

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

**Complaint no.:** 1651 of 2025  
**Complaint filed on:** 24.03.2025  
**Date of first hearing:** 07.08.2025  
**Date of decision:** 05.02.2026

1. Mr. Atulya Bhatia

2. Mrs. Anita Bhaita

**Both RR/o:** - A-702, Green Valley Apartments, Plot No.  
18, Sector-22, Dwarka New Delhi- 110075

**Complainants**

Versus

M/s Manglam Multiplex Private Limited

**Regd. office:** Cabin-1, LGF, F-22, Sushant Shopping  
Arcade, Sushant Lok, Phase-I, Gurugram, Haryana-  
122002

**Respondent**

**CORAM:**

Shri Phool Singh Saini

**Member**

**APPEARANCE:**

Shri Rishabh Gupta (Advocate)

Ms. Shriya Takkar (Advocate)

**Complainants  
Respondent**

**ORDER**

1. 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 to the allottees as per the agreement for sale executed inter-se them.



**A. Unit and Project related details:**

2. The particulars of the project, the details of 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	"M3M 65 <sup>th</sup> Avenue", Sector 65, Gurugram
2.	Nature of the project	Commercial
3.	Project area	14.4125 acres
4.	DTCP license no.	15 of 2017 dated 02.05.2017 valid up to 01.05.2025
5.	Name of licensee	Manglam Multiplex Pvt. Ltd.
6.	RERA Registered/ not registered	01 of 2017 dated 14.06.2017 (Issued for part of the project by the Interim RERA) 32 of 2023 dated 02.02.2023 valid up to 01.05.2024 (for whole project)
7.	Unit no.	KIOSK-14 & 1 <sup>st</sup> Floor (As per page no. 82 of the complaint)
8.	Unit area admeasuring	1124.30 sq. ft. (Super area) 201.39 sq. ft. (Carpet Area) (As per page no. 82 of the complaint)
9.	Allotment letter	25.01.2018 (As per page no. 63 of the complaint)
10.	Date of agreement for sale	21.06.2019 (As per page no. 78 of the complaint)
11.	Possession clause	<b>7. POSSESSION OF THE UNIT</b> <b>7.1 Schedule for possession of the said Unit:</b> <i>The promoter agrees and understands that timely delivery of possession of the unit along with the car parking space(s), if any, to the allottee and the common areas to the association of allottees or the competent authority, as the case may be, as provided under the act and Rule 2(1)(f) of Rules, 2017, is the essence of the agreement.</i> (As per page no. 96 of the complaint)



12.	Due date of possession	01.05.2024 (As per RERA registration)
13.	Total sale consideration	Rs.1,52,80,361/- (including PLC, IFMS etc.) (As per payment plan on page no. 121 of the complaint)
14.	Amount paid by the complainant	Rs.58,70,870/- (As per SOA on page no. 133 of the reply)
15.	Pre-handover amount paid by the respondent	10,22,333/- (As per page no. 109-110 of the reply)
16.	Occupation Certificate	30.09.2021 (As per page no. 128 of the reply)
17.	Offer of possession	25.10.2021 (As per page no. 125 of the complaint)
18.	Pre-cancellation notice	25.11.2021 (As per page no. 138 of the reply)
19.	Cancellation notice	10.12.2021 (As per page no. 139 of the reply)
20.	Notice sent by the complainant to the respondent w.r.t. sale deed and possession	14.05.2024 (Page no. 133 of the complaint)

### B. Facts of the complaint

3. The complainant has made the following submissions: -

1. That the respondent had advertised about their commercial project under name and style "M3M 65 Avenue" situated in Sector- 65 Gurugram alleging to be consisting of many advance technologies and amenities/ infrastructures. Pursuant to the lucrative offer and strong market hold of the respondent, the complainant had shown interest in the said project and agreed to purchase a commercial unit in the said project. The said project is also registered before this Authority vide registration no. GGM/688/420/2023/32 of dated 02.02.2023.



