

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

Complaint no. : 3659 of 2025
Date of complaint : 12.07.2024
Date of order : 14.11.2025

Mukesh Chand Jain and Sadhana Jain
Both R/o:- F-703, Munirka Appt., Sec-9,
Plot No.-11, Dwarka, New Delhi-110075

Complainants

Versus

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

Respondent 1

Hometown Properties Pvt Ltd.
Regd. Office at: 294/1 Vishwakarma Colony,
Lal Kuan, M.B Road, New Delhi-110044

Respondent 2

CORAM:
Arun Kumar

Chairman

APPEARANCE:
Ms. Himani (Advocate)
Mr. Gulshan Sharma (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.No.	Particulars	Details
1.	Name and location of the project	"Oodles Skywalk", Sector 83, Gurugram
2.	Project type	Commercial
3.	Unit no.	G-30, ground floor (As per BBA on page 22 of complaint)
4.	Unit area admeasuring (super area)	372 sq. ft. (As per BBA on page 22 of complaint)
6.	Date of start of construction	21.03.2014 (As confirmed by both the counsels during proceedings)
8.	Date of execution of buyer's agreement	19.03.2016 (As per BBA on page 20 of complaint)
9.	Possession Clause	38. <i>The "Company" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months (refer d. 37 above) of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction.</i> (Page 27 of complaint)
10.	Due date of possession	19.06.2019 (Note: the due date of possession is calculated 36 months from date of execution of buyer's agreement, being later)

		Note: Grace period of 3 months is allowed being unconditional.
11.	Sale consideration	Rs.45,08,640/- (As per BBA on page 22 of complaint)
12.	Amount paid by the complainant	Rs.43,08,551/- (including taxes) (Page 66 of complaint)
13.	Occupation certificate	26.10.2023 [on page 57 of reply]
14.	Demand for Offer of possession	08.11.2023 (Page 66 of complaint)
15.	Reminder letter	18.12.2023 [on page 61 reply]
16.	Cancellation letter	21.02.2025 [on page 65 of complaint]

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - i. That Mr. Mukesh Chand Jain and Mrs. Sadhana Jain, the complainants herein, are peace-loving and law-abiding citizens who, in the utmost bonafide and believing the respondent, had purchased a unit as described below and hence, are allottees under section 2(d) of the Act. Section 2(d) of the Act is reiterated as: "As per Section 2 (d) of the RERA Act, 2016- "allottee" in relation to a real estate project, means a person to whom a plot, apartment or building, has been allotted or sold or otherwise transferred by the promoter, and also includes the person who subsequently acquires the said allotment through sale but does not include a person to whom the plot or apartment is given on rent."
 - ii. That the respondent now, the Oodles Group is a real-estate company incorporated under the Companies Act, 1956 and having its registered office at 294/1, Vishwakarma Colony, Mehrauli Badarpur Road, New

Delhi 110044. It deals in the construction and sale of real estate projects and hence falls under the ambit of a "promoter" as per Section-2(zk) of the Act.

- iii. That around 2013, the respondent was blazoning itself as one of the upcoming real estate developers in the market, with the development of a commercial project with high prospects of great returns. It predominantly advertised and assured of its fine development status, speedy procurement of the necessary licenses and permissions required from the competent authority for its development, timely delivery of possession without any delay, and the stellar quality of its development.
- iv. That respondent was completely engrossed with its blazoning gimmick through various authorised representatives. The complainant, believing the assurances, representations, and warranties of the respondent, booked a shop in the proposed commercial project of the respondent known under the name and style of "Oodles Skywalk" That consequently, the shop bearing no. G-30 admeasuring super area 372.00 Sq. Ft. was allotted to the complainants on 01.07.2015. That the present complaint highlights the absolute malafide conduct, and unfair trade practices by the respondent in respect to Shop No. G-30.
- v. That it is categorical to note that as per the undertakings given by the respondent, the original developer, Hometown Properties Pvt. Ltd. had assigned the entire development rights to the Respondent, however, after the implementation of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "RERA Act"),

the developer and promoter of the project has been noted to be Hometown Properties Pvt. Ltd. and not the respondent.

