan card and addhar card to respondent through whatsapp, respondent prepared the bba document with name "Neha Kiran Kumar" which complainant signed in front of Mr. Harpreet, after which the respondent promised that these bba documents would be delivered to the complainant through courier within a week, because the person authorized to sign the bba document on behalf of respondent company was not present that day.

- xxvii. That the complainant still continuously chasing the respondent for her BBA documents after her meeting on 30th October 2023, but the respondent did not give any satisfactory answer. Respondent's representative Mr. Harpreet finally confirmed to meet with a whatsapp message for 26 december 2023 asking complainant to come to Saket, delhi at 3 pm for a meeting, This meeting was very shocking for the complainant because Mr. Harpreet told the complainant that the BBA document which was signed by the complainant on 30 October 2023, has been rejected by the respondent's legal team. Mr. Harpreet give a very weird reason for rejection of documents, that complainant had to be signed the documents on the left side whereas the complainant had signed on the right side, which was signed in his presence only. This time also the respondent's promise turned out to be false, neither the allotment letter nor the BBA documents were received from the Respondent till date.
- xxviii. That respondent has caused deception because of which Complainant had trusted and chose to invest her hard-earned money in the instant

- commercial project. That respondent had promised to furnish the documents that are required in order obtain finances from the bank. That to her utter shock and dismay, respondent has failed to keep up promises with complainant which caused deception and complainant is in fact, being cheated by the company. That complainant has failed to obtain financial assistance from the bank to fund the instant commercial project because respondent has failed to furnish a document at the right time.
- xxix. It is important to mention here that complainant had already advanced a sum which has already crossed the threshold limit of 10% of the total amount payable, in the FY 2015, in order to secure a BBA from the Company. In fact, the amount has already been advanced to respondent, to an extent of 40% of the total amount that is outstanding on complainant, as per the promises made before entering the instant commercial project. It is noteworthy to mention here that respondent have been trying to extort money from complainant by duping her in the name of GST, by disclosing her at a very later stage that the outstanding amount will go to an extent of Rs. 44,00,000/-. It is pertinent to mention herein that such calculations in relation to the additional charges of GST, were never mentioned by respondent, before starting the commercial project, nor it has been stated in any of the documents or receipts provided to complainant. In fact, as per the discussions it was clear that the total amount includes all the GST charges apart from the fact that any such GST conditions have neither been mentioned orally nor in any of the necessary documents provided to complainant.
- xxx. That firstly respondent established complainant's trust on the instant commercial project and subsequently engaged in deceitful actions,

extracting funds from complainant's hard-earned income. In fact, later, the management of the respondent company had stated to complainant that such commercial projects are only to be sold out to the business class people and not the salaried people. It is pertinent to note that the management had first assured complainant that she need not worry about getting a loan from the bank, upon insisting that she is a salaried woman and later, the management of the company themselves accepted that they only deal with the business class people. It is important to mention here that complainant was being harassed by the management of the respondent company upon such contradictions and the tone in which it was being conveyed to her. It is also pertinent to mention that the director of the respondent company himself flipped at the time of one meeting on 30th October 2023, where he stated that it may take another 6 months for them to get the loan sanctioned from the bank for her, which clearly contradicts the promises of having connections or affiliations with any of the Banks.

- xxxi. That complainant had repeatedly demanded for a bba from respondent, which had to be furnished at the bank for getting a loan to pay the outstanding amount for the instant project. It is noteworthy to state that all the payments as and when demanded by respondent, were duly made by complainant without any delay and respondent, never failed to remind complainant for further payments at regular intervals which proves that such duties to extort money from complainant were successfully accomplished without any fail but when complainant had asked for the documents for securing a bank loan, respondent very

cleverly started quarrelling and started concocting tactics to delay the procedure.

