



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

Complaint no. : 5909 of 2024
Date of decision : 12.12.2025

Manish Singhal, R/O: - C 603, 6 Floor, Park View City 2, Sector 49	Complainant
Versus	
M/s Mangalam Multiplex Pvt. Ltd. Regd. Office at: Cabin-1, Lgf, F-22, Sushant Shopping Arcade, Sushant Lok Phase - 1, Gurugram - 122002, Haryana	Respondent No. 1
M/s Piramal Capital and Housing Finance Limited Regd. Office at: 2 Floor, Piramal Tower, Ganpatrao Kadam Marg	Respondent No. 2
Pranav Purushottam R/O: MH TW - 06 - 0505, M3M Heights, Sector 65	Respondent No. 3
Kiran Purushottam R/O: MH TW - 06 - 0505, M3M Heights, Sector 65	Respondent No. 4
CORAM:	
Shri Arun Kumar	Chairman
APPEARANCE:	
Dhruv Gautam (Advocate)	Complainant
Shriya Takkar (Advocate)	Respondent No. 1

ORDER

1. The present complaint dated 11.12.2024 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"M3M 65 th Avenue", Sector 65, Gurugram, Haryana
2.	Project area	14.4125 acres
3.	Nature of the project	Residential apartment
4.	RERA registered/not registered	Registered vide registration no. 32 of 2023 dated 02.02.2023
	Validity status	01.05.2024
5.	DTPC License no.	15 of 2017 dated 02.05.2017
	Validity status	01.05.2025
6.	Booking letter dated	10.08.2018

		[Page 18 of complaint]
7.	Unit no.	MH TW-06-505, 5 th floor in tower 6 [Page 18 of complaint]
8.	Unit admeasuring	725.28 sq. ft. (carpet area) 1261.00 sq. ft. (super area) [Page 51 of complaint]
9.	Date of execution of buyer's agreement	29.10.2018 [Page 27 of complaint]
10.	Possession clause	DEFINITIONS (m) "Commitment Period" shall mean 30.11.2022 notified by the promoter to the authority, at the time of registration of the project under the Act, for completion of the Project, or as may be further revised/approved by the authorities. [Page 69 of reply]
11.	Due date of possession	30.05.2023 [30.11.2022 + 6 months on account of COVID-19]
12.	Total consideration	Rs.1,34,48,939/- [As per clause 1.2 of agreement on page 120 of complaint]
13.	Amount paid by the complainant	Rs.97,57,422/- [loan disbursed amount]
14.	Acknowledgement letter or retain or refuse letter	8.(ii) if you, the Allottee are not satisfied with the Agreed Specifications and intimate the Company in writing within next 30 (thirty) Days of the Agreed Inspection Period, that the specifications as provided in the Apartment are not in

		next 30 (thirty) Days of the Agreed Inspection Period, then in such an event, you, the Allottee shall be fully entitled to refuse and exercise your right to decline the possession of the Said Apartment and make all further compliances as stated hereinafter within the next 30 (thirty) Days of the Agreed Inspection Period. [page 123 of reply]
15.	Email sent by complainant for right to decline of possession	Page 149, 150 of reply
16.	Occupation certificate	16.10.2023 [as per DTCP website]
17.	Offer of possession	Not placed on record
18.	Loan pre- closure statement	27.01.2023 [on page 75 of complaint]
19.	No objection certificate	24.08.2023 [on page 12 of reply filed by respondent no.2]
20.	Agreement to sell with 3 rd party	08.09.2022 [on page 109 of complaint]
21.	Conveyance deed with 3 rd party	26.06.2024 [on page 156 of complaint]

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. The complainant had purchased a residential unit in the M3M Heights project, located at Sector - 65, Gurugram, Haryana, which was advertised and developed by the respondent no. 1 company. the respondent no. 1 issued the allotment letter dated 10 August 2018 to the complainant. The Complainant paid a booking amount of a

B. Facts of the complaint

3. The complainant has made the following submissions: -
 - I. The complainant had purchased a residential unit in the M3M Heights project, located at Sector – 65, Gurugram, Haryana, which was advertised and developed by the respondent no. 1 company. the respondent no. 1 issued the allotment letter dated 10 August 2018 to the complainant. The Complainant paid a booking amount of a sum of Rs. 7,25,651/- i.e. 5% of the sale consideration to the Respondent No. 1. The total sale consideration was fixed at Rs. 1,45,13,029/-.
 - II. Shortly after the execution of the Booking Letter, the complainant and the respondent no. 1 executed the agreement for sale dated 29 October 2018. The agreement enlisted all the rights and liabilities of the complainant and the respondent in detail.
 - III. The respondent no. 1 and respondent no. 2 entered into a tripartite agreement, whereby, the respondent no. 2 agreed to pay the remaining sale consideration to the respondent no. 1 and the respondent no. 1 agreed to pay the emi for the said loan disbursement. This arrangement is popularly known as the "Subvention Scheme".
 - IV. A few days later, on 14 February 2019, the complainant and the respondent no. 1 executed another agreement, which was in the nature of a buy-back assurance agreement. The terms and conditions of the Buy back assurance agreement are self-explanatory and demonstrate that the whole purpose of entering into the agreement to sale with the complainant was to use his name for obtaining a loan at a lower rate of interest from the respondent no. 2.