- vi. That consequently, a space buyer's agreement was executed on 09.03.2016 on an 'instalment payment plan between the parties whereby the terms and conditions of the said agreement stated the duty of the respondent to hand over the possession of the said shop within a period of 36 months from the date of execution of the space buyer's agreement or within 36 months from date of the start of the construction, whichever is later. However, it is pointed out that the applicants had started making the payment for the shop from 23.4.2013, when they paid the registration amount. It was the responsibility of the respondent to prepare the space buyer's agreement for execution. The applicant had no role to play in preparation of the space buyer's agreement except signing the same once it was presented to them for signing. The respondent deliberately delayed execution of the space buyer's agreement so as to delay handing over the shop to the applicant. as such, the period of 36 months from the date of start of the project and not from the date of execution of the space buyer's agreement.
- vii. That as per the clause 38, the due date of possession has to be calculated as 36 months from the start of construction or execution of agreement, whichever is earlier. That the environment clearance was received on 23.10.2013. Though the agreement was executed on 19.03.2016, computing the due date for completion of the project should be counted from 23.10.2016, the same comes out to be 23.10.2019.

- viii. That no benefit of grace period should be allowed to the respondent, as the condition under clause 36(a) of the agreement, for applying of OC within 36 months were not met with. it is submitted that it was the primary duty of the respondent to apply for the occupation certificate in due course of time which the respondent has clearly and evidently failed to do so in the present circumstance for which the complainants are having to pay the price by running from comer-to-comer.
- ix. That, however, the respondent malafidely delayed the development of the project, without giving any updates to the complainant of the status of the project. That the respondent has violated section 18(1) by causing such delay and hence, is liable for paying the delay possession charges to the complainant since 23.10.2016 i.e., the due date of possession of the allotted shop in question
- x. That the malafide activities of the respondent were continuous on all fronts. It is pertinent to be mentioned herein that the respondent had the duty to hand over the possession of the shop to the complainant(s) within 3 years of the execution of the space buyer's agreement but the same was delayed by over 7 years causing undue and unreasonable mental agony to the complainants. It is submitted that the respondent is bound by the terms and conditions of the space buyer's agreement signed between both the parties and the delay in offering and providing the possession of the said shop in due time is a clear violation of the law of contract as well as the rights of the complainants in the present complaint.
- xi. That the space buyer's agreement which was signed between the parties is a legally binding agreement and the violation of the terms and conditions incorporated in the said agreement gives rise to the

right to the party whose rights are breached against the faulting party to take legal action and claim for damages as per the Indian Contract Act, 1872. It is submitted that in the present circumstances, the respondent is the party at fault as they had the duty to offer the possession of the said shop within due time which they have failed to do so.

- xii. That the complainants visited the office of the respondent in around february 2024 and pointed out to the respondent that the charges for preferential location have been mentioned in the space buyer's agreement signed between the parties as part of the cost of the shop due to the fact that the said shop is on the corner as per the floor plan of the said shop. But the fact of the matter is that the said shop, even though is on the corner, is only open from one side and not open from three sides as the same is covered with walls of adjacent and back shops on two sides and the third side of the said shop is covered by the pillars and thus, there lies only one open side to the said shop and as such, said preferential location charges mentioned in the cost of the shop are unwarranted and illegal.
- xiii. That the respondent took note of the facts put forward by the complainants and after a detailed discussion on the same between the parties, the respondent agreed for a sum of Rs. 2.5 Lakhs and a letter to the same effect had been signed by the complainants on the request of the respondent and the same was kept by the respondent only for the purposes of their records.
- xiv. That the complainants were advised to get the carpet area verified at the shop before making any payment towards the same. That accordingly, when the complainants got the carpet area checked, the

- same was short by 30 sq. ft. and the fact about the shorter measurement was communicated to the respondent by the complainants.
- xv. That after a few days, the complainants were informed by the respondent that some adjustments had been done in the walls of the adjacent shops in order to adjust the carpet area in the shop allotted to the complainants but when the complainants again visited the shop site, the carpet area of the said shop was still short by 10-15 sq. ft. and any further adjustments were said to be impossible to be done by one Mr. Sahoo.
- xvi. That when the discussions were held and the complainants were told that no further adjustments could be done to increase the carpet areas, the complainants made a request to the respondent to reduce the settlement amount of Rs. 2.5 Lakhs as the same was a duty on part of the respondent only but the same was never done by the respondent even though the same is the right of the complainants.
- xvii. That while the discussion regarding the same were being conducted between the parties, the respondent abruptly cancelled the allotment of the complainants and sent a letter of cancellation dated 21.02.2025 to the complainants stating that the complainants had not made the timely payments against the shop allotted to them even though the same is a baseless and vexatious claim. That it is most vehemently submitted that it is the responsibility of the respondent to either offer the shop to the complainant with the exact area measurements as had been decided between the parties or to reduce the amount charged from the complainants against the allotted shop as the respondent are only taking advantage of their own wrongs in the present

circumstance. That the complainants have always made timely payments, however, the complainants were shocked to receive the cancellation letter and frightened to safeguard the rights in the allotted shop. The complainants have been making payments against the said shop even though the offer of possession had been delayed by the respondent by over 7 years, yet the respondent has cancelled the shop allotted to the complainant even though the complainants are not at fault in the present circumstance. No prior notice was given by the respondent for cancellation of the shop, which is against the principle of natural justice.