- II. That the respondent company had invited application as stated to be Expression of Interest dated 24.04.2017 and received Rs.10,00,000/- from the complainant. Thereafter, an allotment letter dated 25.01.2018 was issued by the respondent company alleging the Kisok No. 14, comprising of 1124.30 sq. ft. Super area and 224.97 sq. ft. as carpet area, total sale consideration amounting to Rs.1,68,08,052/- (including taxes and other charges).
- III. That the agreement to sale was got executed and registered on 21.06.2019 vide vasika no. 3585 between the parties Kisok No. 14, comprising of 1124.30 sq. ft. super area and 224.97 sq. ft. as carpet area, total sale consideration amounting to Rs.1,68,08,052/- (including taxes and other charges). The complainant paid total Rs.58,70,870/- (Including all Government taxes and charges as and when demanded by the respondent company). The remaining amount to be paid by the complainant within 30 days from notice offer of possession as mentioned in Schedule D of the agreement mentioned at page no. 43 of the agreement.
- IV. That the as per clause no. 7.1 of the Agreement to sale, the possession was to be handed over as per prescribed under rule 2(1)(f) of Rules 2017. Thus, keeping in view the HRERA Registration Certificate, the possession to the complainant was to be handed over on or before May 2024 as per builder buyer agreement.
- V. That the notice of offer of possession has been issued by the respondent company on 25.10.2021 and thereafter, the complainant visited the spot and inspected the unit wherein the unit was not in habitable and ready and various discrepancies regarding measurements and quality issue



was found and has been admitted by the officials of the respondent company present at that time. The said officials noted down the said discrepancies and assured to get it corrected done after taking approval from the Management of respondent company but all in vain. No such discrepancies have been corrected and the respondent company was bent upon to cancel the unit by raising illegal demand. The respondent company issued Notice for offer of possession dated 25.10.2021 attaching the statement of account, demanding Rs.1,07,18,259/-, as balance sale consideration. But they have failed to perform its part of contract as shown rosy pictures under agreement but was not made accurate accordingly. This act and conduct of the respondent company shows that major deficiency of the service and unfair trade practice opted to make fool of the gullible customers by not correcting the discrepancies and compel them to withdraw from the project and take refund of the amount paid by the complainant after canceling the unit.

- VI. That the respondent company has cancelled the commercial unit purchased by the complainant but have failed to refund the amount to the complainant. Thus, there is no malafide intention of the complainant for paying any outstanding amount but it is the respondent company who had failed to performance its part of contract by adhering terms of agreement and taking undue advantage of escalation in price at the said area, is bent upon to cancel the unit arbitrary and unilaterally on the ground of non-payment of outstanding dues. This act and conduct of the respondent company shows that major deficiency of the service and unfair trade practice opted to make fool of the gullible customers. Thus,



the complainant does not want to continue with the project and hence, is liable for refund of the amount paid by them.

- VII. That the demand raised by the respondent company is completely vague, illegal but being in a dominant position, the respondent company is bent upon to cancel the unit. The respondent has failed to fulfill its obligations as under agreement and it is clear cut case of abuse of their dominant position of the respondent in the market and such an act needs to be penalized against the respondent.
- VIII. That the complainant had also wrote to respondent company detailing all the issue but the respondent company has not paid any heed to this letter and nor has replied. Hence, the cause of action has arose to the complainant to file the present complaint before the Authority.
- IX. Thus, the respondent has also committed fraud with the complainant and has robbed him for usurping money and also their dreams as he has taken away a life-long dream of owning a space which shall support them during their remainder period of life. The respondents in the given circumstances, has voluntarily committed breached terms of the agreement executed and have acted arbitrarily for which respondent should be even prosecuted criminally for cheating, fraud and criminal breach of trust. More so, the complainant has suffered mental agony and harassment at the hands of the respondent and issuing demand illegally and canceling the unit on the ground of non-payment of outstanding. The complainant must also be compensated for this act and conduct on part of respondent as well as be compensated for litigation expenses incurred by him due to the avoidable litigation the complainant has been compelled to institute.



X. That according to the relief claimed by the complainant, this Authority has got Jurisdiction to try the present complaint. The complainant reserves their right to seek Rs.5,00,000/- compensation towards harassment, mental agony and Rs.50,000/- as litigation cost incurred by them, from the promoter for which they shall make separate application before the Adjudicating officer, if required.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief:
  - I. Direct the respondent to refund of the paid-up amount along with prescribed rate of interest as per provisions of the Act, 2016 and the Rules of 2017.
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 respondent has contested the complaint on the following grounds: -
  - I. That the complainant has neither any cause of action nor any locus standi to maintain the present complaint against the respondent, especially when the complainant actually agreed to the terms and conditions earlier and is now seeking the complete modification of the terms and conditions of the understanding between the parties. It is submitted that the complaint filed by the complainants is baseless, vexatious and is not tenable in the eyes of law therefore the complaint deserves to be dismissed at the very threshold.



