

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

Complaint no. : 3256 of 2024
Date of Decision: 07.04.2026

1. Brajesh Chandra Jha Santosh
2. Sonal Kapoor
Through SPA Holder-Ramesh
Chander Kapoor.

Both R/o: 27 Claymore Road, 15-02,
Singapore-229544.

Also At:- E-14/13, 1st Floor, Vasant
Vihar, New Delhi-110057.

Complainants

Versus

सत्यमेव जयते

1. M/s Anand Divine Developers Pvt
Ltd.

Office At: 711/92, Deepali, Nehru
Place, New Delhi-110019.

2. ICICI Bank Limited.

Office At: Landmark, Race Course
Circle, Vadodara-390007.

3. ICICI Securities Limited.

Office At:- ICICI Venture House,
Appasaheb Marathe Marg,
Prabhadevi, Mumbai-400025.

**Respondent
no.1**

**Respondent
no.2**

**Respondent
no.3**

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Somdev Tiwari
Shivani Dang

Advocate for complainant
Advocate for respondent no.1

Virender Singh
Inderjeet Singh

Advocate for respondent no.2
Advocate for respondent no.3

ORDER

- The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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. Unit and project related details

- 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.	Heads	Information
1.	Name and location of the project	"ATS TRIUMPH", Sector 37 C, Gurugram, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	10.144 acres
4.	DTCP License	63 of 2011 dated 16.07.2011 valid till 15.07.2019 10 of 2012 dated 03.02.2012 valid till 02.02.2020
5.	HRERA registered/ not registered	40 of 2019 dated 08.07.2019 valid up to 01.12.2019
6.	Date of booking	06.05.2014

		[As on page no. 67 of complaint]
7.	Date of execution of apartment buyer's agreement	13.06.2014 (As on page no. 66 of the complaint)
8.	Unit no.	5122 on 12 th floor, Tower 05 (As on page no. 69 of the complaint)
9.	Super Area	3150 sq. ft. (As on page no. 69 of the complaint)
10.	Possession clause	<p>18. <i>Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said apartment is proposed to be, offered by the Company to Allottee within 36 (Thirty Six) months with grace period of 6 (six) months from the date of actual start of the construction of a particular Tower Building in which the registration for allotment is made, such date shall hereinafter referred to as 'Stipulated Date', subject always to timely payment of all charges including Basic Sale Price, EDC/IDC, IFMS, Stamp Duty, Registration Fees and Other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard...</i></p> <p>(As on page 77 of the complaint)</p>
11.	Due date of delivery of possession	13.12.2017 (Calculated from the date of agreement in absence of date of start of construction and grace period of 6

		months is included being unqualified and unconditional) <i>Grace period of 6 months is included</i>
12.	MoU	13.06.2014 [As on page no. 112 of complaint]
13.	Buy back clause of MoU	Clause 8 <i>It is hereby agreed by the parties that the purchaser within a time frame of 33 months from the date of booking to 36 months from the date of booking shall be entitled to call upon the developer in writing to purchase the four set apartment at a premium of Rs.1500 per square feet and in such a case the owner or developer shall repurchase the said flat within thirty days of expiry of 36 months from the date of booking.</i> [Emphasis supplied] (As on page no. 115 of complaint)
14.	Time for exercising buy back option	06.02.2017-06.05.2017
15.	Letter issued by respondent for extending the period as stated in clause 8 of the said MoU by 12 months	03.04.2017 [Note: The same is not signed/accepted by the complainants] [As on page no. 45 of reply]
16.	Revised time for exercising buy back	06.02.2018-06.05.2017
17.	Letter issued by respondent no. 2 acknowledging the buy	10.11.2017 [As on page no. 117 of complaint]