- V. The Respondent no. 1 sent an intimation letter to the complainant on 24 December 2021, which informed the complainant that 'part occupation certificate' of the project. The intimation letter nowhere states that the OC for Tower - 6, wherein the complainant's unit is located, has been obtained. Further, the intimation letter contained no whisper whatsoever regarding physical inspection of the unit by the complainant as provided for in the buy back assurance agreement.
- VI. The complainant had the right to inspect the unit and upon inspection, the complainant had the right to exercise of choice if either retaining the unit or the respondent no. 1 would have to compulsorily buy back the unit and return the complainant's money paid by him along with agreed interest.
- VII. On 03 January 2022, the complainant requested the respondent no. 1 to permit him to inspect the unit before exercising his option as per clauses 7 and 8. However, till date, no such inspection has been offered to him. Since the complainant was not being permitted to inspect the unit and was asked to take the decision without inspection at the earliest hence, complainant had no choice but to opt for buyback hoping to close this arrangement in 2-3 months time. The respondent no. 1 maintained complete silence on either inspection or providing clarity on the timelines to close this arrangement and settle the loan including refund.
- VIII. To the complainant's surprise, he received an email from the respondent no. 1 on 27 May 2022, indicating that the occupation certificate of the tower in which the complainant was located was yet to be obtained. On one hand, the respondent no. 1 was offering

possession of the unit in terms of clause 7 in December 2021 and on the other hand, the OC was being applied for in May 2022 for Tower 1, with the assurance that the oc for the subsequent towers would be applied for within that particular financial year. Therefore, the communication dated 24 December 2021 was nothing but a fraud on the complainant and obtain his consent by misleading the complainant with wrong facts.

- IX. The complainant and respondent no. 1 kept exchanging communication through from March 2022 till March 2023, with the complainant continuously seeking update on the closure of loan with respondent no. 2, since loan of over Rs. 1 Crore was being availed by the respondent no. 1 in the name of the complainant under the subvention scheme. The complainant was being repeatedly misled by the officials of respondent no. 1 that his loan has been closed or was under the process of closure by the respondent no. 1.
- X. The respondent no. 1 kept on insisting that the complainant must obtain the loan pre-closure statement on his own from respondent no. 2, whereas for other unit owners, the respondent no. 1 had obtained loan pre-closure statement from respondent no. 2 directly. Upon the insistence of the respondent no. 1, the complainant duly obtained the loan pre-closure statement from the respondent no. 2 on 24 June 2022 and once again on 27 January 2023 and handed it over to the respondent no. 1 so that the loan closure could be proceeded. It is important to point out that the complainant had obtained and supplied the loan pre-closure statement not once but twice. The respondent no. 1 started the closure proceedings only

after the complainant sought possession of his unit. And this time loan closure proceedings did not require pre-closure letter from complainant which clearly reflects the inconsistencies and collusion between respondent 1 and respondent 2.

- XI. On March 2023, when nothing concrete was coming through from the respondent no. 1 on closure of loan, the complainant orally expressed his willingness to retain the unit and offered to pay the remaining sale consideration to the respondent no. 1. The complainant also recorded his confirmation of willingness to take over possession and pay the balance amount by way of email dated 24 May 2023, which was once again reiterated on 05 June 2024. For the reasons best known to the respondent no. 1, it neither foreclosed the complainant's loan with respondent no.2 until August 2023 nor did they accept the complainant's offer to retain the unit.
- XII. The loan settlement between the respondent no. 1 and respondent no. 2 happened in August 2023, which is much after the complainant's expression of interest to retain the unit in March 2023. Since June 2023, the complainant has been writing email after email seeking to know the status of his unit. The respondent no. 1 remained evasive and kept asking for the original documents from the complainant, which were deposited with the respondent no. 2 at the time of availing of the bank loan under the subvention scheme.
- XIII. In September 2024, the complainant has come to know from reliable sources that the respondent no. 1 had already sold the complainant's unit to the respondent no. 3 & no. 4, who has taken over possession of the unit and has in fact rented out the same to a tenant. In order to be sure of this aspect, the complainant tried and

obtained the agreement to sell and the conveyance deed of the unit, executed by respondent no. 1 in favour of respondent no. 3 & respondent no. 4.

