

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

Complaint no.: 3521 of 2025
Date of complaint: 29.07.2025
Date of order: 29.01.2026

1. Arun Massey
2. Rajni Massey

Both R/o: - 146-F, DDA Flat, Pocket-4, Mayur Vihar
Phase-1, Chilla Saroda Khadar, East Delhi- 110091

Complainants

Versus

M/s SS Group Private Limited.

Regd. Office at: - SS House, Plot o. 77, Sector-44,
Gurugram-122003.

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Sarthak Pathak (Advocate)

Shri Dhruv Dutt Sharma (Advocate)

Complainants

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 provision 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. No.	Particulars	Details
1.	Name of the project	"The Coralwood" situated at Sector- 84 Gurugram
2.	Nature of the project	Group housing complex
3.	DTCP license no. and validity status	59 of 2008 dated 19.03.2008 valid upto 18.03.2025
4.	Allotment letter	11.08.2020 (Page no. 20 of complaint)
5.	Unit no.	G-603, Type-G, Tower-G, (Page no. 20 of complaint)
6.	Unit admeasuring	2250 sq. ft. (super area) (Page no. 20 of complaint)
7.	Date of execution of Buyers agreement	Not executed
8.	Possession clause	N. A
9.	Due date of possession	Cannot be ascertained
10.	Basic sale consideration	80,92,422/- (As per Schedule-Payment plan at page no. 21 of complaint)
11.	Total sale consideration	Rs.94,80,393/- (As per Schedule-Payment plan at page no. 21 of complaint)
12.	Amount paid by the complainant	Rs.10,00,000/- (As per details of cheque at page no. 22 and 23 of complaint)
13.	E-mail sent by complainant to respondent for refunding the entire	28.09.2020 and 13.10.2020



	amount	
14.	Surrender request made by the complainant	05.10.2020 (Page no. 52 of complaint)
15.	Occupation certificate	06.03.2020 (Page no. 11 of reply)
16.	Cancellation letter issued by the respondent	29.01.2021 (Page no. 14 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainants are retired senior citizens and dependent upon their lifelong savings for livelihood. The complainants have no other source of income and their child is also searching for a job. A residential unit no. G-603, Tower G, in the project titled as - "The Coralwood" located in Sector 84, Gurugram, Haryana was allotted to the Complainants vide allotment letter dated 11.08.2020. It may be noted that no builder buyer agreement was ever executed between the complainants and the respondent.
- II. That, during the discussions and negotiations, it was mutually agreed between the parties that the complainants would purchase the said unit only after sale of their existing flat in Delhi i.e. 146-F, DDA Flat, Pocket-4, Mayur Vihar Phase - 1, Chilla Saroda Khadar, East Delhi - 110091 and subject to it being first converted to freehold from Delhi Development Authority. The representatives of respondent assured the complainants that they will get their existing flat freehold from the Delhi Development Authority and undertook the liability to that extent. The complainant, relying on the assurances and promises made by the respondent, paid an amount of Rs.5,00,000/- vide cheque no. "202962" drawn on State Bank of India dated 29.07.2020 as the first booking amount to the respondent.



- III. Thereafter, the respondent demanded another Rs.5,00,000/- towards 2nd installment of the sale consideration and for registry of the said unit. The complainants paid a sum of Rs.3,00,000/- vide cheque no. "202963" drawn on State Bank of India dated 10.08.2020 and a sum of Rs.2,00,000/- vide cheque no. "546801" drawn on State Bank of India dated 10.08.2020. Thus, the complainant made each and every payment on demand raised by the respondent without any delay and paid a total sum of Rs.10,00,000/- towards the said unit to the respondent.
- IV. That Covid-19 cases were rising again in the September, 2020 and the DDA as well as other offices were closed. On further enquires being made by the complainants, it came to the knowledge of the complainants that the staff was either on training or were not coming to the office. On the other hand, the respondent failed to take any responsibility for conversion of the complainant's flat to freehold rather the respondent was pressurizing the complainants to make further installments.
- V. That the complainants were not receiving any information from DDA Office and thus left with no option, the complainants finally decided to surrender the said unit and sought refund of the payment made towards the said unit in the year 2020. The respondent on receipt of the surrender request demanded the original allotment letter dated 11.08.2022 from the complainants. The complainants submitted surrender/withdrawal application vide letter dated 05.10.2020 along with the original allotment letter dated 11.08.2022.
- VI. That, the respondent acknowledged the surrender/withdrawal application and assured that the refund will be made by the end of year, 2020. After submission of the abovesaid document, the respondent assured that the initiation of refund process will start very soon and the refund amount



would be credited within a period of few months and maximum till December, 2020 in any case. When no refund was received by the complainants, the complainants made various telephonic communications to the respondent to know the status of the refund but no response was given by the respondent. The complainants time and again made various communications to respondent and even visited their registered office requesting them to process the refund but the same was never responded either. Now, whenever the complainants tried to enquire regarding the status of their refund, the complainants were refused to enter the premises of the registered office of the respondent and not allowed to meet anyone.