	back option exercised by the complainant	
18.	Tripartite agreement [Note: An amount of Rs.2,14,91,000/- was disbursed by respondent no.2]	13.06.2014 (As on page no. 92 of complaint)
19.	Total consideration	Rs.2,86,56,250/- (As per page no. 89 of complaint)
20.	Total amount paid by the complainant	Rs. 2,78,41,550/- (Amount paid by bank-Rs.2,08,86,422/- and complainants-Rs.69,55,128/-, Page no. 59 of complaint)
21.	Reminders	Not available
22.	Occupation Certificate	29.05.2019 [As on page no. 113 of reply]
23.	Offer of possession	07.06.2019 (As per page no. 125 of complaint)
24.	Letter sent by respondent to the complainant informing that ICICI Bank have taken symbolic possession of the unit on 08.02.2023.	02.03.2023 (As on page no. 130 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- I. That the present complaint is arising out of the unlawful and mala fide acts of the respondent no. 1 (Builder/ Developer), in connivance of the respondent no. 2 (ICICI Bank) and respondent no. 3 (ICICI Securities Ltd.), wherein respondent no.1 induced the complainants to enter into a Buyer Agreement and a Memorandum of Understanding pertaining to Buy-Back Scheme of the respondent no. 1. Under which, the complainants agreed to purchase a unit in the residential project of respondent no. 1 with an option to invoke Buy-Back option, thereby calling upon respondent no. 1 to purchase the unit back from the complainants for a fixed stipulated amount along with the refund of the sale consideration to the complainants.
 - II. Upon the joint representations of the respondents, the complainants availed a loan from the respondent no. 2 under a Tripartite Agreement executed between the complainants and respondent no. 1 and 2 for the purchase of aforesaid unit with the possibilities of repaying the said loan from the amount received through the Buy-Back Scheme. When the complainants sought to invoke the Buy-Back option, the respondent no. 1 in utmost arbitrary and unlawful manner delayed the payment and refund of stipulated amount to the complainants without any legal basis, thereby virtually denying the benefits.
 - III. Owing to the refusal on part of respondent no. 1, the complainants have been rendered incapable of repaying the loan amount to the respondent no. 2, thereby allowing the respondent no. 2 to proceed against the complainants for the recovery of the loan amount. Various acts of the respondents clearly show that the respondents have acted

hands-in-glove with the objectives of defrauding the complainants and cause undue financial losses to the complainants.

- IV. That the complainants were approached by respondent no.3 in order to facilitate an investment transaction with respondent no.1 to make certain investments into the project of the respondent no. 1 being, 'ATS Triumph', which is in Sector 104, (Dwarka Expressway), Gurgaon, Haryana - 122001. ("Project").
- V. That the respondent no. 1 sent a brochure which envisaged the description of the property as well as an Investor Scheme' for the said project to the complainants. Subsequently, believing the respondent no. 1 & 3's representations, the complainants entered into a 'Buyer Agreement dated 13.06.2014 with respondent no. 1 wherein the complainants were provisionally allotted an apartment bearing no. 5122, 12'h Floor, Tower No. 05, ATS Triumph, Dwarka Expressway, Sector 104, (Dwarka Expressway), Gurgaon, Haryana - 122001, having a Super Area of approximately 3150 sq. ft. (292.64 sq. mtr).
- VI. That as acknowledged by respondent no. 1 vide email dated 15.09.2023, out of the total sale consideration of the apartment was Rs.2,86,56,250/-, the complainants had already paid 97% of the total sale consideration i.e., Rs.2,78,41,550/-. The complainant paid Rs.69,55,128/- directly from his own account and respondent no. 2 and 3 paid Rs.2,08,86,422/- on behalf of the complainant from his loan account.
- VII. That, according to Clause 18 of the Buyer Agreement, the respondent no. 1 was obligated to hand over the possession of the Apartment within a period of 36 months, along with a grace period of 6 months, from the date of actual start of construction of a particular tower

building in which the registration of allotment is made, that is, by 13.12.2017.

- VIII. That the complainants, in order to purchase the said apartment, were induced to avail a Loan from respondent no. 2. For the said purpose, the complainants entered into a Tripartite Agreement' dated 13.06.2014 with the respondent no. 1 & 2. It is pertinent to mention herein that under Clauses 26 and 27 of the Tripartite Agreement, it was mutually agreed between the parties that the respondent no 1 was solely obligated to pay the "Pre-EMI" interest amount on the said Loan Facility, during the subvention scheme, which is for a period of 36 months, on behalf of the complainants, which was otherwise payable by the complainants alone.
- IX. Lastly, the complainants and respondent no.1 entered into a Memorandum of Understanding ("MoU") dated 13.06.2014 As per Clause 8 of the MoU, the complainants were entitled to call for a 'buy-back' of the apartment within a time frame of 33 to 36 months from the date of booking. In the present case, the complainants had booked the Apartment on 02.05.2014 and had already paid an amount of Rs.9,64,246/- on 02.05.2014 to that effect; and the same has been categorically recorded under Clause 5 of the Buyer Agreement.
- X. That as per the Clause 8 of the abovementioned MoU, it was agreed that the complainants shall be entitled to call upon the respondent no. 1 to purchase the said apartment at a premium of Rs.1,500/- per sq. ft. (*Premium Amount", and in such a case, the Respondent No.1 shall repurchase the Apartment within 30 days of expiry of 36 months from the date of booking. In such an instance, the complainants were entitled to a refund of the entire amount paid by the complainants

along with premium amount as well as service tax which was to be paid by respondent no.1.