- XIV. The agreement for sale and the conveyance deed in favour of respondents no. 3 & 4 are a concrete proof of fraud and collusion between the respondent no. 1 and respondent no. 2 and also with the possible involvement of respondents no. 3 & 4. Without getting the NOC from the complainant and without clearing the loan, which was availed by the complainant from respondent no. 2, how could the respondent no. 1. enter into agreement for sale with receipt of booking amount to transfer the unit to a third party. Clearly, with duplicate sale of the same unit, it's a fraudulent activity from respondent no. 1.
- XV. The complainant has been used as a means to achieve loan by the respondent no. 1 in collusion with respondent no. 2, and once the market price of the unit went up in 2022 and 2023 and the construction was coming to an end, the complainant was quietly pushed out and not even informed. The fraud played by the respondent collectively is evident from the fact that as late of July 2023, the respondent no. 2 had deducted an instalment from the complainant's bank account towards repayment of loan. Later, the amount was credited back to the complainant's account.
- XVI. The mala fides of the respondent no. 1 are clear from the fact that the unit was sold to the complainant in August 2018 for a sale consideration of Rs. 1,45,13,029/- whereas the same unit has been first agreed to be sold for Rs. 1,34,48,939/- in the agreement for sale in September 2022 and finally sold to the respondents no. 3 & 4 for

a sale consideration of RS. 1,18,12,660/-. It is hard to believe that the price of the unit went down progressively from August 2018 to September 2022 to June 2024. This fact becomes more glaring when seen with the complainant's offer to retain the unit and pay the entire agreed sale consideration of Rs. 1.45 Crores. The question that arises for consideration is that why would the respondent no. 1 proceed with agreement for sale in favour of respondents no. 3 & 4 without obtaining the oc, without clearance of loan with respondent no. 2 and at a loss of Rs. 27 lacs.

XVII. The complainant has therefore no option but to approach this Authority and seek allotment of another unit of same size and the at the rate at which the complainant's unit has been sold to respondents no. 3 & no. 4. The respondents cannot be permitted to take prospective unit buyers for a ride and hatching a pre-planned conspiracy of availing loan in the name of the complainant and selling his unit much before the closure of the loan or obtaining of the oc for the tower in which the complainant's unit is located.

C. Relief sought by the complainant

4. The complainant has sought following relief(s).
 - a) Direct the respondent no. 1 to allot and hand over physical possession of residential apartment of the similar description as compared to the complainant's unit no. MH TW - 06 - 0505, on the 5th floor, Tower No. 6 of the Project M3M Heights, located at Sector - 65, Gurugram, Haryana and at the same rate at which the complainant's unit has been illegally sold to respondents no. 3 & no. 4;



- b) Direct the respondent no. 1 to pay compensation for refusal and delay in hand over of possession of the unit despite the complainant's willingness to pay the complete sale consideration as early as March 2023;
 - c) Direct the respondent no. 1 to pay a sum of Rs. 50,000/- as compensation for mental agony and a sum of Rs. 25,000/- as litigation cost;
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 no. 1.

6. The respondent has contested the complaint vide its reply on following grounds: -
- i. That the complainant has approached this Authority with unclean hands and has tried to mislead this Authority by making incorrect and false averments and stating untrue or incomplete facts and, as such, is guilty of suppressio very suggestion falsi. The complainant has suppressed and/or mis-stated the facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law. On this short ground alone, the complaint is liable to be dismissed.
 - ii. That the complainant has neither any cause of action nor any locus standi to maintain the present complaint against the respondent company no.1, especially when the complainant is seeking the complete re-writing of the terms and conditions of the agreement

between the parties. This is evident from the averments as well as the prayers sought in the complaint.

- iii. It is submitted that the complaint filed by the complainant is baseless, vexatious and is not tenable in the eyes of law therefore the complaint deserves to be dismissed at the very threshold.
- iv. That the present complaint has been filed with malafide intentions to wriggle out of contractual obligations as no cause of action has arisen in favour of Complainant for the relief sought as has been made out in the present complaint. That after making independent enquiries and only after being fully satisfied about the project, the complainant approached the answering respondent company for booking of an apartment in the project 'M3M Heights', residential component of mixed land use project situated in Sector 65, Gurugram, Haryana comprising of commercial, retail and residential segments being developed in a planned and phased manner over a period of time vide application form dated 08.08.2018 and paid part booking amount towards the same. It is submitted that the complainant on his own free will and after having duly read and understanding all the terms of the application form, signed the said application form.
- v. Thereafter in due consideration of the part booking amount paid by the complainant and his commitments to comply with the terms and conditions of the allotment, the respondent no.1 company vide allotment letter dated 10.08.2018 allotted an apartment bearing no. MH TW-06-505 on 5th Floor situated in Tower-6 to the complainant. The cost of the apartment admeasuring 725.28 sq. ft. was Rs. 1,45,13,029/- plus other applicable charges. The

complainant paid an amount of Rs. 5,00,000/- towards the unit in question on 17.08.2018, which was duly acknowledged by the respondent no.1 company.