- xviii. That not only has the respondent abruptly cancelled the allotment of the complainants but has also clearly stated in the letter of cancellation that the refund against the cancellation of the said shop shall only be given to the complainants after the said shop shall be re-allotted to the other buyer which is a grave violation of the rules and regulations laid down and the rights of the complainants as the complainants have no knowledge as to by when they will be able to get the refund.
- xix. That it is submitted that the respondent has only tried to benefit out of their own mistakes, faults and illegal actions which made the complainants run from corner-to-corner for the shop they are legally entitled to get and the same has done nothing but caused grave mental agony to the complainants who are senior citizens and are at the mercy of the Authority to get their fair share.
- xx. That it is submitted that the respondent is liable to pay the delayed possession charges against the delayed possession of the said shop and the balance amount to be paid by the complainants to the respondent

should be adjusted against the delayed possession charges to be paid by the respondent to the complainants.

- xxi. That it is pertinent to be mentioned herein that the letter of offer of possession dated 08.11.2023 issued by the respondent to the complainant states that the holding charges shall be payable from 15th December 2023.
- xxii. That the respondent is only trying to gain wrongfully from the complainants by infringing their rights. That the complainants have done nothing but acted legally in respect to the payments against the said unit but the respondent has been acting fraudulently since the very beginning of the project.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s):
- I. Direct the respondent to make the payment of the delayed possession charges on amount paid @mclr+ 2% from 23.10.2016 till the actual realisation of the same;
 - II. Direct the respondent to recall the letter of cancellation dated 21.02.2025 issued to the complainants;
 - III. Direct the respondent to calculate the carpet area as is to be offered to the complainants;
 - IV. Direct the respondent to revise the total sale consideration as per revised carpet area after reducing the charges for preferential location charges as the said shop is only one side open as well as shorter in carpet area as compared to the promised area;
 - V. To direct the respondent to adjust the total dues payable by the complainants against the delayed possession charges payable by the respondent;
 - VI. Direct the respondent to execute the conveyance deed as per Section 17 of the RERA Act;

VII. Grant leave to the Complainants to approach the Ld. Adjudicating Officer for seeking compensation for various violations as noted in the complaint;

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondents have made the following submissions:

- a) That, on 01.07.2015, the complainant approached the respondents and desired to book a unit with the project in question and, accordingly, an allotment letter was issued by the respondent relating to allotting unit bearing no. G-30.
- b) That, thereafter, on 19.3.2016, a space buyer agreement (sba), which is the final document relating to unit bearing no. g-30 was executed between the complainants and the respondent, wherein sale consideration of Rs.45,08,640/- was agreed to be paid by the Complainants to the Respondent.
- c) That the complainants time to time made the payment towards the unit in question and as on 12.12.2019, the total payment was made Rs. 46,22,000/- by the complainants to the respondents. That, thereafter, the respondents received the occupation certificate from the department.
- d) That, thereafter, on 8.11.2023, the respondent sent a demand letter demanding the outstanding dues of Rs. 10,47,109/- from the complainants, thereby intimating the respondents, the due date 8.12.2023. Since the complainants failed to make the above pending payment by 8.12.2023, the respondents were constrained to send reminder for payment and offer of possession through letter dated

18.12.2023. It is respectfully submitted that after waiting for almost one year and two months, when the complainants despite receiving of offer of possession letter, followed by reminder letter, failed to clear the dues towards the unit in concerned, the respondents were constrained to issue the cancellation notice dated 21.2.2025, whereby as per the terms and conditions of sba, the tentative Unit booked, stands "cancelled". It is further respectfully submitted that as per covenants of sba, after cancellation of unit, the complainant is only liable for refund of his deposited amount, after deduction of 10% of the earnest money, that too, after realizing the money from the subsequent sale of the unit by another prospective party.

- e) Thereafter, instead of clearing the dues relating to unit concerned, the complainants filed false and fictitious complaints before this authority, wherein while filing the present reply to the complaint by the respondents, the said complaint stands nowhere.
- f) In the light of the above, it is humbly prayed that present complaint is a vexatious and frivolous one, just to gain the unjust enrichment from the respondents and to anyhow blame the reputed builders like respondents, who have been constructing the project as per the norms and in consonance with Rera act, more so, when the complainants are the defaulters in the present case and not making any due payments. Moreover, after obtaining the OC, the respondents has raised its final demand by way of demand letter, wherein offer of possession was also issued to the complainants, apprising him to clear its dues and take offer of possession, however, the complainants failed to deposit and/or clear the dues of the unit concerned, which led to issuance of reminder letter, followed by finally the cancellation letter after more than one

year due to non-payment of dues by the complainants, which led to cancellation of unit. Now, after cancellation of tentative unit, the complainants are only entitled for refund of his deposited amount, after deduction of 10% of the earnest money, that too, after realizing the money from the subsequent sale of the unit by another prospective party, as per terms and conditions of space buyer agreement executed between the parties.