- xxxii. That on the date agreed for the delivery of possession of said shop as per date of booking and later on according to the terms of empty und executed buyers agreement is end of 2018, the complainant had approached the respondent and its officers for inquiring the status of allotment letter , bba & delivery of possession but none had bothered to provide any satisfactory answer to the complainant about the completion and delivery of said shop. the complainant thereafter kept running from pillar to post asking for the delivery of his shop but could not succeed in getting any reliable answer.
- xxxiii. That the conduct on part of respondent regarding delay in delivery of possession of the said shop has clearly manifested that respondent never ever had any intention to deliver the said shop on time as agreed. It has also cleared the air on the fact that all the promises made by the respondent at the time of sale of involved shop were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainant to buy the said shop basis its false and frivolous promises, which the respondent never intended to fulfill. The respondent in its advertisements had represented falsely regarding the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainant.
- xxxiv. On 25/06/2023 complainant inform respondent telephonically that respondent is creating anomaly by not providing the buyers agreement as per RERA Act 2016. Complainant makes it clear to respondent that, if respondent not provide the buyers agreement as specified under The

Haryana Real Estate Rules 2017 then complainant will approach the appropriate forum to get redressal.

- xxxv. That it is noteworthy to state that complainant, after seeing various series of uncalled events and acts of respondent, such as furnishing a blank bba document, false assurance, arbitrary decision of changing the basic aspect of commercial unit from retail space to virtual anchor space, willful default and sever violation of RERA Act by not providing the signed copy of bba to complainant even after taking 40% payment of consideration value, complainant had realized that complainant is being cheated and manipulated to an level where her money is being extorted forcefully by asking her to advance further payments without giving a heed to her demands for securing finances from banks. In furtherance to such unscrupulous act of the respondent, the trust of investing in the instant project is lost and therefore complainant wishes to get refund of the entire funds along with interest. Respondent created a grave situation for complainant, by leaving no other option, but to demand the entire payments made by complainant along with interest from the day it was made to respondent. Complainant after waiting for Nine long years for allotment letter and bba documents, sent a legal notice through her counsel " adab singh kapoor & associates" on 22nd jan 2024 to demand the refund of entire money along with interest, however all such requests fell on deaf ears..
- xxxvi. That the complainant is perforce to file the present complaint before the Authority to secure the statutory rights & to safeguard her interest in the said commercial project. Complainant is eagerly waiting for allotment

letter and signed copy bba to avail the bank loan to pay the upcoming payment demands of respondent.

xxxvii. That on 17th June 2024 respondent sent an email to update the construction status of said stalled project and from the photographs it can be very well understand only 30% to 40 % progress is achieved in last 10 years, there hardly be any labor working at site.

C. Relief sought by the complainants: -

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

- I. Pass an order to restrain the Respondent from arbitrary cancellation of Commercial Unit.
- II. Pass an order to direct the Respondent to issue the Allotment Letter and Execute the BBA for the unit booked by the Complainants.
- III. Pass an order to direct the Respondent to pay interest at the rate of 15% on Rs.16,00,000/- (Rupees Sixteen Lakh Only) from due date of Possession (i.e 31st December 2018) to till the physical possession of said flat to complainant.
- IV. Pass an order to direct the Respondent to update the construction status of project to Complainant.
- V. Pass an order to direct Respondent to provide the valid offer of Possession, physical Possession of Flat and also direct the Respondent to execute the Conveyance Deed.
- VI. Pass an order to direct the Respondent to pay an amount of Rs. 55,000/- to the Complainant as cost of the present litigation.

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) That at the outset, respondent humbly submits that each and every averment and contention, as made in the complaint, unless specifically admitted, be taken to have been categorically denied by respondent and may be read as travesty of facts.
- b) The complainant has sought reliefs under section 18 of the rera act but the said section is not applicable in the facts of the present case and as such the complaint deserves to be dismissed. It is submitted that the operation of section 18 is not retrospective in nature and the same cannot be applied to the transactions that were entered prior to the RERA Act came into force. In the present case also, the booking was executed much prior to the date when the RERA Act came into force and as such section 18 of the RERA Act cannot be made applicable to the present case.
- c) That the respondent's promise to complete the construction within the period given in the said clause was dependent upon timely payment of the instalments by the complainant. Since the complainant failed to make payment as per the agreed payment schedule the respondent was under no obligation to complete the construction within the given period. As such the complainant cannot be allowed or compensation or to rescind the contract and seek refund of the amount on the ground that the construction was not completed within the given period. The respondent relies upon section 53 and section 54 of the Indian Contract Act 1872 in this regard.