- VII. That the complainants have already made a total payment of Rs.10,00,000/- towards the residential unit booked. That, despite repeated requests and prayers, the respondent has not made any payment towards the refund amount. The respondent is not only guilty of deficiency of services and for unfair trade practices but also with the breach of contractual obligations, mental torture, harassment of the complainants by misguiding them, keeping them in dark and putting their future at risk.
- VIII. That, the complainants are constrained and left with no option but to file the present complaint. Further, the complainants are seeking and entitled to full refund of the amount along with interest for the delayed period but not limited to all the payments made in lieu of the said unit.
- C. Relief sought by the complainant:**
4. The complainant has sought following relief:
- I. Direct the respondent to refund the entire amount of sale consideration paid by the complainant i.e. Rs.10,00,000/- along with interest @ of 18% p.a. for the delayed period.



- II. Direct the respondent to pay cost of litigation to the complainants being a sum of Rs.2,00,000/-;
- III. Direct the respondent to pay compensation against the mental harassment suffered by the complainants being a sum of Rs.3,00,000/-;

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 without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing. The present complaint, having been filed after 4 years 10 months from the date of withdrawal/surrender i.e. 28.09.2020, is hopelessly barred by limitation and is liable to be dismissed on this ground alone.
- ii. That apparently, the complaint filed by the complainants is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed.
- iii. That the complainants have frustrated the terms and conditions of the allotment, which was the essence of the arrangement between the parties and therefore, the complaint is not maintainable and should be rejected at the threshold. The complainants are estopped from filing the present complaint by their own act, conduct, omission, admission, delay, laches and acquiescence.
- iv. That the complainants have failed to make timely payments in accordance with the terms and conditions of the allotment letter as well as the payment



plan annexed thereto, and therefore, the present complaint is liable to be rejected. It is submitted that out of the total sale consideration of Rs. 95,08,954/-, the complainants have paid only a sum of Rs. 10,00,000/-, which is approximately 10.5% of the agreed sale consideration. Despite having expressly agreed to adhere to the payment plan, the complainants willfully defaulted in making further payments towards the sale consideration of the flat, and thereby committed a breach of their contractual obligations.

v. That the respondent had already received the occupation certificate dated 06.03.2020 in respect of the unit in question prior to the booking made by the complainants. Accordingly, since the Unit was ready for occupation, the complainants were required to pay 20% of the sale consideration at the time of allotment and the remaining 80% at the time of offer of possession. However, immediately after the allotment, and before the respondent could execute the builder buyer agreement and offer possession, the complainants, citing financial constraints, chose to withdraw from the project and cancelled the booking. That the complainants, from the very inception, were never genuinely interested in purchasing the unit, and had entered into the transaction solely with the intent of making speculative gains. That upon failure of the complainants to make the payment, the respondent was constrained to cancel the booking and forfeit the amount paid by the complainants vide cancellation letter dated 29.01.2021.

7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Written submissions filed by the complainants: -



9. The complainants have filed the written submissions on 04.02.2026 which are taken on record. The additional facts apart from the complaint has been stated by the parties in written submissions are mentioned below: -
- i. That the said unit allotted to the complainants was complete and fully constructed. Further, the respondent received the occupation certificate in respect to the said unit on 06.03.2020 i.e. before the allotment of the said unit to the complainants. Thus, it is clearly established that no actual or physical loss has arisen to the respondent rather the respondent has made huge profits by selling the said unit and creating third party interest over the said unit. The said unit is located in Gurgaon and prices in Gurgaon has rapidly increased over the last few years and therefore without any actual or physical loss to the respondent, it is totally unfair, unjust and inequitable on the part of respondent to forfeit the whole amount paid by the complainants.
 - ii. The complainants that the respondent has failed to show that they have actually suffered any loss to the extent of the amount forfeited by the respondent. The said forfeiture is totally unreasonable, arbitrary and the respondent has unjustly enriched them by forfeiture of whole amount paid by the complainants.
 - iii. Further, the complainants visited the office of the respondent to submit original allotment letter and submitted letter dated 05.10.2020 seeking refund, the respondent did not inform the complainants that their amount will be forfeited rather the respondent promised that after some deduction, their refund amount will be processed. The complainants kept visiting the office of the respondent many times in future to seek their refund but the respondent never informed the complainants about their intention to forfeit the entire amount paid by the complainants.



