

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

Complaint no.:	3911 of 2024
Date of filing complaint	08.08.2024
Date of decision:	20.01.2026

1. Swati Yadav 2. Manju Yadav R/O: House No. 83 P, Upper Ground Floor, Sector 45, Gurugram, Haryana122003	Complainants
Versus	
M/s Manglam Multiplex Private Limited Regd. Office at: Cabin 1, LGF, FF-2, Sushant Shopping Arcade, Sushant Lok, Phase 1, Gurugram 122002	Respondents

CORAM:	
Shri Arun Kumar	Chairman
Shri. Phool Singh Saini	Member
APPEARANCE:	
Jay Gupta (Advocate) Sushil Yadav (Advocate)	Complainants
Shriya Takkar (Advocate) Meenal Khanna (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/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 provisions of the Act or the Rules and regulations made thereunder 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 complainant, 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	"M3M Skycity", Sector 65, Gurugram
2.	DTCP license no. and validity status	15 of 2017 dated 02.05.2017 valid upto 01.05.2022
3.	RERA Registered/ not registered	32 of 2023 dated 02.02.2023 valid upto 01.05.2025
4.	Allotment Letter	26.11.2021 (Page 39 of reply)
5.	Unit no.	MH TW-03-2901, Tower-3 (Page 39 of reply)
6.	Unit area admeasuring	1021.07 sq. ft (carpet area) (Page 39 of reply)
7.	Date of execution of buyer's agreement	22.04.2024 (Page 17 of complaint)
8.	Possession clause	<i>"Commitment Period" shall mean 30th June, 2024 as notified by the Promoter to the Authority, at the time of registration of the Said Project under the Act, for completion of the Said Project including 'M3M Skycity' (an integral block/constituent/segment of the Said Project), or as may be further revised/approved by the authorities.</i>
9.	Due date of possession	30.06.2024

		(page 65 of reply)
10.	Total sale consideration	Rs. 1,72,61,273/- (As per page 111 of reply)
11.	Amount paid by the complainant	Rs. 69,04,510/- (As per page 138 of reply)
12.	Reminder/Demand Letter	21.03.2024 30.04.2024 (Page 52 and 119 of reply)
13.	Pre-cancellation letter	07.05.2024 (Page 123 of reply)
14.	Cancellation Letter	23.07.2024 (Page 135 of reply)
15.	Occupation certificate /Completion certificate	09.09.2024 (page 142 of reply)
16.	Offer of possession	Not offered
17.	Refund given by the respondent after cancellation	12.09.2024 of Rs. 51,76,764/- (Page 138 of reply)

B. Facts of the complainants:

3. The complainants have made the following submissions: -

i. That the respondent gave advertisement in various leading newspapers about their forthcoming project named "m3m skycity", situated at Sector 65, Gurgaon promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements, complainant booked a unit measuring 1828 sq ft. in aforesaid project of the respondent for total sale consideration is Rs 1,72,61,273/-.

ii. That the complainant made payment of Rs. 69,04,509/- to the respondent vide different cheques on different dates. The agreement for sale was executed on 22.04.2024 and as per agreement for sale the respondent allotted a unit bearing no.mh tw-03-2901, 29th floor, 3