- XI. That under Clause 8 of the MoU, the respondent no.1 was obligated to pay all instalments, Pre-possession EMI's, and interest directly to respondent no.2; and was also obligated to keep the complainants fully indemnified in this regard.
- XII. Thereafter, in accordance with the Tripartite Agreement as well as the MoU, the complainants through respondent no. 3 opted for the buy back as offered by respondent no.1. However, the respondent no. 3 did not share the email communication with the complainants and upon enquiry, they only informed the complainants verbally that they had invoked the buyback on behalf of the complainants. In response to the same, respondent no.1 replied vide letter dated 10.11.2017, stating that they had received the request for invocation of buy back as proposed under the MoU. The complainant was informed by respondent no. 3 vide an email communication dated 16.11.2017 that respondent no. 1 had informed them that they had extended the time period for invoking the buy-back option under the MOU for a year.
- XIII. That respondent no. 3 had acknowledged that the said act of respondent no. 1 is a 'total retraction from the initial commitment by the respondent no. 1'. Even though the project and buy back was offered by respondent no.1, it was respondent no. 3 who had played an active and constant role in the facilitation and communication with respect to the project and the Buy Back scheme between the complainants and the respondent no.1. However, to the dismay of the complainants, respondent no.1 flatly refused to purchase the apartment from the complainants as contemplated under the buyback

scheme under Clause 8 of the MOU and wrongly stated that as per the clause 13 of the Buyer Agreement, the complainants are required to *'surrender their apartment and that the same shall be re-allotted to another buyer;*

- XIV. That respondent no. 1, in its response dated 10.11.2017, sought to draw a link between Clause 13 of the Buyer Agreement and the MOU when no such connection was ever envisaged under the MOU. The MOU pertaining to the Buy-Back Scheme was absolute in nature, in that, respondent no. 1 was obligated to accept the Buy-Back option at the instance of the complainants. The Buy-Back option and the payment of premium, refund of money, etc. thereunder were not dependent upon respondent no. 1 finding an alternate buyer/ allottee of the unit.
- XV. That the respondent no. 1 misplaced its reliance upon Clause 13 of the Buyer Agreement which only stipulated refund upon finding of an alternate buyer/ allottee only in case of complainants withdrawing their application/ Agreement at any stage. The invocation of Buy-Back Option envisaged under the MOU was never an event falling within the purview of Clause 13 of the Buyer Agreement.
- XVI. Further, the respondent no.1 on 10.11.2017 also mentioned that it shall continue to pay the bank loan Pre-EMI's up till the time of possession of the apartment. However, the said Pre-EMIs have not been paid by respondent no.1 to respondent no. 2 till date. Thereafter, the complainant received an offer of possession and registration of conveyance deed for the Apartment on 07.06.2019. However, the Complainant chose not to take possession of the same as

he had opted for a buy-back of the property. Hence, the offering of possession of the Apartment, despite the option of buy back as envisaged as per the mutual understanding and agreement under the MoU, is a clear and gross violation of the same on part of respondent no.1.

XVII. That the respondent no. 1 has committed another breach of the MOU as well as the Tripartite Agreement, by failing to pay the Pre-EMI Interest, that it was bound to do. That to the utter shock and dismay of the complainants, on 14.10.2022, the complainants received a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"), whereby a demand of Rs.2,21,52,604/- was made by ICICI Bank. Subsequently, the complainants got to know that vide letter dated 02.03.2023, ICICI Bank, under Section 13(4) read with Rule 8 of the SARFAESI Act, had taken symbolic possession of the apartment on 08.02.2023.

XVIII. Being aggrieved with the same, the complainants sought for due inspection of the loan details with respect to its amortisation and schedule as disbursed by the Bank vide email dated 21.01.2024 which was sent by complainant to ICICI Bank. The ICICI Bank had disbursed the loan amount to respondent no. 1 in a manner which would clearly depict that the two respondents were hand in glove with each other. Further, the complainants also sought clarification from respondent no.1 with respect to what amount of Pre-EMI Interest has been paid by the respondent no. 1 to the respondent no. 2, as stipulated under the MoU and the Tripartite Agreement. However, no response has been received from respondent no.1.