- iv. That as per section 13 of the Act, 2016 provides that no promoter shall accept sum more than 10% of the cost of the apartment, plot or building before entering written agreement for sale and registering the said agreement. It is pertinent to mention here that the Respondent not only collected more than 10% of the sale consideration rather were making additional demands which were illegal and against the provisions of the Act, 2016. The complainants paid an amount of Rs.10,00,000/- which is more than 10% of the agreed sale consideration and the said fact is admitted by the respondent in their reply as well.
- v. That the complainant respectfully submits here that the notification dated 05.12.2018 issued by the Authority and relied by the respondent in their reply dated 08.10.2025, is not applicable to the present facts and circumstances of the present case as the said booked unit was already constructed and no loss has occurred to the respondent. Even otherwise, the said notification also highlights that the Authority shall be guided by the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.
- vi. Further, the complainants humbly submits here that the said notification suggesting 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 is merely directory and not mandatory in nature. The argument is further strengthened by the very fact that the Authority has also incorporated a Miscellaneous Clause in the said notification.
- vii. Thus, in view of the above, it is well established that the Authority has the power to hold a contrary view in case the facts of the matter otherwise justify. It may be noted here that the complaints are the retired senior

citizens and their child is also dependent on the complainants and thus falls in a vulnerable class of the society. The complainants reiterates here that the respondent violated the obligations, responsibilities and functions provided under the Act 2016, rules and regulations made thereunder and mutual agreement and understanding arrived between the parties.

F. Jurisdiction of the Authority

10. The Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

11. 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.

F. II Subject matter jurisdiction

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

Section 11..... (4) The promoter shall-

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

Section 34-Functions of the Authority:

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



13. 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.

G. Relief sought by the complainant.

G.I Direct the respondent to refund the entire amount of sale consideration paid by the complainant i.e. Rs.10,00,000/- along with interest @ of 18% p.a. for the delayed period.

14. The factual matrix of the present case reveals that the complainants were allotted a unit bearing no. G-603, in Tower-G, for an area admeasuring 2250 sq. ft. vide allotment letter dated 11.08.2020 for the basic sale consideration of Rs.80,92,922/- in the project of the respondent namely, "The Coralwood", situated at Sector-84, Gurugram. The complainant has paid an amount of Rs.10,00,000/- to the respondent. No builder buyer agreement has been executed between the complainants and respondent till date. The respondent obtained the occupation certificate for the subject tower on 06.03.2020. Subsequently, the complainants sent an email to the respondent seeking refund of the paid-up amount on 28.09.2020, after the issuance of the occupation certificate for the tower where the unit is located.
15. The counsel for the respondent argued during the proceedings dated 29.01.2026 that the complainants had purchased the unit after obtaining occupation certificate i.e., 06.03.2020 and the complainants were allotted the unit vide allotment letter dated 11.08.2020. The complainants have made surrender request vide email dated 28.09.2020, thereafter the respondent cancelled the unit vide cancellation letter dated 29.01.2021 and made a request to allow the refund after deduction of 10% as earnest money.
16. Based on the documents placed on record and submissions made by both parties, it is evident that the respondent has obtained the occupation certificate



on 06.03.2020. Thereafter, the complainants booked the unit in the project of the respondent and the respondent company issued an allotment letter dated 11.08.2020 in favour of the complainants and the complainants have paid an amount of Rs.10,00,000/- against the basic sale consideration of Rs.80,92,922/- Further, the complainants vide email dated 28.09.2020, requested withdrawal of the allotment of the said unit due to financial circumstances and the relevant portion of the email dated 28.09.2020 is reproduced for ready reference: -

"Sir/Madam

We had booked an apartment (G-603) in SS Coralwood, Sector-84, Gurgaon vide letter dated 11th August 2020 (Copt attached)

We had verbally told your office that we will be purchasing the apartment when we sell our existing flat in Delhi, where we are residing at present, for which we are trying to get our flat freehold from Delhi Development Authority.