- tower having super area of 1828 sq. ft. to the complainant.
- iii. That the complainant receive a demand on 30.04.2024 of Rs. 86,30,636/- from the respondent thereafter complainant sent an email to respondent for the application of occupation certificate so that they can avail the home loan and bank will disburse the amount to the respondent but respondent did not send the same to the complainant after repeated request by the complainant.
- iv. That the complainant wrote an email on 03.05.2024 to the respondent for the proof of application of occupation certificate so that bank can disburse the loan amount to the respondent. The complainant also send the home loan sanction letter from SBI Bank dated 29.05.2024 to the respondent and shown their intention to pay the demanded amount to the respondent and requested for the occupation certification or application of occupation certificate so that the same can be submitted with the bank and bank disburse the demand to the respondent. Surprisingly respondent sent a pre cancellation letter dated 07.05.2024 to the complainant which itself is unilateral and illegal.
- v. That the complainant again wrote an email on 18.05.2024 to the respondent for the copy of occupation certificate so that they can send the same to their financier i.e SBI Bank and the loan amount can be disburse to the respondent as per their demand but the respondent did not send the occupation certificate and reply to the same.
- vi. That again surprisingly respondent sent a cancellation letter dated 23.07.2024 to the complainant stating that respondent have sent pre cancellation letter on 07.05.2024 and the total amount paid by the complainant is forfeited. The complainant have wrote various email to the respondent for the application of occupation certificate so that the

bank will disburse the demand to the respondent and without sending the same respondent acted unilaterally and cancel the unit of the complainant which is per se illegal as per the law.

vii. That the complainant again wrote an email on 24.07.2024 to respondent that cancellation notice sent on 23.07.2024 by respondent to complainant is totally wrong and illegal. The complainant also wrote to the respondent that no government /PSU bank of India is giving loan for all the projects of M3M company without occupation certificate as respondent company is blacklisted by the government /PSU bank of India the reason would be best known to respondent. The complainant also send the loan sanction letter from SBI Bank to the respondent and request many time form the respondent for occupation certificate but respondent did not send the same to the complainant.

viii. That the complainant again wrote an email on 26.07.2024 to the respondent that the complainant is ready to take home loan suggested by the respondent and requested for some more time and revocation of cancellation letter but respondent did not respond to the same.

ix. That the complainant again wrote an email on 27.07.2024 stating that the complainant visited the office of respondent with the request to revoke the cancellation letter and accept all the payment as demanded by respondent, the officer available in the office of respondent said that their request is forwarded to higher official but again complainant did not receive any reply or communication from the official of respondent.

x. That the complainant again wrote an email on 30.07.2024 to the respondent that the complainant visited the office of respondent on 29.07.2024 to submit cheque but they refuse to accept the same. C

complainant again requested to revoke cancellation as they are ready to pay full demand today itself but respondent dined the request of the complainant.

xi. That lastly complainant again wrote an email on 01.08.2024 to the respondent that they have talked to the CRM of the respondent Mr. Manoj Aggarwal that they are ready to pay the whole demand to respondent but Mr Manoj Aggarwal did not accept the payment. The complainant has repeatedly requested the respondent to send the application of occupation certificate and occupation certificate so that the bank disburse the demand to respondent but respondent did not send the same to the complainant.

xii. That it is also pertinent to mention here that after giving allotment of the said unit on 08.11.2021 to complainant, respondent executed agreement to sell with the complainant on 22.04.2024 after the repeated request by the complainant. The respondent has taken more than the 10% amount of total sale consideration from the complainant which is per se illegal and against the RERA Act.

xiii. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the offices of the respondent to deliver possession of the flat and revoke the cancellation letter but the respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard-earned huge amount of money and wrongfully gains himself and caused wrongful loss to the complainant.

c. Relief sought by the complainants:

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

- I. Direct the respondent to pay delay possession charges at the prescribed rate.

II. Direct the respondent to revoke the cancellation letter dated 23.07.2024.

III. Direct the respondent to handover the physical possession of the said unit to the complainant.

IV. Direct the respondent to provide the copy of occupation certificate to the complainant.

V. Direct the respondent to accept the demanded payment from the complainant.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions: -

- i. That the complainants after conducting their independent due diligence and market research approached the respondent expressing their interest in booking a residential unit in the project "M3M Skycity", the residential component consisting of Tower No. 2 and 3 and a part of the mixed land use development Project at Sector-65, Gurugram, Haryana, comprising of commercial, retail and residential segments being developed in a planned and phased manner over a period of time through their broker M/s. Rise Infra vide Application Form and paid part booking amount towards the same. In due consideration of the part booking amount paid by the complainants and their commitments to comply with the terms and conditions of the booking/allotment and make timely payments of demands, the complainants were allotted residential unit bearing no. MH TW-03-2901 in Tower 3 vide allotment letter dated 19.11.2021. The cost of the unit admeasuring 1021.07 sq. ft. carpet area as per the allotment letter was Rs. 1,72,61,273/- plus other charges. The complainants had opted for the specific payment plan as per their own free will and volition.