- vi. The respondent no.1 company in accordance with the payment plan opted by the complainant raised the demand vide letter dated 01.10.2018 payable on or before 25.10.2018 for an amount of Rs. 6,25,651/-. The complainant in lieu of the said demand paid only an amount of Rs. 1,00,000/- on 03.10.2018 which has been duly acknowledged by the respondent no.1 company vide receipt.
- vii. Thereafter the respondent no.1 company vide covering letter dated 13.10.2018 dispatched the triplicate copies of the buyers agreement for due execution at the complainant's end. In due course, the buyers agreement was duly executed between the parties on 29.10.2018. The buyers agreement sets out the rights and liabilities of both the parties. The said agreement was duly registered by the respondent no.1 company and the complainant.
- viii. The complainant in accordance with the payment plan specifically opted by him belatedly, paid an amount of Rs. 1,19,173/- and 6,478/- on 09.01.2019 and 19.01.2019, which have been duly acknowledged by the respondent no.1 company vide receipts.
- ix. The respondent no.1 company in accordance with the payment plan opted by the complainant raised a demand vide demand letter dated 07.02.2019 for an amount of Rs. 29,02,607/- which was payable on or before 26.02.2019. This amount was not paid by the complainant within the time limit i.e., on or before 26.02.2019. It is submitted that the said demand was raised a later stage on the request of the

complainant as he was in the process of obtaining loan for the unit in question.

- x. Thereafter, a tripartite agreement dated 08.02.2019 was executed between the complainant, respondent No.1 Company and respondent no.2 bank and a permission to mortgage was issued by the respondent no.1 company.
- xi. In furtherance to the same, the respondent no.1 company again vide letter dated 08.02.2019 raised a demand due on commencement of PCC for an amount of Rs. 43,53,909/- which included the previous outstanding dues to the tune of Rs. 29,02,607/- wherein an amount of Rs. 29,02,607/- was payable immediately and Rs. 14,51,302/- was payable on or before 26.02.2019.
- xii. The complainant in lieu of the aforesaid demands paid an amount of Rs. 32,76,755/- on 01.03.2019 which has been duly acknowledged by the respondent no.1 company. The respondent no.1 company credited an amount of Rs. 10,77,154/- on 01.03.2019 as subvention interest.
- xiii. It is submitted that in furtherance of the allotment letter and the buyers agreement, an acknowledgement letter was executed between the parties on 01.03.2019. It is submitted that as per the retain or refuse agreement, the respondent no.1 company agreed to service the Pre-EMI interest on the entire amount of loan disbursed by the bank, as payable by the complainant to respondent no.2 for a fixed period starting from the date of first disbursement till the date of notice of offer of possession. Further, as per the acknowledgement letter, it was agreed between the parties that on the receipt of the occupation certificate for the project, an intimation

shall be sent to the complainant by the respondent no.1 company to either retain or refuse the apartment. It is submitted that the rights and entitlements under the acknowledgment letter were subject to the complainant not committing any breach of the terms of the buyers agreement.

- xiv. The complainant on his own free will and volition paid an amount of Rs. 38,874/- on 31.03.2019, which has been acknowledged by the respondent no.1 company. In furtherance to the same, the respondent no.1 company as per the payment plan opted by the complainant, raised a demand vide letter dated 20.10.2020 for an amount of Rs. 13,24,152/- post advance adjustments of Rs. 38,874/- which was payable on or before 08.11.2020.
- xv. The complainant paid an amount of Rs. 10,66,426/- on 12.11.2020. Since the complainant failed to come forward and make the payment of the pending dues raised vide the aforesaid demand letter, the respondent no.1 company vide letter dated 09.11.2020 reminded the complainant to come forward and make the payment of the pending dues within a period of 15 days from the date of this reminder letter. The complainant despite the issuance of the aforesaid reminder letter failed to make timely payment of the dues, as a consequence of which the respondent no.1 company was constrained to issue pre-cancellation letter dated 26.11.2020 reminding the complainant to come forward and make the payment of the pending outstanding dues along with applicable interest within a period of 15 days, failing which the company shall be constrained to cancel the booking/allotment of the complainant.