- d) It is submitted without prejudice that the alleged delay in delivery of possession, even if assumed to have occurred, cannot entitle the complainant to any relief contrary to or inconsistent with the contractual terms agreed between the parties and the breach thereof cannot entitle the complainant to seek refund of the amount or to seek interest and compensation beyond what was agreed.
- e) That the complainant has no locus standi to file the present complaint. The complainant has failed to produce any registration certificate or memorandum of its objects. Thus, it is submitted that the complainant cannot be given a legal status in the absence of such documents and therefore is not entitled to file and prosecute the instant proceedings. The complaint is liable to be dismissed on this ground alone.
- f) That the respondent is a reputed and renowned real estate developer, enjoying an impeccable reputation in the real estate industry for the disciplined and time bound execution of projects undertaken by it. The projects implemented and executed by the respondent are considered to be architectural landmarks.
- g) That the intending allottees had approached the respondent for purchase of unit in the aforesaid project. It is pertinent to mention that the intending allottees prior to approaching the respondent for purchasing unit had undertaken detailed and elaborate verification of the title of the project land as well as competence, capacity and capability of the respondent with regard to the execution of the project and availability of resources. It is pertinent to note that the intending allottees had completely familiarized themselves with the dimensions and other details of the unit intended to be purchased by them and this fact had been categorically recorded in the booking application form. The

complainant alleging to be espousing the cause of its alleged members is indulging in deception and is stopped from alleging any discrepancy or deficiency in respect of the unit on the basis of frivolous contentions contained in the complaint. Furthermore, the unit in question have been sold on 'as is where is' basis. The complainant has withheld this fact from this Authority and therefore there is absolutely no equity in its favour.

- h) That the said Act i.e. The Real Estate (Regulation & Development) Act, 2016 is a complete code in itself and as per the provisions of the said Act, the legislature had categorically formed two separate bodies i.e. the Authority under Section 20 for Regulatory functions under the Act and the Adjudication officer under section 71 of the Act for adjudicatory function. Thus there is a clear distinction under the said Act including the regulatory and adjudicatory functions as provided under the said Act. Thus, based on this Principle this Hon'ble Regulatory Authority by accepting the present Complaint is exercising the adjudicatory function which is against the principle of law.
- i) It is submitted that since the Preliminary Objections are of a jurisdictional nature which go to the root of the matter, and as per settled law, the same should be decided in the first instance. It is only after deciding the question relating to maintainability of the Complaint that the matter is to be proceeded with further. The preliminary and jurisdictional objections are being raised for dismissal of the Complaint. Without prejudice to the contentions that unless the question of maintainability is first decided, the Respondent ought not to be called upon to file the reply on merits to the Complaint, this reply is being filed by way of abundant caution, with liberty to file such further reply as may be necessary, in case the Complaint is held to be maintainable.

- j) It is submitted that the respondent sent two copies of the buyer agreement to the complainant however, for the reasons best known to the complainant even after repeated reminders and follow ups being sent to the complainant, the complainant did not acted further and executed the buyer's agreement.
- k) It is submitted that as per the application for allotment which is binding between the complainant and the respondent, both have agreed upon their respective liabilities and consequences in case of breach of any of the conditions specified therein. In view of the above, the captioned complaint is not maintainable in law and is liable to be dismissed in limine. It is a well settled proposition of law that the Courts cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract; the responsibility of the court is to interpret appropriately the existing contract and decide the rights and liabilities of the parties within the four corners of the contract.
- l) That the complainant is chronic defaulters in making payment on time contrary to the agreed terms. It is submitted that on many occasions repeated demand letters and reminders were issued to the complainant for payment and consequently the allotment made in favour of the complainants was cancelled by the respondent. Even after repeated demands complainant were not ready to make the payment. Hence, complainants are not entitled to get any reliefs from this Authority.
- m) It is submitted that the Application for Allotment and the Agreement to be executed in furtherance thereof delineates the respective obligations, covenants and liabilities of the complainants as well as the respondent in case of breach of any of the conditions specified therein. In this view of

the matter, the complaint is not maintainable in law and is liable to be dismissed in limine.