- II. That the present complaint was filed by the complainant on 24.03.2025 i.e., after a period of 3 years, 3 months and 14 days from the date of cancellation dated 10.12.2021.
- III. That the complainant ought to have approached the Authority within 3 years from the date of cancellation of allotment. Since, the complainant has approached the Authority after the expiry of prescribed period of limitation for filing the present complaint, hence the same is liable to be dismissed on this ground alone. That the present complaint is time bared. It is submitted that the present complaint filed by the complainant is filed beyond the period prescribed Article 113 and 137 of the Limitation Act, 1963. The complainant has raised the claims which are hopelessly time barred and it is settled law that the limitation for filing of the complaint shall start from the day the cause of action has accrued. Admittedly, the present complaint had been filed before this Authority in March 2025 i.e. after expiry of prescribed period of limitation for filing the present complaint, hence the same is liable to be dismissed on this ground alone.
- IV. That it is settled law that when a special Act or local law do not prescribe the period of limitation, the limitation period prescribed under the Limitation Act, 1963 shall be applicable. Accordingly, the period of limitation as prescribed under Article 113 of the Limitation Act is applicable to the present complaint. Admittedly, the present complaint is hopelessly barred by limitation and is liable to be dismissed on this ground alone. That Section 88 of the RERA Act provides that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. That since the complainant had been left with no remedy under civil law, the



complainant has filed the present complaint to abuse the process of law and indulge in forum hunting. That the cancellation of allotment cannot be challenged at this belated stage. Further, it is well settled that the correspondences, representations and legal notice do not extend the time of limitation. Thus, the present complaint is barred by limitation.

- V. That the respondent wants to bring to the kind knowledge of this Authority that the complainants have not approached this Authority with clean hands and is guilty of suppression of material facts absolutely relevant for just and proper adjudication of this complaint. The complainants after conducting their own due diligence applied for booking of a unit in the project "M3M 65th Avenue" which is an integral part of the mixed land use development being undertaken by respondent vide application form and paid an amount of Rs.1,00,000/- towards part booking amount. The Complainants on account of their own free will and understanding and after having read and understood all the terms of the application form, duly signed the application form.
- VI. In due consideration of the part booking paid by the complainants and their commitments to comply with the terms of the booking/allotment and make timely payments of demands, the complainant was allotted commercial unit bearing no. Kiosk 13 in 'M3M 65th Avenue', commercial component of mixed land use development of the respondent company vide allotment letter dated 23.06.2017. The complainants vide the allotment letter dated 23.06.2017 were requested to deposit a sum of Rs.60,51,131/- as per the specific payment plan opted by the complainants.



- VII. That the respondent issued a revised allotment letter dated 25.01.2018 for the commercial unit Kiosk 14 in "M3M 65th Avenue" in lieu of and/or in substitution of the earlier provisional allotment letter for commercial unit no. Kiosk 13. It was further informed to the complainants that the allotment of their commercial unit in "M3M 65th Avenue" stands substituted/varied/ revised/ altered and henceforth the allotment of the complainants would be referred to as commercial unit no. Kiosk 14 on the same terms and conditions as per the schedule of payments to be made as earlier. In light of the commitment to make timely payments, the complainants were allotted unit bearing no. KIOSK-14 vide revised allotment letter dated 25.01.2018. The cost of the unit for carpet area admeasuring 201.39 sq. ft. was Rs. 1,52,80,361/- plus other applicable charges.
- VIII. That the complainant had earlier applied for booking of a ready to move in unit in the project of the associate company M/s. M3M India Private Limited. Thereafter, the complainants requested that the amount paid towards the booking in associate company be transferred towards the unit in question without any deductions. The respondent being a customer-oriented company acceded to the request of the complainants and accordingly transferred the entire amount paid i.e. Rs.57,08,459/- towards the unit in question. After constant follow ups with the complainant, the buyer's agreement was executed between the parties on 21.06.2019 and the same was duly registered vide vasika no. 3584. The buyer's agreement sets out the rights and liabilities of the parties.
- IX. That the complainants failed to deposit the due amounts therefore, the respondent company issued reminder-1 dated 28.11.2019 and reminder



2 dated 30.12.2019 requesting the complainants to deposit the pending dues along with prescribed rate of interest. That in view of the booking and commitment to make timely payments, the respondent company vide acknowledgment letter dated 26.04.2021 offered a monthly amount to the complainants provide them the comfort of the respondent company's commitment to deliver the unit on time.