The respondent no.1 company further credited an amount of Rs. 2,48,007/- on 01.01.2021 as subvention interest.

- xvi. That thereafter in accordance with the payment plan opted by the complainant, the respondent no.1 company raised a demand vide demand letter dated 26.03.2021 due on completion of 8th floor slab for an amount of Rs. 20,50,615/- which included the previous outstanding dues to the tune of Rs. 9,719/- wherein an amount of Rs. 9,719/- was payable immediately and Rs. 20,40,896/- was payable on or before 14.04.2021. In lieu of the same, the complainant paid a part booking amount to the tune of Rs. 18,38,059/- on 15.04.2021 and the respondent no.1 company credited an amount of Rs. 1,83,400/- as subvention interest on 15.04.2021.
- xvii. The respondent no.1 company on the completion of the 15th floor slab raised the demand vide letter dated 27.10.2021 for an amount of Rs. 13,87,322/- which included the previous outstanding dues of Rs. 26,726/- wherein an amount of Rs. 26,726/- was payable immediately and Rs. 13,60,596/- was payable on or before 15.11.2021. In lieu of the same, the complainant paid a part booking amount to the tune of Rs. 13,36,004/- on 15.11.2021 and the respondent no.1 company credited an amount of Rs. 51,318/- as subvention interest on 15.11.2021.
- xviii. The respondent no.1 company received the occupation certificate for the commercial component of the project M3M 65th Avenue on 30.09.2021. The respondent no.1 company on receiving occupation certificate for the commercial component of the project vide letter dated 24.12.2021 requested the complainant to exercise his option

to either retain the possession of the apartment or refuse the same as per the retain or refuse agreement entered into between the parties on 01.03.2019.

- xix. That the complainant in furtherance of the email dated 03.01.2022, again gave a confirmation vide email dated 06.05.2022 that he wants to surrender the unit in question and has no intention of taking possession. Thus, it is absolutely clear that the complainant wanted to withdraw from the project.
- xx. As the complainant had taken loan from the financial institution, the representatives of the respondent no.1 company vide emails dated 21.05.2022, 08.06.2022, 19.01.2023, 20.01.2023, 21.01.2023, 23.01.2023 and 25.01.2023 requested the Complainant to provide the latest loan foreclosure statement so that the process for closure of loan and refund can be initiated in accordance with Clause 13(b) of the acknowledgment letter, but to no avail. It is relevant to state that the financial institution would only recognise a communication from the loanee for foreclosure. That after constant follows ups and repeated requests the complainant shared the latest foreclosure letter dated 27.01.2023,
- xxi. Accordingly, the respondent no.1 company post receipt of the foreclosure letter from the complainant herein, paid the loan amount. The respondent no.1 company vide emails dated 23.04.2023 and 24.04.2023 informed the complainant that the loan amount stands paid in full. Further, vide the said emails the complainant was requested to submit the original documentation pertaining to the apartment along with loan closure noc received from financial institution for processing the refund amount in

accordance with the terms of the retain or refuse letter. The respondent no.1 company vide emails dated 27.04.2023 and 28.04.2023 apprised the complainant about the refundable amount payable to him as per agreed terms.

- xxii. The respondent no.1 company vide emails apprised the complainant that loan has been closed and requested the complainant to provide consent so that the respondent could act further and complete the loan foreclosure formalities.
- xxiii. The complainant thereafter collected the original documents pertaining to the apartment in question from the bank however, with a mala fide intent to extract and extort unlawful benefits from the respondent refused to handover the same. The said fact is evident from a bare perusal of the email dated 11.09.2023.
- xxiv. The respondent no.1 company wrote numerous emails requesting the complainant to submit original documents enabling the respondent no.1 company to issue a refund cheque, but to no avail. That instead of submitting the original documentation to the respondent no.1, the complainant has approached this Authority with a mala fide intent, allegedly seeking an alternative apartment in the project developed by the respondent no.1 company granting of which relief on the face of it is not only impossible, the complainant being not entitled to it but also absent in view of the submissions made herein above. The present complaint has been filed by the complainant to wriggle out the terms of the retain and refuse agreement duly executed between the parties. The complainant very clearly vide his emails dated 03.01.2022 and 06.05.2022 had stated that he wants to surrender the apartment.

The complainant after exercising his option and surrendering the unit is estopped by his own conduct from seeking possession of an apartment much less at this belated stage. The respondent acting upon the said request has complied with all the terms of the ror letter. It is submitted that the complainant as an afterthought is not coming forward to comply with his obligations under ror letter.