- n) That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone.
- o) That the complainant have not come before this Authority with clean hands and have suppressed vital and material facts from this Authority. The correct facts are set out in the succeeding paras of the present reply.
- p) That the complainant approached the respondent and expressed interest in booking of an apartment in the affordable housing developed group housing developed by respondent known as "Sixty Three Golf Drive" situated in Sector 63, Gurugram Haryana. Prior to the booking, the complainant conducted extensive and independent enquiries with regard to the project and only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- q) That thereafter the complainant, vide application form applied to the respondent for allotment of the unit. Pursuant thereto residential flat bearing no. 107, Tower D, admeasuring carpet area of 598 sq. ft. and balcony area of 95 sq. ft. was allotted vide provisional allotment letter dated 11.01.2016. The complainant represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant and proceeded to allot the unit in question in their favor.
- r) Thereafter, an agreement to sell was executed between the complainant and the respondent. It is pertinent to mention that the agreement was

consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.

- s) That as per clause 4.1 of the agreement, the due date of possession was subject to the allottee having complied with all the terms and conditions of the agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect. That as per clause 4.1 of the agreement the respondent endeavored to offer possession within a period of 4 years from the date of obtainment of all government sanctions and permissions including environment clearance, whichever is later. That it is also pertinent to note that the possession clause of the agreement is with par with the clause 1(iv) of the affordable housing policy 2013.
- t) That, the building plan of the project was approved on 10.03.2015 from DGTCP and the environment clearance of the project was received on 16.09.2016. Thus, the proposed due date of possession, as calculated from the date of EC, comes out to be 21.08.2021. That it is pertinent to mentioned herein that the Authority vide notification no.9/3-2020 dated 26.05.2020 had allowed an extension of 6 months for the completion of the project the due of which expired on or after 25th March 2020, on account of unprecedented conditions due to outbreak of Covid-19. Hence, the proposed due date of possession comes out to be 16.03.2021.
- u) That however, the offer of possession was also subject to the incidence of force majeure circumstances under clause 16 of the Agreement. That the

construction and development of the project was deeply affected by such circumstances which are beyond the control of the respondent.

- v) The respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court of Punjab & Haryana and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost for 2 years that the scarcity as detailed aforesaid continued, despite which, all efforts were made and materials were procured at 3-4 times the rate and the construction of the project continued without shifting any extra burden to the customer. It is to be noted that the development and implementation of the said project have been hindered on account of several orders passed by various courts.
- w) It is importance to mention herein that as per license condition developer are required to complete these projects within a span of 4 years from the date of issuance of environmental clearance since they fall in the category of special time bound project under section 7B of The Haryana Development and Regulation of Urban Area Act 1975, it is needless to mention that for a normal group housing project there is no such condition applied hence it is required that 4 years prescribed period for

completion of construction of project shall be hindrance free and if any prohibitory order is passed by competent authority like National Green Tribunal Or Hon'ble Supreme Court then the same period shall be excluded from the 4 years period or moratorium shall be given in respect of that period also. It is important to mention herein that section 7(2)(i) of the act itself recognizes the relaxation for renewal of license in case the delay in execution of development work was the reason beyond control of the colonizer, here also colonizers were estopped because of force majeure.

- x) Therefore, it is safely concluded that the said delay of 422 days in the seamless execution of the Project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay. Thus, from the facts indicated above and documents appended, it is comprehensively established that a period of 422 days was consumed on account of circumstances beyond the power and control of the Respondent, owing to the passing of aforesaid Orders by the statutory authorities.
- y) It is further submitted that despite there being a number of defaulters in the Project, the Respondent had to infuse funds into the Project and have diligently developed the Project in question. That it must be noted by the Hon'ble Authority that despite the default caused, as a gesture of goodwill, with good intent the Respondent got sanctioned loan from SWAMIH fund of Rs. 44.30 Crores to complete the project and has already invested Rs. 35 Crores from the said loan amount towards the project. That further the Respondent has already received the FIRE NOC, LIFT NOC, the sanction letter for water connection and electrical inspection report.