- XIX. That the loan amount as sanctioned by ICICI Bank was Rs.2,14,91,000/- and the monthly payable amount was Rs.2,76,350/- As per the terms of the Tripartite Agreement, the respondent no. 2 was bound to disburse the loan amount to the respondent no. 1, on behalf of the complainants. The disbursement of such loan amount was done in three tranches i.e., on 30.06.2014, 26.11.2014 and 25.01.2016 for an amount of Rs.1,52,73,789/-, Rs.25,39,265/- and Rs.30,73,368/- respectively, that total to an amount of Rs.2,08,86,422/-which was neither agreed upon nor envisaged under any agreement between the complainant and respondent no.2.
- XX. That the ICICI Bank has disbursed the partial Loan Amount in three tranches in the amounts and timelines as mentioned above. It is submitted that the complainants, being long-time customers of the respondent no. 3, had placed their faith on the respondent no. 2 (which is a sister concern of respondent no. 3) to the effect that it would handle the disbursement of loan amount as per the timelines prescribed in the Loan Facility Agreement, which, consequently, would also ensure that the respondent no. 1 is using the said loan amounts so disbursed for the timely construction of the Apartment, as mutually agreed between the parties.
- XXI. Furthermore, as evinced by the loan account statement of the complainants, the various cheques deposited by the respondent no. 1 as 'Pre-EMI interest' were dishonoured, which again shows respondent no. 1's mala fides and fraudulent conduct to dupe the complainants.
- XXII. That after due and constant follow up by the complainant, respondent no. 1 vide its email dated 27.02.2023 has showed its willingness to

resolve and settle the dispute with respect to the Apartment. However, the respondent no.1 wrongly captured in the email that the complainant agreed to take the possession of the Apartment.

XXIII. That the respondent no. 2 and 3 have committed a fraud of Rs.33.5 lacs with the complainants'. After facing the egregious fraud from the respondents, in the year 2022, the complainant transferred his portfolio of mutual funds investment from respondent no. 2's bank account to Yes Bank. However, the bank officials failed to change the complainant's source bank account from respondent no. 2's bank to Yes bank in the Mutual fund folios. Therefore, in 2023, when the complainants' opted for liquidation of his Mutual Funds from Yes bank the fund redemption amount was mistakenly released to complainants' ICICI bank account. The respondent no. 2 went ahead and without any intimation and on its own took a sum of Rs.33.5 lacs approximately from the complainants' bank account. In view of the above, the respondents have acted in cahoots with each other to defraud the complainants in the following manner:

- i. *Respondent no. 1 has illegally refused to refund the money to the complainants that they are entitled to get as per the buy-back option granted under the MOU. The respondent no. 1, in its response dated 10.11.2017, sought to draw a link between Clause 13 of the Buyer Agreement and the MOU when no such connection was ever envisaged under the MOU.*
- ii. *Respondent no. 1 has breached the Tripartite Agreement by failing to pay the pre-EMI interest to the Respondent no. 2 that it is legally bound to do as per the terms of the Tripartite Agreement, as a result of which the Respondent no. 2 has wrongfully initiated SARFAESI proceedings against the complainants, and respondent no. 2 is still sending demand notices and payment demands/reminders to the complainants.*

- iii. Respondent no. 2 has illegally and wrongfully disbursed the entire loan amount in three tranches, without verifying the status of the project, which is clear contravention of the Tripartite Agreement.
- iv. Respondent no. 2 has illegally blocked the complainants' funds to the tune of Rs. 30 lacs approx.

XXIV. That the complainants have made the contractually stipulated payments that they were bound to make, the respondent no. 1 has refused to refund the amounts to complainants under the buy-back option; the respondent no. 2 has taken the symbolic possession of the apartment and the respondent no. 2 has also illegally blocked the complainants' funds to the tune of Rs.30 lacs, for no fault of the complainant whatsoever, thereby causing grave prejudice to the complainant herein.

C. Relief sought by the complainant:

4. The complainant in the present complaint is seeking the following relief(s).
 - i. Direct the respondent no.1 to pay principal amount of Rs.2,78,41,550/-towards refund of the entire amount as paid by the complainants along with a premium of Rs. 1,500/-per sq. ft. as per the Memorandum of Understanding dated 13.06.2014.
 - ii. Direct the respondent no. 1 to pay interest at 18% per annum for period of delay in honouring the buyback scheme on the total repurchase price payable to the complainant as per the Memorandum of Understanding dated 13.06.2014.
 - iii. Direct the respondent no. 1 to pay all due payable towards Pre-EMI along with interest, if any, for the apartment to the respondent no. 2.