- xxv. The present complaint has been filed by the complainant to take advantage of his own wrongs and defaults. It is submitted that the complainant is not entitled to any relief whatsoever and the present complaint is liable to be dismissed at the very threshold with heavy costs.
- xxvi. Pursuant to the exercise of right to refuse by the complainant, the respondent no.1 re-allotted the apartment to a subsequent purchasers i.e. respondent nos. 3 and 4. The conveyance deed for the apartment in question was executed on 26.06.2024.
- xxvii. It is manifestly clear that from the terms of the correspondence exchanged between the complainant and the respondent no.1 company that the complainant had agreed to exercise the option of retain or refuse and chose to surrender the unit. That the complainant in furtherance of the email dated 03.01.2022 as well telephonic conversations, again vide email dated 06.05.2022 gave a confirmation that he wants to surrender the unit in question and has no intention of taking possession. Since, the complainant himself chose the option for refusal of the unit, the respondent no.1 company acceded to the said request and asked the complainant to provide the foreclosure letter. The complainant delayed providing the foreclosure letter and provided the same only on 27.01.2023 and the respondent paid off the loan amount as per agreed terms. The respondent has acted as per the request of the

complainant and the complainant is estopped from raising any issues qua the same. It is submitted that post exercising the option of refusal of the apartment, the complainant has no right, title or interest over the apartment in question and has no privity of contract with the answering respondent

- xxviii. That instead of submitting the original documentation to the respondent no.1, the complainant has approached this Authority with a mala fide intent, allegedly seeking an alternative apartment in the project developed by the respondent no.1 company granting of which relief on the face of it is not only impossible, the complainant being not entitled to it but also absent in view of the submissions made herein above. The present complaint has been filed by the complainant to wriggle out the terms of the retain and refuse agreement duly executed between the parties. The complainant very clearly vide his emails dated 03.01.2022 and 06.05.2022 had stated that he wants to surrender the apartment. The complainant after exercising his option and surrendering the unit is estopped by his own conduct from seeking possession of an apartment much less at this belated stage. The respondent acting upon the said request has complied with all the terms of the ROR letter. It is submitted that the complainant as an afterthought is not coming forward to comply with his obligations under ROR letter. The complainant herein has approached this Authority after 3 years with the sole motive to unjustly enrich himself.
- xxix. That the parties are bound by the terms and conditions mentioned in the apartment buyer's agreement and the retain or Refuse Agreement duly executed between the parties. The said apartment

buyer's agreement and the acknowledgement letter was duly signed by the complainant after properly understanding each and every clause contained in the apartment buyer's agreement and the acknowledgement letter. The complainant was neither forced nor influenced by the respondent no.1 company to sign the said buyer's agreement and the acknowledgement letter. It was the complainant who after understanding the clauses signed the said apartment buyer's agreement and the acknowledgement letter in his complete senses.

- xxx. That it is trite law that the terms and conditions of an agreement are binding between the parties. It is seen that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract; it is for the party claiming otherwise to establish the exception in a suit. When a party to a contract disputes the binding nature of the signed document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents.
- xxxi. That the complainant has approached the Authority with unclean hands and has suppressed and concealed material and vital facts which have a direct bearing on the very maintainability of the purported complaint and if there had been disclosure of these material facts, the question of entertaining the purported complaint would not have arisen.
- xxxii. It is submitted that as per the clauses of the buyer's agreement and the retain or refuse agreement which is binding between the complainant and the respondent no.1 company, both have agreed upon their respective obligations and consequences in case of

breach of any of the conditions specified therein. In view of the above, the captioned complaint is not maintainable in law and is liable to be dismissed in limine. It is a well settled proposition of law that the courts cannot travel beyond what is provided in the contract and generate altogether a new contract; the responsibility of the court is to interpret appropriately the existing contract and decide the rights and liabilities of the parties within the four corners of the contract.

xxxiii. It is submitted that the buyer's agreement and the retain or refuse agreement delineates the respective obligations of the complainants as well as the respondent no.1 in case of breach of any of the conditions specified therein, the consequences thereof. In view of the abovementioned matter, the present complaint is not maintainable in law and is liable to be dismissed in limine.