- X. That both the parties herein, by mutual agreement, amended clause 4 of the acknowledgment letter with effect from 01.05.2020. It was further agreed between the parties that all the other terms and conditions of the acknowledgment letter would remain unaltered. Thus, by way of the amended clause 4, it was agreed between the parties that the pre-handover amount from 01.05.2020 would be adjusted as a discount at the time of notice of offer of possession. In due compliance of clause 4 of the acknowledgment letter, the respondent paid an amount of Rs. 17,03,889/- as pre-handover to the complainants from 01.02.2018 to 01.05.2020 vide cheques/RTGS.
- XI. That the respondent company fulfilled its promise and completed the construction of the present phase before the agreed timeline by investing its own funds. The respondent completed the construction of the project much prior to the agreed timeline and thus applied for the grant of occupation certificate on 30.04.2021. That the occupation certificate for the present phase was granted by the competent authorities on 30.09.2021 after due verification and inspection.
- XII. That the unit was ready and the respondent company herein vide letter dated 25.10.2021 offered possession to the complainants and requested the complainants to remit the outstanding amount towards the



remaining basic sale price, taxes, cess, stamp duty charges etc. It is pertinent to mention herein that the construction of the project was completed prior to the prescribed commitment timeline i.e., June 2022 and there is no delay in offering possession of the unit to the complainants. Thus, no case under Section 18 of Act, 2016 is made out. The complainants were well aware of their obligation to take possession of the unit in accordance with Sec 19(10) of Act, 2016.

- XIII. That the respondent in compliance of its obligations under the acknowledgment letter had credited an amount of Rs.12,91,678/- as accumulated pre-handover into the account of the complainant on 22.11.2021. The said fact is evident from a bare perusal of the ledger account statement appended herein. That the complainants in violation of their contractual obligations miserably failed to remit any amount towards the dues communicated vide the offer of possession, therefore the respondent company left with no other alternative, issued pre-cancellation notice dated 25.11.2021.
- XIV. Despite the issuance of abovementioned pre-cancellation letter, the complainants herein failed to take advantage of this opportunity to come forward to clear their dues, as a consequence of which the respondent company was constrained to terminate the allotment of the complainants vide cancellation letter dated 10.12.2021 and forfeit the amount deposited. Post cancellation of the allotment, the complainant has no right, title or interest over the unit in question nor has any privity of contract with the respondent.
- XV. That the respondent company was constrained to cancel the unit on account of non-payment of demands raised by the respondent. The



respondent has incurred various losses/damages on account of the breach of the terms of the buyer's agreement by the complainants, which the complainants are liable to pay as per the terms of agreement. That the actual amount paid by the complainant towards the unit in question was Rs. 58,70,870/- against the total sale consideration of Rs. 1,52,80,361/- (excluding all applicable taxes).

XVI. That the respondent to bring closure to the matter, refunded an amount of Rs. Rs.24,86,176/- to the Complainants vide two cheques dated 11.11.2024 for an amount of Rs.12,43,088/- each drawn on ICICI Bank post necessary deduction of the following amounts:

Earnest money of Rs. 16,80,805/-

Pre-handover amount: Rs.17,03,889/-

XVII. The aforesaid refund cheques were sent to the complainants vide cover letter dated 18.11.2024 through blue dart courier. The aforesaid cheques were sent to the complainant's address however, the same were return undelivered as the Complainants had shifted from the last address. The respondent company once again attempted to refund the amount to the complainants vide RTGS dated 07.04.2025. However, the said RTGS could not be affected due to lapses and omissions attributable to the complainants, for which the respondent company bears no responsibility. That the respondent is not liable to pay any interest on the refundable amount post 18.11.2024.

7. 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**



8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

**E. I Territorial jurisdiction**

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 completed territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

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

*Section 11(4)(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;*

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, 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 of 2016 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 complainants at a later stage.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed



by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings regarding relief sought by the complainant.**

**F.1 Direct the respondent to refund of the paid-up amount along with prescribed rate of interest as per provisions of the Act, 2016 and the Rules of 2017.**

13. The complainants were allotted a unit bearing no. KIOSK-14, 1<sup>st</sup> Floor, in 'M3M 65th Avenue', vide allotment letter dated 20.05.2012, under possession linked payment plan. Thereafter, an agreement to sell was executed between the parties on 21.06.2019, vide which a unit bearing no.