- iv. Direct the respondent no. 2 to recall notice under Section 13(2) of the SARFAESI Act, and to order a stay on all proceedings initiated by respondent no. 2 with respect to the present transaction.
- v. Direct the respondents to pay an amount of Rs.1,00,00,000/- in lieu of compensation for the mental agony and harassment that the complainant faced.
- vi. Direct the respondents to pay legal cost incurred by the complainants

D. Reply by the respondent no.1

5. The respondent no.1 has contested the complaint on the following grounds.
 - I. That the complainants, after checking the veracity of the project namely, 'ATS Triumph', Sector 104, Gurugram had applied for allotment of an apartment vide Booking Application Form dated 01.05.2014. The complainants had agreed to be bound by the terms and conditions of the Booking Application Form.
 - II. Based on the said application, respondent no. 1 vide its Allotment Letter allotted to the complainants an apartment no. 5122 on the 12th floor of tower no. 5 having super area of 3150 sq. ft. for a sale consideration of Rs.2,36,56,250/-. The complainants signed and executed the Apartment Buyer's Agreement on 13.06.2014.
 - III. That for making payment towards the sale consideration, the complainants opted for loan to purchase the said apartment and entered into a Tripartite Agreement dated 13.06.2024 with respondent no. 1 and 2. Vide several clauses of this Tripartite Agreement it is clearly established that it is the complainants'

obligation to repay the loan amount distinctly and independently and more particularly independent of any issues/concern/dispute of whatsoever nature between the complainants and respondent no.1. It was further undertaken by the complainants that they shall diligently and faithfully observe the terms and conditions of the Tripartite Agreement and Apartment Buyer's Agreement along with the terms and conditions of any other documents or agreements as may have been executed by the complainants with respondent no. 2 or the complainants with respondent no. 1. In the event of default by the complainants in payment of dues to respondent no.1 as per the agreed terms, respondent no. 1 shall be entitled to terminate the allotment of the said apartment in favour of the complainants in accordance with the terms and conditions of the Apartment Buyer's Agreement. The complainants shall comply with all terms and conditions of the loan agreement with respondent no. 2 and repay the loan amount along with interest, other costs and commissions in accordance with the loan agreement.

- IV. Prior to the execution of the tripartite agreement, the complainants had requested and persuaded respondent no. 1 to execute the memorandum of understanding so as to attain some comfort of utilizing the goodwill of respondent no. 1 in the event of respondent no. 1 not honouring its commitments of making payment towards the EMIs to the bank. The complainants further aimed to hedge the risk of unforeseen fall in the real estate sector of entering into some kind of understanding with respondent no.1 and accordingly memorandum of understanding dated 13.06.2014 was executed between the complainants and respondent no. 1.

- V. That the possession of the unit was supposed to be offered to the complainants in accordance with the agreed terms and conditions of the Buyer's Agreement. It is submitted that Clause 18 of the Buyer's Agreement states that "barring unforeseen circumstances and force majeure events as stipulated hereunder, the possession of the said apartment is proposed to be, offered by the company to the allottee within a period 36 (thirty six with a grace period of 6 months from the date of actual start of the construction of a particular tower building in which the registration for allotment is made, such date shall hereinafter referred to as 'stipulated date, subject always to timely payment of all amounts including the basic sale price, EDC/IDC, IFMS, stamp duty, registration fees and other charges as stipulated herein or as may be deemed by the company from time to time in this regard.
- VI. That respondent no. 1 had been completely transparent in its dealings with the complainants and had from time to time updated them about the construction status of the tower in which the unit allotted to the complainants is located. Respondent no. 1 in order to keep the complainants updated about the construction of the project also requested the complainants to visit the site and witness the progress in the construction of the project vide letter dated 10.02.2017.
- VII. That due to unforeseen circumstances construction at the project site was not finished in time. Respondent no. 1 was forced to seek an extension of the MOU dated 13.06.2014. Therefore vide letter dated 3.04.2017 respondent no. 1 had extended the MOU for a period of 12 months and respondent no. 1 continued to abide by terms and conditions of the MOU for the said period. Respondent no. 1 continued

to pay Pre EMI to respondent no. 2 for the extended period as per the terms and conditions of the MOU.