E. Reply by the respondent no. 2.

- i. That the reply is being filed and represented through its authorized representative Mr. Uttam Singh Negi who is authorized signatory of the respondent no.2 and is duly authorized by respondent company vide resolution dated 05.08.2022 passed by the board of directors, for filing the reply to the accompanying complaint.
- ii. That at the very outset it may be respectfully submitted that the averments made in the complaint are denied as being wrong and incorrect. Nothing shall be deemed to have been admitted unless expressly admitted by way of present reply.
- iii. That the complainant has approached this Authority with unclean hands by not disclosing and by misrepresenting material facts. The present complaint is false misconceived and vexatious in nature

- and has been filled with the intention of harassing the respondent no.2.
- iv. That it is pertinent to mention that the loan availed by the complainant has been duly closed by the respondent no.3 NBFC and no objection certificate dated 24.08.2023 has been issued to the complainant.
 - v. That all original documents pertaining to the said flat i.e. original agreement for sale, original tri partite agreement and other original documents have been collected by the complainant.
 - vi. That it is respectfully submitted that no cause of action whatsoever has arisen against respondent no. 3, nor does the complaint disclose any deficiency of service, illegality, or unfair trade practice on its part. The answering Respondent has no role in the development, marketing, or sale of the project in question.
 - vii. That the answering respondent no.3 is a registered non-banking financial company engaged in providing housing finance and has no involvement whatsoever in the execution, management, or delivery of the real estate project. All disbursements were made in accordance with the borrower's written requests and the terms of the tripartite agreement.
 - viii. In view of the above, it is submitted that the complaint is misdirected, devoid of merit, and liable to be dismissed qua respondent no. 3 at the threshold.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

F. Jurisdiction of the authority

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

F.I Territorial jurisdiction

9. 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.

F.II Subject-matter jurisdiction

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

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.

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

which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent no. 1 to allot and hand over physical possession of residential apartment of the similar description as compared to the complainant's unit no. MH TW - 06 - 0505, on the 5th floor, Tower No. 6 of the Project M3M Heights, located at Sector - 65, Gurugram, Haryana and at the same rate at which the complainant's unit has been illegally sold to respondents no. 3 & no. 4;

G.II Direct the respondent no. 1 to pay compensation for refusal and delay in hand over of possession of the unit despite the complainant's willingness to pay the complete sale consideration as early as March 2023;

G.III Direct the respondent no. 1 to pay a sum of Rs. 50,000/- as compensation for mental agony and a sum of Rs. 25,000/- as litigation cost;

12. On the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other reliefs.
13. The present complaint was filed by the complainant on 11.12.2024 seeking restoration of allotment of a residential unit in the project namely "M3M 65th Avenue", Sector 65, Gurugram, Haryana, along with delay possession compensation and other consequential reliefs. The reply to the complaint was filed by the respondent on 11.05.2025. The Authority has carefully considered the pleadings of both the parties and the documents placed on record.
14. The record reveals that the complainant was allotted Unit No. MH TW-06-505 on the 5th floor in Tower-6 of the aforesaid project vide allotment letter dated 10.08.2018. Subsequently, a buyer's agreement dated 29.10.2018 was executed between the parties governing the rights and obligations of the allottee and the promoter. As per the terms

- of the agreement, the total sale consideration of the unit was ₹1,34,48,939/-, out of which an amount of ₹97,57,422/- has been paid by the complainant through loan disbursement under the financing arrangement entered into with the lending institution.
15. As per the possession clause contained in the buyer's agreement, the commitment period for completion of the project was 30.11.2022. After granting a grace period of six months on account of the disruptions caused by the COVID-19 pandemic, the due date of possession works out to 30.05.2023. Thus, the respondent-promoter was under a contractual obligation to complete the project and offer possession of the unit to the complainant within the said timeline.
16. The complainant has averred that the allotment of the unit was part of a subvention scheme executed between the complainant, the respondent-promoter and the lending institution, whereby the promoter had undertaken to service the pre-EMI interest on the loan disbursed towards the said unit for a specified period. It is further the case of the complainant that a retain-or-refuse arrangement was executed between the parties on 01.03.2019, which entitled the complainant to inspect the unit upon receipt of the occupation certificate and thereafter exercise the option either to retain the unit or decline possession. The said arrangement contemplated that the allottee would be given a reasonable opportunity to inspect the unit before making a final decision. The relevant portion of the allotment letter dated 01.03.2019 is reproduced below for ready reference:

"That, it has been agreed that on the receipt of the Occupation Certificate for the Project, an intimation shall be sent (an email intimation by the Company to you, the Allottee will be sufficient in this regard), wherein you, the Allottee shall have the right to reasonably inspect the Apartment in general and the Agreed

Specifications in particular, with respect to the said Apartment within a period of 30 (thirty) Days from the Company's aforementioned intimation ("Agreed Inspection Period")."