- ii. That the respondent as per the payment plan opted by the complainants raised a demand due within 30 days of booking vide demand note dated 20.11.2021 to the tune of Rs. 49,04,509/- after advance adjustments which was payable on or before 18.12.2021. Thereafter the respondent again vide cover letter dated 29.11.2021 dispatched the triplicate copies of the buyer's agreement for due execution at the complainant's end.
- iii. That the respondent as a goodwill gesture offered the complainants a discount/rebate of Rs. 8,22,600/- against the total consideration amount of the said unit vide letter dated 16.12.2021. It was specifically stated in the said letter that the complainants shall be entitled for the abovesaid discount at the time when the demand of application of occupancy certificate will be raised subject to making of the payment of the instalment of the said unit in a timely manner as per the agreed payment plan. Since the complainants failed to pay the dues as per the demand raised by the respondent vide demand letter and failed to execute the buyer's agreement, the respondent issued reminder vide reminder letter dated 20.12.2021 requesting the complainants to remit the amount to the tune of Rs. 49,04,509/- along with applicable interest within 15 days from the date of the issuance of the reminder letter. The respondent completed the construction of the tower in which the apartment of the complainants was located and duly applied for the grant of occupation certificate to the competent authorities. Thereafter the respondent as per the payment plan opted by the complainants raised a demand due on application of occupation certificate vide demand note dated 21.03.2024 for an amount of Rs. 86,30,636/- which was payable on or before 10.04.2024. The said demand was also intimated to the complainants by the respondent

vide email dated 22.03.2024. The respondent also vide email dated 30.03.2024 gave a reminder to the complainants and requested the complainants to clear their outstanding dues for the aforesaid demand.

iv. That after constant follows up with the complainants, the buyer's agreement was executed between the complainants and the respondent company on 22.04.2024. The buyer's agreement was duly registered vide vasika no. 993 before the sub-registrar of Assurances, Gurugram, Haryana. The complainants vide Authorisation letter had authorise Mr. Rakesh Kumar Gupta for presenting the buyers agreement for registration in the office of the Sub-Registrar.

v. That since the complainants failed to pay the dues as per the demand raised by the respondent vide demand letter, therefore the respondent issued reminder letter dated 30.04.2024 requesting the complainants to remit the amount to the tune of Rs.86,30,636/- along with applicable interest within 7 days from the date of the issuance of the reminder letter. The respondent also vide emails dated 01.05.2024 and 06.05.2024 sent reminder letters to the complainants and requested the complainants to clear their outstanding dues. Since the complainants failed to pay the dues raised vide demand note, the respondent issued a pre-cancellation notice dated 07.05.2024 reminding the complainants to remit the outstanding dues along with applicable interest within 7 days from the date of issuance of this notice, failing which the respondent shall be constrained to cancel the booking. The respondent vide emails dated 08.05.2024 and 09.05.2024 also sent the pre-cancellation notice to the complainants and requested the complainants to clear their outstanding dues. The respondent vide email dated 16.06.2024 also shared the copy of the

registered buyer's agreement with the complainants. The respondent vide emails dated 18.05.2024 and 20.06.2024 requested the complainants to come forward and clear their outstanding dues, but to no avail. The respondent on various occasions vide emails dated 20.04.2024, 29.04.2024, 03.05.2024, 04.05.2024, 20.05.2024 and 31.05.2024 requested the complainants to obtain the loan for the project from already approved banks like HDFC and Axis Bank, but to no avail.