- VIII. That the booking was made on 01.05.2014. The option of invoking the buy-back scheme by the complainants was subject to prior consent of respondent no. 2 after the completion of the period of the MOU. Vide letter dated 10.11.2017 respondent no. 1 had conveyed that the said option which had allegedly been exercised by the complainants was invoked by the complainants prior to the time period prescribed in the MOU. Moreover, it was also categorically conveyed to the complainants that their request to exercise the option of buy-back was not received as per clause 13 of the buyer's agreement. Thus, there was no proper invocation of the buy-back scheme by the complainants.
- IX. That the possession of the unit was subject to the occurrence of the force majeure events. The relevant clause of the Agreement pertaining to force majeure event is as under:-

"The Company shall not be held liable or responsible for performing nay of its obligations or undertakings in this Agreement is such performance is prevented, delayed or hindered by Force Majeure Events' such as non-availability of necessary infrastructure facilities being provided by the government for carrying development activities, non-availability or inadequate supply of steel and/or cement or other building materials, or water or electric power or labor, slow down, strike or due to dispute with the constriction agency employed by the company, lock out or civil commotion, war or enemy action or by reason or by reason of earthquake, major fire, abnormal rains, floor, other Act of God, terrorist action or by reason of change of law, act, notification prohibitory order, rule of Government and/or any other public or competent authority or due to delay in the grant of Environmental Clearance, completion/occupancy certificate, by any competent authority or it competent authority refuses, delays, withholds, denies the grant of necessary approvals of the said apartment/building for any amenities, facilities intended to be created therein or if any matters, issues relating to such approvals, permissions, notice by competent authority become subject matter of any suit/writ/litigation before a competent court or for any reason beyond the control of the Company. in such event, the

Company shall not be liable for any compensation or damages in any manner whatsoever."

- X. That the implementation of the said project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of respondent no. 1 and which have affected the materially affected the construction and progress of the project. Some of the Force Majeure events/conditions which were beyond the control of respondent no. 1 and affected the implementation of the project.
- XI. That respondent no. 1 has already obtained the occupation certificate and offered the possession of the unit in question to the complainants. Respondent no. 1 has strictly abided by the terms and conditions of the duly executed Builder Buyer's Agreement. On the other hand, even though the complainants have been called upon to take the possession of their unit after payment of the amount due to respondent no. 1 and fulfilment of the requisite formalities yet the complainants are intentionally not coming forward to do so. Moreover, due to default by the complainants in repayment of their loan liability as the possession is already offered, action has been initiated by respondent no. 2 under the SARFAESI Act and the symbolic possession of the unit in question has been taken over by respondent no. 2. As far as the stand of the complainants that they had invoked the buy-back option, the same is absolutely baseless and false. The alleged invocation had not been done as per the terms and conditions agreed between the parties. Moreover, the alleged invocation had been conveyed by the complainants to respondent no. 3 and not respondent no. 1. As per the MOU, the complainants could invoke the option of buy back only in writing to respondent no. 1 within the stipulated time period.

XII. That the present complaint is a counterblast to the action initiated by respondent no. 2 under the SARFAESI Act. If the complainants had any grievance regarding invocation of buy-back of their unit, they could have approached the Authority. The complainants are estopped from filing the present baseless, false complaint.

E. Reply on behalf of respondent no.2

6. The respondent no.2 has contested the complaint on the following grounds:

- I. That the subject matter of the present complaint has arisen due to the alleged default on part of respondent no. 1 in timely construction and handover of the project. However, the complainant has decided to wrongly implead ICICI BANK LTD. as respondent no. 2 and moreover the complainant has not sought any relief against the respondent no.2.
- II. That this Authority lacks jurisdiction to issue any directions or orders to any other person or entity who is not a promoter, real estate agent or allottee and respondent no. 2 being the lender, does not fall under any of the aforementioned categories. The instant complaint is liable to be dismissed on account of mis-joinder of parties qua the respondent no. 2. The domain of services provided by the respondent no. 2 is completely separate and independent of respondent no. 1 and many relationship between the complainant and the respondent has ceased to exist and hence the complaint ought to be dismissed as against respondent no. 2 on account of lack of jurisdiction and lack of cause of action.
- III. That the respondent no. 2 i.e. ICICI Bank Ltd is in no way concerned with the present complaint except that it had sanctioned and disbursed the Home Loan in terms and conditions of the Home Loan Agreement

(Loan A/c No-LBDEL00002106093) and Tripartite Agreement. However, for the sake of brevity, the answering respondent is filing this reply.