Due to Covid-19, the DDA office was closed for some time and now the staff at present are either on training or not coming, dure to which it is taking very long time and we are struck with very meagre monthly saving.

This is to inform you that we had taken some loan from SBI and closed the closed the fixed deposit also, to book the apartment, presuming that freehold of our house will be done at the earliest but it is taking too long.

Therefore, due to this unforeseen circumstances, it will not be possible for us to make further payment and request you to kindly refund our booking amount which we have paid as per the following details (copies attached)

- i. Cheque No. 202962 dated 29.07.2020 for Rs.5 lakh*
- ii. Cheque no. 202963 dated 10.08.2020 for Rs.2 lakh & Rs.3 lakh.*

We are sure, you will consider our case sympathetically and refund of booking amount, also taking into consideration that we have no one else to support us and our sons are out of Job.

Looking forward to your favourable reply. We would appreciate acknowledgement of this letter.

*Thanking You,
Yours faithfully,*

Arun Massey

&

Rajni Massey"

17. The Authority observes that Section 18(1) of the Act, 2016, is applicable only in the eventuality where the promoter fails to complete or is unable to give possession of the unit in accordance with terms of agreement for sale or duly

completed by the date specified therein. In the present case the complainants have purchased the ready to move in property as the occupation certificate of the subject unit has already been obtained by the respondent/promoter on 06.03.2020. The respondent has issued the allotment letter on 11.08.2020 vide which complainants have allotted a unit bearing number G-603, for an area admeasuring 2250 sq. ft. for the basic sale consideration of Rs.80,92,922/- and the complainants have only paid a booking amount of Rs.10,00,000/- to the respondent. Thereafter, the complainants have surrendered the unit vide email dated 28.09.2020. Further, the Authority also observes that this is a case where the promoter has sold the unit after obtaining occupation certificate, thereafter, the allottee wish to withdraw from the project and demanded refund of the amount paid by the complainant in respect of the unit along with interest at the prescribed rate. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per allotment letter.

18. The Authority has observed that the respondent-builder has offered possession of the unit after obtaining occupation certificate but the complainant wants to surrender the unit and refund the amount paid. The Hon'ble Apex court of the land in cases of *Maula Bux Vs. Union of India (1973) 1 SCR 928 and Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136*, and followed by the National Consumer Dispute Redressal Commission, New Delhi in consumer case no. 2766/2017 titled as *Jayant Singhal and Anr. Vs. M/s M3M India Ltd.* decided on 26.07.2022, took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted 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. So, it was held that 10% of the basic sale price is reasonable amount to be forfeited in the name of earnest money. Keeping in view, the principles laid down by the Hon'ble Apex court in the above mentioned two cases, rules with regard to forfeiture of earnest money were framed and known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides as under-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer.

19. 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 BSP is reasonable amount which is liable to be forfeited as earnest money.
20. 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 in case of surrender/withdrawal of the allotment but that was not done. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.10,00,000/- after deducting the earnest money which shall not exceed the



10% of the basic sale consideration i.e., Rs.80,92,922/- and return the remaining amount along with interest on such balance amount 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 request for refund made by the complainant i.e. 28.09.2020 till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. II Direct the respondent to pay cost of litigation to the complainants being a sum of Rs.2,00,000/-;

G.III Direct the respondent to pay compensation against the mental harassment suffered by the complainants being a sum of Rs.3,00,000/-;

21. The complainants are seeking in the above-mentioned reliefs w.r.t compensation. The Hon'ble Supreme Court of India in Civil Appeals no. 674445-679 of 2021 titled as *M/s Newtech Promoters and Developers Ltd. V/s State of UP (Supra)* has held that an allottee is entitled to claim compensation and litigation charges under Section 12, 14, 18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation and litigation charges shall be adjudicated by the adjudicating officer having due regards to the factors mentioned in Section 72. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority.

22. 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 i.e. Rs.10,00,000/- to the complainant after deducting 10% of the basic sale consideration of Rs.80,92,922/- being earnest money along with interest



at the prescribed rate i.e., 10.80%, from the date of request for refund made by the complainant i.e. 28.09.2020 till the date of realization of payment.

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

23. Complaint as well as applications, if any, stand disposed off accordingly.

24. File be consigned to the registry.

Dated: 29.01.2026



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