vi. That the complainants even after the issuance of the aforesaid pre-cancellation notice failed to remit any payment against the outstanding dues and continued to breach the terms of the buyer's agreement, the respondent left with no other alternative cancelled the allotment vide cancellation notice dated 23.07.2024. The respondent also vide email dated 24.07.2024 sent the cancellation letter to the complainants. Thereafter the complainants approached the respondent and requested to reinstate the unit. The respondent being a customer-oriented company acceded to the request of the complainant subject to the receipt of the entire outstanding amount. Despite the leverage being given to the complainants, the complainants failed to make the complete payment of the outstanding dues and only made a partial payment of Rs. 20,00,000/- against the total dues of Rs. 86,30,636/-. The respondent vide email dated 29.07.2024 intimated to the complainants that the respondent cannot accept the partial payment and hence the unit cannot be revived. The cancellation letter dated 23.07.2024 stood in its operation. Thus, the total loss calculated comes to Rs. 26,76,503/- (approx.) which includes earnest money deduction @10% to the tune of Rs. 17,26,127, loss of statutory dues and taxes deposited Rs. 3,28,786/, brokerage of Rs.

3,23,556 and further a sum of Rs. 2,98,034 towards interest payable by the complainants for delayed payment. The complainants are raising these frivolous issues as an afterthought in order to unjustly enrich themselves.

vii. That the respondent has fulfilled its contractual obligations under the buyer's agreement however, despite that the complainants have failed to clear their outstanding dues. The complainants are in default of their contractual obligations and are raising these frivolous issues in order to escape the liability cast upon them by the virtue of the terms of buyer's agreement. Therefore, the complainants are not entitled to any relief whatsoever. Despite the losses mentioned herein above, the respondent post deductions of only 10% of the earnest money and 0.5% brokerage refunded the balance amount of Rs. 51,76,764/-. The details of the calculation of refundable amount is reproduced hereinunder:

TCV	Rs.1,72,61,273/-
RECEIVED AMOUNT	Rs.69,04,510/-
Deduction of EMD @ 10%	Rs.17,26,127/-
Deduction of 0.5% brokerage	Rs.1,619/-
Refundable Balance	Rs.51,76,764/-
TOTAL REFUNDABLE AMOUNT	Rs. 25,88,382/- in favour of Swati Yadav Rs.25,88,382/- in favour of Manju Yadav

viii. That the cheques for the refundable amount of Rs. 51,76,754/- were sent to the complainant vide cover letter dated 12.09.2024 and the details of the cheques are stated hereinbelow:

I) cheque bearing no. 017383 for an amount of Rs. 25,88,382/- drawn on ICICI Bank dated 20.08.2024 in favour of the complainant no.1.

II) cheque bearing no. 017384 for an amount of Rs. 25,88,382/- drawn on ICICI Bank dated 20.08.2024 in favour of the complainant no.2.

ix. That the cheques amounting to Rs. 51,76,764/- were sent to the complainants vide cover letter dated 12.09.2024 and the same was duly delivered to the complainants. However, the said cheques were not encashed by the complainants for the reasons best known to them. The occupation certificate for the tower in which the apartment was located was granted by the competent Authorities on 09.09.2024 after due verification and inspection. Thus, the apartment was completed within the prescribed timeline i.e. before 01.11.2024. Therefore, no case under Sec 18 of RERA Act, 2016 is made out.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

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 allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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

F. Findings on the relief sought by the complainants:

- F.I Direct the respondent to pay delay possession charges at the prescribed rate.**
F.II Direct the respondent to revoke the cancellation letter dated 23.07.2024.
F.III Direct the respondent to handover the physical possession of the said unit to the complainant.
F.IV. Direct the respondent to provide the copy of occupation certificate to the complainant.
F.V. Direct the respondent to accept the demanded payment from the complainant