F. Reply on behalf of respondent no.3

7. The respondent no.3 has contested the complaint on the following grounds:
 - I. That respondent no.3 is a Limited Company duly registered under the provisions of the Companies Act, 1956, and is a SEBI Registered Stock Broker. The respondent no. 3 offers broking service to its clients through the online web portal www.icicidirect.com.
 - II. Under the provisions of the Act, 2016 only those complaints can be entertained and adjudicated which are filed by aggrieved person for any violation or contravention of the provisions of the Act or the rules and regulations made there under against the promoter or real estate agent. The respondent no.3 is neither a promoter nor real estate agent therefore the present complaint filed is not maintainable and is liable to be dismissed whereby deleting respondent no.3 as party from the present complaint.
 - III. That there is no privity of contract between the complainants and respondent no.3 and it has no role to play in the alleged transaction between the complainants, respondent no.1 and respondent no.2.
 - IV. That the alleged transaction which is in question is between the complainants, respondent no.1 and respondent no.2. The respondent no.3 is totally a stranger to the said alleged transaction in question and has been arrayed a party with an intention to cause harassment.

- V. That no specific relief has been sought by the complainants against respondent no.3 and same also suffices from the prayer clause of the complaint. It is important to submit that the presence of respondent no.3 is not required in present complaint in order to enable the Hon'ble Authority to effectually and completely adjudicate upon and settle all the issues involved in the present complaint.
8. 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.

G. Jurisdiction of the authority

9. The Authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

G.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

G.II Subject-matter jurisdiction

11. 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;

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

H. Findings on the reliefs sought by the complainants:

- H.I. Direct the respondent no.1 to pay principal amount of Rs.2,78,41,550/-towards refund of the entire amount as paid by the complainants along with a premium of Rs. 1,500/-per sq. ft. as per the Memorandum of Understanding dated 13.06.2014.**
- H.II. Direct the respondent no. 1 to pay interest at 18% per annum for period of delay in honouring the buyback scheme on the total repurchase price payable to the complainant as per the Memorandum of Understanding dated 13.06.2014.**
- H.III. Direct the respondent no. 1 to pay all due payable towards Pre-EMI along with interest, if any, for the apartment to the respondent no. 2.**
- H.IV. Direct the respondent no. 2 to recall notice under Section 13(2) of the SARFAESI Act, and to order a stay on all proceedings initiated by respondent no. 2 with respect to the present transaction.**
- H.V. Direct the respondents to pay an amount of Rs.1,00,00,000/- in lieu of compensation for the mental agony and harassment that the complainant faced.**
- H.VI. Direct the respondents to pay legal cost incurred by the complainants.**

13. In the present complaint, the complainants booked a unit in the project of the respondent no.1 namely 'ATS Triumph" situated at Sector-37-C, Gurugram, Haryana. The complainants were allotted a unit bearing no. 5122 situated at 12th Floor in the Tower-05, admeasuring 3150 sq.ft of super area. Thereafter, the "Apartment Buyer's Agreement" for the said unit was executed between the complainants and the respondent no.1 on 13.06.2014. A Memorandum of Understanding was executed between the complainants and respondent no.1 on 13.06.2014. As per Clause 8 of the said MOU, it was agreed between the parties that the purchaser (complainants) is entitled to call upon the developer (respondent no.1) to exercise the option of Buy Back within a period of 33 months from the date of booking to 36 months from the date of booking i.e., 06.02.2017-06.05.2017. A tripartite Agreement has been executed between the complainants, respondent no.1 and respondent no.2 on 13.06.2014. The total sale consideration of the unit was Rs.2,86,56,250/- and the complainants have paid an amount of Rs.2,78,41,550/- against the same till date. Out of the said amount, Rs.69,55,128/- has been paid by the complainants on the own account and an amount of Rs.2,08,86,422/- was paid by the Bank. The Occupation Certificate has been obtained from the competent authorities on 29.05.2019 and thereafter, the offer of possession was made to the complainants on 07.06.2019. The complainants were informed by respondent no.1 that the symbolic possession of the unit has been taken by the respondent no.2.
14. The complainants have sought the relief of refund of the amount paid i.e., Rs.2,78,41,550/- alongwith a premium of Rs.1500/- per sq.ft. as per the MOU dated 13.06.2014, also, pay interest @18% per annum for the

period of delay in honouring the buyback scheme, direct respondent no.1 to pay Pre-EMIs alongwith interest to respondent no.2 alongwith compensation for mental agony and harassment.