- z) That the Respondent has applied for occupation certificate on 08.12.2023. it is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the statutory authority concerned, respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the statutory authority concerned over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the Respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.
- aa) That the complainant has failed to make any payment of the installment at "within 36 months from the due date of allotment" due on april 2019 along with partial payments towards previous installments. That in accordance with the same, it is submitted that the complainant, cannot rightly contend under law that the alleged period of delay continued even after the non-payment and delay in making the payments as stated above. That the non-payment by the complainant severally affected the construction of the project and funds of the respondent. That due to default of the complainant, the respondent had to take loan to complete the project and is bearing the interest on such amount. That the respondent reserves its right for claim of damages before the appropriate forum.

- bb) That it is the obligation of the complainant under the Affordable Housing Policy, 2013 and the Act to make timely payments for the unit. In case of default by the complainant the unit is liable to be cancelled as per the terms of Affordable Housing Policy, 2013.
- cc) That in compliance of the above-mentioned provision the respondent issued a various reminder letters requesting the complainant to make the outstanding payment. That in complete default the Complainant failed to make payment within 15 days.
- dd) That the respondent after obtaining all the mode to communicate with the complainant but didn't received any response from the complainant regarding the payment of the due amount and at the same time complainant miserably fail to compliance with the terms and condition of the BBA signed by the complainant the respondent on 06.04.2024 through publication announce a general reminder to the complainant for the compliance of the due payment but still didn't received any revert from the complainant regarding the same.
- ee) Thus, the unit of the complainant is liable to be canceled in terms of the Clause 5(iii) i affordable housing policy and the clause 3.7 of the BBA.
- ff) That it is clearly evident that the complainant despite all the reminders failed to make payment against the instalment. That the respondent earnestly requested the complainant to make payment. however, the complainants did not pay any heed to the legitimate, just and fair requests of the respondent. All requests of the Respondent to make payment fell on deaf ears of the Complainant.
- gg) That the complainant has not only in breach of the buyer's agreement but also in breach of the affordable housing policy and the rera act, by failing to make the due payments of installments. the complainant is responsible

for all the consequences of breach of the buyer's agreement and violation of RERA.

- hh) That the complainant has intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favor of the complainant to institute or prosecute the instant complaint. The complainant has preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent.
- ii) That in light of the bona fide conduct of the respondent, the fact that no delay has been caused to the complainant. The non-existence of cause of action this complaint is bound to be dismissed with costs in favour of the respondent.
- jj) Without prejudice, assuming though not admitting, relief of delayed possession charges, if any, cannot be paid without adjustment of the outstanding installment from the due date of installment along with the interest at the rate of 15%.
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 Pass an order to restrain the Respondent from arbitrary cancellation of Commercial Unit.

F.II Pass an order to direct the Respondent to issue the Allotment Letter and Execute the BBA for the unit booked by the Complainants.

F.III Pass an order to direct the Respondent to pay interest at the rate of 15% on Rs.16,00,000/- (Rupees Sixteen Lakh Only) from due date of Possession (i.e 31st December 2018) to till the physical possession of said flat to complainant.

F.IV Pass an order to direct the Respondent to update the construction status of project to Complainant.

F.V Pass an order to direct Respondent to provide the valid offer of Possession, physical Possession of Flat and also direct the Respondent to execute the Conveyance Deed.

F.VI Pass an order to direct the Respondent to pay an amount of Rs. 55,000/- to the Complainant as cost of the present litigation.

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, it is not in dispute that the complainant applied for allotment of a commercial unit bearing no. G-132, ground floor, admeasuring 294 sq. ft., in the project "Manish Gallaexie91", Sector-91, Gurugram, vide application dated 04.07.2015 and was issued a welcome letter dated 29.07.2015. It is further an admitted position that the complainant has paid a total amount of Rs.16,00,000/- against the total sale consideration of Rs.39,49,155/-, the last payment having been made on 03.10.2019. Thus, approximately 40% of the total sale consideration stands paid by the complainant.
13. The complainant has contended that despite repeated requests, no duly executed builder buyer agreement was furnished to her and that the respondent continued to raise demands without complying with the statutory requirement under Section 13(1) of the Act. The respondent, on the other hand, has annexed a copy of a disputed agreement for sale and has relied upon the possession clause contained therein. Relevant portion of the section is reproduced hereunder :-