11. The above-sought relief(s) by the complainants are taken together being inter connected.
12. The complainants were allotted an apartment bearing no. MH TW-03 2901 , tower 3 in the project of the respondent named "M3M Skycity", at Sector 65 vide allotment letter dated 26.11.2021. Thereafter a buyer's agreement was executed between the parties on 22.04.2024 for a sale consideration of Rs.1,72,61,273/-. Out of the said sale consideration, the complainants have paid an amount of Rs.69,04,510/- in all against the said allotment.
13. The complainants have submitted that as per payment plan 50% of the amount of total sale consideration was to be paid on application of the occupation certificate. But the respondent did not send the application of the occupation certificate so that they can avail home loan. The complainants also wrote an email on 03.05.20254 to the respondent for the proof of application of the occupation certificate so that the bank can disburse the bank loan to the respondent. The respondent has submitted that the application of the occupation certificate was sent to the competent Authority on 20.05.2024 and raised demand from the complainant. Various reminders were sent to the complainant to make the payment but the complainant fails to pay the same. Further the cancellation letter was sent on 23.07. 2024.The respondent has obtained the occupation certificate on 09.09.2024 and refunded the amount of Rs. 51,76,764/- to the complainants on 12.09.2024. Thereafter, on non-payment of the outstanding dues, a demand/reminder letter dated 21.03.2024 and 30.04.2024 was issued to the complainants to pay the outstanding dues. Afterwards the respondent issued a pre cancellation letter on 07.05.2024 and finally terminated the allotment of the unit on 23.07.2024 on failure of

payment of outstanding instalments as the complainants never paid the said raised demand. Copies of the same is available on record and are not in dispute. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 23.07.2024 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 Rs.69,04,510/- against the sale consideration of Rs.1,72,61,273/- and no payment was made by the complainants as per the demands which were raised by the respondent. The occupation certificate for the tower in question was obtained by the respondent on 09.09.2024. No possession of the apartment was offered to the complainants. As per the payment plan agreed between the parties, 'on application of OC', the complainant was obligated to pay 50% of the TCV + Applicable tax. However, the complainants defaulted in making payment and the respondent was to issue demand letter dated 21.03.2024 and 30.04.2024 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 23.07.2024. 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. Hence, cancellation of the unit in view of the terms and conditions of the buyer's agreement and the payment plan annexed with the buyer's agreement dated 22.04.2024 is held to be valid. The respondent in its reply as well as in court has stated that after cancellation the respondent has refunded an amount of Rs. 51,76,764/- to the complainants on 12.09.2024 but the cheques were not encashed



by the complainants. However, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928*** and ***Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached 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.* National Consumer Disputes Redressal Commissions in ***CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in ***CC/2766/2017*** in case titled as ***Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022***, held that *10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money"*. Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing 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."

15. Keeping in view the aforesaid factual and legal provisions, the respondent can retain the earnest money paid by the complainant against the allotted unit and shall not exceed 10% of the consideration amount. So, the same was liable to be forfeited as per Haryana Real Estate Regulatory Authority Regulation 11(5). So the respondent is directed to refund the paid-up amount of Rs.69,04,510/- after deducting 10% of the sale consideration of Rs.1,72,61,273/- being earnest money along with an interest @10.80% 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., 23.07.2024 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*. The amount of Rs. 51,76,764/- if already refunded by the respondent shall be deducted from the amount so assessed.

16. In view of the findings detailed above, the rest of the reliefs sought by the complainants became redundant and no direction to the same is given.

G. Directions of the Authority:

17. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the paid-up amount of Rs. 69,04,510/- after deducting 10% of the sale consideration of


Rs. 1,72,61,273/- being earnest money along with an interest @10.80% 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., 23.07.2024 till its realization. The amount of Rs. 51,76,764/- if already refunded by the respondent shall be deducted from the amount so assessed.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

18. The complaint stands disposed of.

19. Files be consigned to the registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:20.01.2026