15. The Authority after considering all the documents on record observes that the complainants herein entered into the project namely "ATS Triumph" of respondent no.1 situated at Sector 104, (Dwarka Expressway), Gurgaon, Haryana - 122001. The complainants were allotted a unit bearing no. 5122 situated at 12th Floor in the Tower-05, admeasuring 3150 sq.ft of super area. Thereafter, the "Apartment Buyer's Agreement" for the said unit was executed between the complainants and the respondent no.1 on 13.06.2014. A Memorandum of Understanding was executed between the complainants and respondent no.1 on 13.06.2014. A tripartite Agreement has been executed between the complainants, respondent no.1 and respondent no.2 on 13.06.2014. The total sale consideration of the unit was Rs.2,86,56,250/- and the complainants have paid an amount of Rs.2,78,41,550/- against the same till date. Out of the said amount, Rs.69,55,128/- has been paid by the complainants on their own account and an amount of Rs.2,08,86,422/- was paid by the Bank.

16. As recorded hereinabove, respondent no. 1 obtained the Occupation Certificate on 29.05.2019 and thereafter offered possession of the unit in question to the complainants vide letter dated 07.06.2019. The complainants were called upon to take possession of the said unit upon payment of the outstanding dues payable to respondent no. 1 and completion of the requisite formalities. However, despite the offer of

possession, the complainants failed to come forward to take possession of the unit.

17. It is further evident from the record that, owing to the default committed by the complainants in repayment of their loan liability, and since possession had already been offered, respondent no. 2 initiated proceedings under the provisions of the SARFAESI Act. Consequently, symbolic possession of the unit in question was taken over by respondent no. 2.

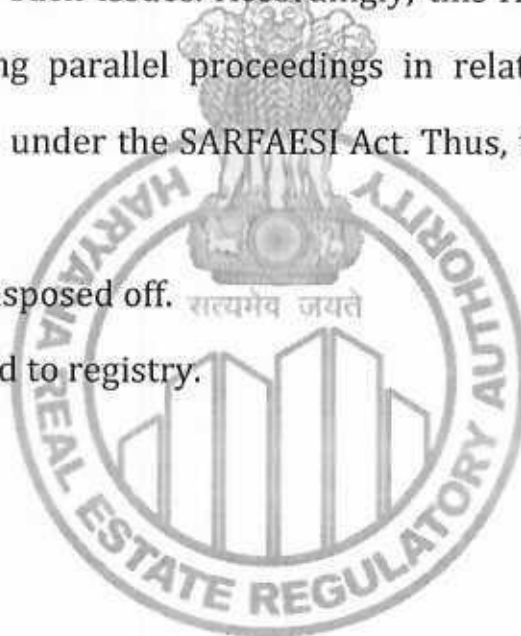
18. Vide proceedings dated 16.09.2025, Shri Sumeet, Coordinator, Planning Branch, HARERA, Gurugram, was appointed as Local Commission to visit the unit in question and ascertain whether the complainants were in possession thereof, and to submit a report in this regard. Pursuant thereto, the unit was physically inspected on 29.10.2025. As per the Site Inspection Report, it was observed that a notice/letter issued on behalf of ICICI Bank had been affixed on the main entrance gate of the unit, indicating therein that the symbolic possession of the said unit vested with ICICI Bank.

19. Upon consideration of the pleadings of the parties, documents available on record, and the material placed before this Authority, it is apparent that the matter is already pending adjudication under the provisions of the SARFAESI Act. It is a settled principle of law that parallel proceedings in respect of the same subject matter, involving the same parties and cause of action, are not maintainable, as the same may lead to multiplicity of litigation, conflicting findings, and forum shopping.

20. Furthermore, Section 34 of the SARFAESI Act expressly bars the jurisdiction of civil courts and other authorities in matters pertaining to actions or measures undertaken by secured creditors under the said Act. The adjudicatory mechanism in such disputes has been specifically entrusted to the Debts Recovery Tribunal (DRT) and the Debts Recovery Appellate Tribunal (DRAT), which possess exclusive jurisdiction to adjudicate upon such issues. Accordingly, this Authority is restrained from entertaining parallel proceedings in relation to the measures already initiated under the SARFAESI Act. Thus, the present complaint is dismissed.

21. Matter stands disposed off. सत्यमेव जयते

22. File be consigned to registry.




(Arun Kumar)
Chairman

HARERA
Haryana Real Estate Regulatory Authority, Gurugram
GURUGRAM

Dated:07.04.2026