13. No deposit or advance to be taken by promoter without first entering into agreement for sale. -

(1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

14. At the outset, it is observed that more than 10% of the total sale consideration was admittedly accepted by the respondent without demonstrating that a duly executed agreement for sale was entered into at the relevant time. Such conduct is in clear contravention of section 13(1) of the act, which prohibits a promoter from accepting more than ten percent of the cost of the unit without first entering into a valid agreement for sale.
15. However, the dispute regarding execution of the agreement for sale pertains primarily to enforceability of financial obligations and termination clauses. The possession timeline mentioned in the annexed agreement has not been disputed by the complainant. The respondent itself has relied upon the possession clause and has invited this Authority to take the due date of possession from the said agreement for sale.
16. The possession clause provides that the company proposes to hand over possession by end of 2021 with a grace period of 180 days. Accordingly, the committed period of possession emerges as 31.06.2022. This Authority clarifies that the said timeline is being taken only for the limited purpose of determining the committed period of delivery and not for enforcing any financial or penal stipulation against the complainant.
17. The record reflects that demand letters were issued in June 2023 and a pre-termination notice dated 30.06.2023 was issued alleging non-payment of dues. However, no final cancellation letter has been placed on record to demonstrate that the allotment was conclusively terminated in accordance with law by the respondent. A pre-termination notice, by itself, does not amount to cancellation unless followed by a definitive act of termination in compliance with contractual and statutory requirements. Therefore, it is held that the allotment of the subject unit continues to subsist.

18. It is further observed that no possession letter has been issued to the complainant and no occupation certificate in respect of the subject unit has been placed on record. The committed due date of possession being 31.06.2022, and no valid offer of possession having been made till date, the respondent stands in delay beyond the committed period.
19. The respondent has contended that Section 18 of the Act is not applicable as the booking was made prior to the enactment of the Act. This contention is devoid of merit. The project stood registered under the Act vide Registration No. 382 of 2017 dated 12.12.2017. The delay in handing over possession occurred after registration of the project and after the Act came into force. The cause of action for delay crystallized upon expiry of the committed period of possession i.e., 31.06.2022. Accordingly, the provisions of Section 18(1) of the Act are squarely attracted. Relevant portion of the section is reproduced hereunder :-
- Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*
20. The complainant has expressed her intention to continue with the project and seeks possession along with interest for delayed possession. In terms of the proviso to Section 18(1), where an allottee does not intend to withdraw from the project, she shall be paid interest for every month of delay till the handing over of possession at the prescribed rate.
21. In view of the above discussion, the pre-termination notice dated 30.06.2023 is held to be arbitrary and unsustainable. The complainant continues to remain an allottee of the subject unit and is entitled to protection under the Act, including interest for delay from the committed due date of possession till valid offer of possession.

22. **Due date of handing over of possession:** The due date of possession is being calculated from the possession clause 15 of the Agreement to sell. Therefore, the due date of possession comes out to be December 2021 with extension of 180 days, which shall be 31.06.2022.
23. **Admissibility of delay possession charges at prescribed rate of interest:** 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, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. 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]
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.*
24. 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.
25. 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., 10.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
26. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter,

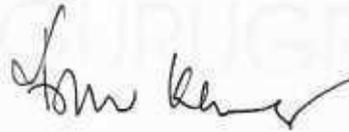
in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default

27. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
28. The respondent is further directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

G. Directions of the Authority

29. 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 pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 31.06.2022 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
 - ii. The respondent is directed to execute the Agreement to sale in respect of unit within 30 days from the date of this order, in accordance with the provisions of the Act.
 - iii. The respondent shall withdraw the pre-termination letter dated 30.06.2023 and any consequential action taken thereunder, being

- unsustainable in the absence of a duly executed and registered agreement for sale.
- iv. The respondent is further directed to issue a valid offer of possession in respect of the subject unit immediately upon completion of all statutory approvals and to handover lawful possession of the said unit to the complainant within the timelines stipulated under the Act.
 - v. The respondent shall update the current construction and development to the complainant.
 - vi. The respondent is further directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.
 - vii. 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.
30. The complaints stand disposed of.
31. Files be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.10.2025