KIOSK-14, 1<sup>st</sup> Floor, admeasuring 201.39 sq. ft. (carpet area) and 1124.30 sq. ft. (super area) was allotted to them. They have paid an amount of Rs.58,70,870/- against the basic sale consideration of Rs.1,08,81,223/-. As per clause 7.1 of the agreement, the respondent was required to hand over possession of the unit to the allottee and the common areas to the association of allottees or the competent authority, as the case may be, as provided under the Act and the Rule 2(1)(f) of the Rules, 2017 is the essence of the agreement. The due date of possession was 01.05.2024 (as notified by the promoter to the Authority at the time of registration of the project).

14. That the respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 30.09.2021 and thereafter, has offered the possession on 25.10.2021. Thereafter, the respondent has issued various reminder cum demand letters to the complainants and requested to pay the outstanding dues but the complainants have failed to pay the same. Due to non-payment of the outstanding dues, the respondent has cancelled the unit vide letter dated 10.12.2021 vide which the respondent threatened the complainants to forfeit the entire amount paid by them.
15. The respondent submitted that the complainants are defaulter and have failed to make payment as per the agreed payment plan. Various reminders and final opportunities were given to the complainants and thereafter the unit was cancelled vide letter dated 10.12.2021. Accordingly, the complainants failed to abide by the terms of the agreement to sell executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule.

Now, the question before the authority is whether this cancellation is valid or not?



16. The authority has gone through the payment plan, which was duly signed by both the parties, which is reproduced for ready reference: -

S. No.	Name of Instalment	Payment plan	Instalment (Rs.)	Applicable Tax (Rs.)	Total (Rs.)
1.	On or before 31 Jan 18 (Subject to signing of Builder Buyer Agreement)	Rs.49,88,732 of BSP + Rs.7,28,614 of PLC	57,17,346	3,33,785	60,51,131
2.	Within 30 days of Notice of Possession	58.55% of BSP + 59.50 % of PLC + 100% of DC + 100% of Electricity Installation Charges + 100% of Power back up + 100% of IFMS + 100% of Stamp duty charges + 100% of registration charges + 100% of other charges	95,63,015	11,93,906	1,07,56,921
Total					1,68,08,052

17. It is matter of record that the complainants booked the subject unit under the above-mentioned payment plan and paid an amount of Rs.58,70,870 /- towards basic sale consideration of Rs.1,08,81,223/- which constitutes 53.95% of the basic sale consideration and they have paid the last payment only on 09.05.2019. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainants on 30.09.2021 and thereafter, the possession of the same was offered on 25.10.2021.
18. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottees are under obligation to make payments towards consideration of allotted unit as per agreement to sale dated 11.07.2014. The respondent issued pre cancellation letter dated 25.11.2021 and finally cancelled the unit on 10.12.2021.
19. Further, clause 9.3 of the Model RERA Agreement provides for a procedure for cancellation of allotment of the allottee. The relevant part of the clause is reproduced below: -



*"9.3 The Allottee shall be considered under a condition of Default, on the occurrence of the following events:*

*(i) In case the Allottee fails to make payments for two consecutive demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate prescribed in the Rules;*

*(ii) In case of Default by Allottee under the condition listed above continues for a period beyond ninety days after notice from the Promoter in this regard, the Promoter may cancel the allotment of the Plot/Unit/Apartment for Residential/ Commercial/Industrial /IT/any other usage along with parking (if applicable) in favour of the Allottee and refund the money paid to him by the allottee by forfeiting the booking amount paid for the allotment and interest component on delayed payment (payable by the customer for breach of agreement and non-payment of any due payable to the promoter). The rate of interest payable by the allottee to the promoter shall be the State Bank of India highest marginal cost of lending rate plus two percent. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within ninety days of such cancellation. On such default, the Agreement and any liability of the promoter arising out of the same shall thereupon, stand terminated. Provided that, the promoter shall intimate the allottee about such termination at least thirty days prior to such termination."*

20. Herein, buyer's agreement was executed between the parties on 21.06.2019, however, the said agreement is not in terms of the Model RERA agreement. The same is evident from the cancellation clause of the agreement. The relevant part of the clause is reproduced below: -