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 submission made by the complainants.

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 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings on the relief sought by the complainants.

- I. Direct the respondent to make the payment of the delayed possession charges on amount paid @mclr+ 2% from 23.10.2016 till the actual realisation of the same;
- II. Direct the respondent to recall the letter of cancellation dated 21.02.2025 issued to the complainants;
- III. Direct the respondent to calculate the carpet area as is to be offered to the complainants;
- IV. Direct the respondent to revise the total sale consideration as per revised carpet area after reducing the charges for preferential location charges as the said shop is only one side open as well as shorter in carpet area as compared to the promised area;
- V. To direct the respondent to adjust the total dues payable by the complainants against the delayed possession charges payable by the respondent;
- VI. Direct the respondent to execute the conveyance deed as per Section 17 of the RERA Act;
- VII. Grant leave to the Complainants to approach the Ld. Adjudicating Officer for seeking compensation for various violations as noted in the complaint;

12. 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.
13. The complainants were allotted a commercial unit bearing number G-30 on Ground Floor having super area 372 sq. ft. in the project of the respondent named Oodles Skywalk at Sector 83, Gurugram vide allotment letter dated 01.07.2015. Thereafter, a Space Buyer's Agreement was executed between the parties on 19.03.2016 for a sale consideration of ₹45,08,640/- (exclusive of applicable taxes and charges) against which the complainants have paid a sum of ₹43,08,551/- in all. The respondent has submitted that it has completed the construction and development of the project and got the occupation certificate on 26.10.2023 and thereafter offered possession of the unit vide letter dated 08.11.2023, subject to payment of outstanding dues of ₹10,47,109/- at the earliest. However, the complainants defaulted in making payments and the respondent had to issue reminder letter dated 18.12.2023, requesting the complainants to comply with their obligation and to clear all the dues before the stipulated period. Despite repeated follow ups and communications, the complainants failed to act further and comply with their contractual obligations and therefore the allotment of the complainants was finally cancelled vide cancellation letter dated 21.02.2025. The complainants have submitted that the cancellation was arbitrary on account of disputes regarding preferential location charges and area variation. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 21.02.2025 is valid or not.
14. On consideration of documents available on record and submissions made by both the parties, the Authority is of the view that on the basis of

provisions of allotment, the complainants have paid an amount of ₹43,08,551/- against the sale consideration of ₹45,08,640/- (exclusive of applicable taxes and charges) and as per the payment plan agreed between the parties, the balance amount along with applicable taxes and charges were payable at the time of offer of possession. The respondent/builder has obtained occupation certificate on 26.10.2023 and thereafter offered possession of the unit vide letter dated 08.11.2023, subject to payment of outstanding dues of ₹10,47,109/- as per the payment plan agreed between the parties. However, the complainants defaulted in making payments and the respondent issued reminder letter dated 18.12.2023, giving last and final opportunity to the complainants to comply with their obligation to make payment of the amount due, but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 21.02.2025. The Authority observes that Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner as per the agreement. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the Space Buyer's Agreement dated 19.03.2016 is held to be valid.

15. In view of the above, the reliefs sought by the complainants stands dismissed being devoid of merits. However, while cancelling the unit, it was an obligation of the respondents to return the paid-up amount after certain deductions as prescribed under the 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."

16. Keeping in view the aforesaid factual and legal provisions, the respondent is liable to refund the paid-up amount of ₹43,08,551/- after deducting 10% of the sale consideration of ₹45,08,640/- being earnest money along with an interest @10.85% p.a. (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., 21.02.2025 till actual refund of the amount.

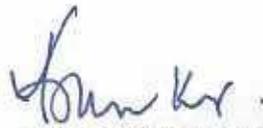
G. Directions of the authority

17. 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 cancellation is held valid.
 - ii. The respondents/promoter are directed to refund the amount received by it from the complainants i.e. Rs.43,08,551, after deducting 10% of the sale consideration of Rs.45,08,640/- being earnest money along with an interest @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 21.02.2025, till its realization.

iii. 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.

18. The complaint stand disposed of.

19. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.11.2025

HARERA
GURUGRAM