17. It is the contention of the complainant that the respondent issued an intimation letter dated 24.12.2021, asking the complainant to exercise the option to either retain or surrender the unit. However, according to the complainant, despite requesting inspection of the unit vide communication dated 03.01.2022, no inspection was facilitated by the respondent. The complainant submits that the contractual right to retain or decline possession could only be meaningfully exercised after inspection of the completed unit and verification of the agreed specifications. The absence of such inspection, therefore, deprived the complainant of the opportunity to make an informed and voluntary decision regarding the retention or surrender of the unit.
18. The complainant has further alleged that despite his willingness to retain the unit and pay the remaining consideration, the respondent proceeded to execute an agreement to sell dated 08.09.2022 and subsequently a conveyance deed dated 26.06.2024 in favour of third parties in respect of the same unit. According to the complainant, such action on the part of the respondent amounts to an unlawful transfer of the unit which was already allotted in his favour and in respect of which no valid cancellation had ever been effected.
19. On the other hand, the respondent has contended that the complainant had voluntarily opted to surrender the unit and had expressed no intention of taking possession thereof. It is further submitted that the complainant had defaulted in making timely payments under the payment plan and therefore is not entitled to seek any relief from this Authority. The respondent has relied upon certain email

communications allegedly exchanged with the complainant to contend that the complainant had been given an opportunity to either retain or refuse the allotment.

20. The Authority has examined the record placed on file as well as the submissions advanced by both the parties. The respondent has relied upon two email communications to contend that the complainant had opted to surrender the unit. However, significantly, the respondent has not placed on record any formal notice of cancellation or forfeiture of the allotment issued in accordance with the terms of the buyer's agreement or in compliance with the provisions of the Act and the Rules framed thereunder.
21. Further, from the material available on record, it emerges that the respondent proceeded to execute an agreement to sell with third parties on 08.09.2022, followed by execution of a conveyance deed dated 26.06.2024, thereby creating third-party rights in respect of the subject unit. Such action of the respondent not only runs contrary to the contractual framework governing the allotment but also defeats the very basis of the retain-or-refuse arrangement, which clearly contemplated that the option could only be exercised after the issuance of the occupation certificate and inspection of the unit by the allottee. Additionally, the respondent appears to have created third-party rights without first ensuring the closure or foreclosure of the loan that had been availed in the name of the complainant under the tripartite arrangement, thereby giving rise to serious inconsistencies in the conduct of the respondent.
22. In the considered view of the Authority, the creation of third-party rights in respect of an allotted unit without formally cancelling the

allotment of the existing allottee is contrary to the settled principles governing allotment under the Act as well as the contractual relationship between the parties. The promoter cannot unilaterally divest an allottee of his rights in the absence of a valid and duly communicated cancellation carried out in accordance with the terms of the agreement.

23. The Authority also takes note of the contention of the complainant that the retain-or-refuse option under the acknowledgement arrangement could only be exercised after inspection of the completed unit. The complainant had requested inspection of the unit vide communication dated 03.01.2022. However, the respondent has not placed any material on record to demonstrate that such inspection was ever facilitated or that the complainant was provided with a genuine opportunity to inspect the unit before being asked to exercise the said option.
24. In view of the foregoing discussion, the Authority is of the considered opinion that the respondent has failed to demonstrate that the allotment of the complainant was validly cancelled prior to the creation of third-party rights in respect of the subject unit. In the absence of any lawful cancellation, the subsequent transfer of the unit to third parties cannot be sustained. Consequently, the purported cancellation of the allotment is liable to be set aside.
25. The complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

“Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of

delay, till the handing over of the possession, at such rate as may be prescribed."

26. **Due date of handing over of possession:** The due date of possession is being calculated as per the commitment period mentioned in the Agreement to sell dated 29.10.2018. Therefore, the due date of possession comes out to be which shall be 30.05.2023(committed period + six months on the account of Covid-19)[In the proceedings dated 12.12.2025 the due date of possession was inadvertently mentioned as 30.12.2022 which stands corrected].
27. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:
- Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*
28. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
29. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as

- on date i.e., 12.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
30. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default
31. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
32. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 10.01.2017 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
33. The complainant is seeking relief w.r.t legal expenses. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.** (supra), has held that the adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of legal expenses.

H. Directions of the authority

34. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of

obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The cancellation of the unit is not valid in the eyes of law, hence the said cancellation letter is hereby set aside. The respondent is directed restore the subject unit to its original position in favour of the complainant. In case the respondent has already created third party rights on the unit in question, then the respondent shall offer possession of a similarly located unit/flat of the same size and specifications at the same rate as per the buyer's agreement dated 29.10.2018 in the said project to the complainant
- ii. The respondent/promoter is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 30.05.2023 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- iii. The arrears of such interest accrued from 30.05.2023 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
- iv. The respondent/promoter shall not charge anything from the complainant which is not the part of the Agreement duly signed by both the parties.
- v. The respondent/promoter shall execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on

payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

- vi. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
35. Complaint as well as applications, if any, stand disposed off accordingly.
36. Files be consigned to registry.



Arun Kumar
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.12.2025

HARERA
GURUGRAM