*"9.3 If, (a) the allotment of the Unit has been obtained by the Allottee through fraud, misrepresentation, misstatement of facts, or concealment/ suppression of any material fact, or b) the Allottee is not competent to enter into this Agreement for reasons of insolvency or due to operation of any regulation or law, then the Promoter may cancel the allotment of the Unit along with the parking (if applicable) if any, and refund the money paid to him by the Allottee by forfeiting the Earnest Money being 10% of the Total Consideration and interest component on delayed payment (payable by the Allottee for breach and non-payment of any due payable to the Promoter in terms of Clause 1.14 herein before and brokerage/ any rebates availed earlier/ margin/ incentive paid to a Channel Partner in case booking is made through a Channel Partner. The balance amount of money paid by the*



*Allottee shall be returned by the Promoter to the Allottee, without interest or compensation within 90 (ninety) days of such cancellation. On such default, the Agreement and any liability of the Promoter arising out of the same shall thereupon, stand terminated. Provided that, the Promoter shall intimate the Allottee about such termination at least 30 (thirty) days prior to such termination."*

21. As per the said clause 9.3 of the agreement, there is no pre-requisite of sending the demand letters to the complainants before cancelling the allotment. However, Model RERA Agreement provides that only after the complainants fail to make the payment of two consecutive demands as per the payment plan for a period beyond 90 days, the respondent may cancel the allotment of the unit allotted to the complainants after an intimation in this regard to the complainants. In the present case, the respondent has cancelled the unit only after a period of 46 days of such intimation, instead of 90 days (as provided in the Model RERA Agreement). Thus, the Authority is of the view that the said cancellation made by the respondent is not being in terms with the Model RERA Agreement. Hence, the cancellation letter dated 10.12.2021 is invalid, being pre-mature and hereby quashed.
22. Now, the complainants herein are seeking refund the entire amount along with interest under the provisions of the Act, 2016 and the Rules 2017 made thereunder. The question arises before the Authority whether the complainants are entitled to refund the entire amount paid by the complainants with or without deduction of earnest money?
23. It is admitted fact, that the respondent has obtained the occupation certificate on 30.09.2021. The complainants herein have sought the relief of refund by filing of present complaint on 24.03.2025 i.e., only after a gap of more than 3.6 years from the date of obtaining of occupation certificate. Further, clause 7.5 of the agreement to sell dated 21.06.2019, talks about



cancellation by allottee. The relevant part of the clause is reproduced as under: -

**"7.5 Cancellation by Allottee: - The Allottee shall have the right to cancel/withdraw his allotment in the Project as provided in the Act.**

**Provided that where the Allottee proposes to cancel/withdraw from the Project without any fault of the Promoter, the Promoter herein is entitled to forfeit the Earnest Money being 10% of the Total Price and interest component on delayed payment (payable by the Allottee for breach and non-payment of any due payable to the Promoter in terms of Clause 1.14 herein before and brokerage and any rebates availed earlier/ margin/ incentive paid to a Channel Partner in case the booking is made through a Channel Partner. The balance amount of money paid by the Allottee shall be returned by the Promoter to the Allottee, without interest or compensation within 90 (ninety) days of such cancellation."**

24. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of **Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Ors. VS. Sarah C. Urs., (2015) 4 SCC 136**, 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 farmed 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."*

25. Also, Hon'ble Apex Court in ***Civil Appeal no.3334 of 2023*** titled as ***Godrej Projects Development Limited Versus Anil Karlekar*** decided on 03.02.2025 has held that 10% of basic sale price is reasonable amount which is liable to be forfeited as earnest money.
26. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of Regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainants after deducting 10% of the basic sale consideration and return the remaining amount along with interest at the rate of 10.80% (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, from the date of filing of complaint i.e., 24.03.2025 till the actual date of refund of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017 *ibid*.

**G. Directions of the Authority**

27. Hence, the Authority hereby passes this order and issue 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 is directed to refund the paid-up amount of Rs.58,70,870/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration of Rs.1,08,81,223/-. The amount paid on account of assured return may be adjusted from the refundable amount and shall return the balance amount to the complainants. The refund should have been made on the date of filing of complaint i.e., 24.03.2025. Accordingly, the interest at the prescribed rate i.e., 10.80% is allowed on the balance amount from the date of filing of complaint till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017.
  - 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.
28. Complaint as well as applications, if any, stand disposed off accordingly.
29. File be consigned to registry.

Dated: 05.02.2026



**(Phool Singh Saini)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram