

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

Date of filing of complaint: 03.04.2025  
Date of Order: 12.03.2026

**1. George Thomas**

**2. Elsu Thomas**

R/o: H.No. T-11, 101, Tata New Haven,  
Bahadurgarh, Jhajjar, Haryana - 124507

**Complainants**

Versus

**1. M/s Emaar MGF Land Ltd.**

Regd. Office at: 306-308, 3rd Floor,  
Square One, C-2, District Centre, Saket,  
New Delhi-110017

**2. M/s RPM Advisory Pvt Ltd.**

Regd. Office at: 51-D, Pocket A, Mig Flats,  
Nand Nagri, Delhi, India- 110093

**Respondents**

**CORAM:**

Shri Phool Singh Saini

**Member**

**APPEARANCE:**

Shri Gaurav Bhardwaj (Advocate)

Shri Dhruv Rohatgi (Advocate)

Complainants

Respondents

**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 under the provision of the Act or the

		<p><i>with all formalities or documentation as prescribed by the company, the company shall offer the possession of the unit to the allottee within a period of 30 months from the date of execution of this agreement as mutually agreed between the parties.</i></p> <p style="text-align: right;"><b>(Emphasis supplied)</b></p> <p>(As per page no. 70 of the complaint)</p>
10.	Due date of possession	18.04.2021 [Note: Due date to be calculated 30 months from the date of execution of agreement i.e., 18.10.2018]
11.	Basic Consideration	Sale 97,43,772/- (Page 49 of complaint)
12.	Total consideration	sale Rs.1,05,78,833/- (As per payment plan on page no. 49 of the complaint)
13.	Total amount paid by the complainants	Rs.20,07,530/- (As per statement of account on page no. 148 of the reply)
14.	Occupation certificate	16.07.2019 (As per page no. 162 of the reply)
15.	Offer of possession	18.07.2019 (As per page no. 121 of the complaint)
16.	Possession reminder	23.09.2019, 23.10.2019, 02.01.2020 & 01.03.2020 (As per page no. 164, 165, 167 & 168 of the reply)
17.	Cancellation letter	27.11.2020 (As per page no. 169 of the reply)

### B. Facts of the complaint:

3. That the complainant has made following submissions:
- i. Somewhere around 2017, the respondent no.1 advertised about its new Group Housing Colony namely "Gurgaon Greens" (*hereinafter called as "the project"*) located in Village Dhankot, Sector-102, Dwarka Expressway, Gurugram, Haryana. The respondent no.1 painted a rosy



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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Emaar Gurgaon Greens", Sector 102, Gurugram, Haryana
2.	Total area of the project	13.53 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	75 of 2012 dated 31.07.2012 valid up to 30.07.2020.
5.	Unit no.	GGN-04-GF-01, Ground floor, Building no. 04 (As per page no. 62 of the complaint)
6.	Area admeasuring	1650sq. ft. (Super area) (As per page no. 62 of the complaint)
7.	Date of provisional allotment	17.11.2017 (As per page no. 39 of the complaint)
8.	Date of execution of buyer's agreement	18.10.2018 (As per page no. 43 of the complaint)
9.	Possession clause	<b>Clause 7. POSSESSION AND SALE DEED</b> <i>Subject to force majeure and fulfillment by the allottee of all the terms and conditions of this agreement including but not limited to timely payment by the allottee of the total price payable in accordance with payment pla, Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the allottee and also subject to the allottee having complied</i>

picture of the project in their advertisement making tall claims and representing that the project aims at providing Group Housing Colony next to Dwarka Expressway on the State Highway having modern gated development which is spread across approx. 13.5 acres. It was represented that the project offers Premium 3-Bedroom Homes with a study room, Luxurious 4-Bedroom duplexes, Penthouses with Terraces, efficient floor plans, and two apartments per floor. The development also features two elevators, 8 acres of landscaped green parks, Modern Amenities and Facilities, all towers facing green spaces, and various sports facilities. It was additionally highlighted that the project features a water body, a clubhouse and recreational center, a swimming pool, central green spaces, a jogger's park, a jogging track, a rose garden, sports facilities, and an amphitheater.

- ii. Believing the representations of the respondent no.1 and relying on the goodwill of the respondent company, while being on the lookout for an adobe for themselves, the complainants visited respondent company and met Mr. Dhruv Suri who is the Regional Manager of the respondent company no.1 along with representatives of respondent company's Channel Partner "M/s RPM Advisory Pvt Ltd." (*hereinafter referred to as "Respondent No.2"*) named Mr. Puneet Prashar and Mr. Varun Bansal. The representative of the respondent no.1 and respondent no. 2 offered a special payment plan to the complainants and as per which they were assured a generous 30-month period from the date of booking to take possession of the unit in question. Furthermore, the plan allowed them to make 80% of the total payment after the completion of the 30-month period. The offer presented to the complainants led them to believe that it was highly flexible and convenient, particularly in terms of the payment plan and the timeline for taking possession of the unit. The structure of the offer, with its extended 30-month period and the



- option to make the majority of the payment later, was seen as an accommodating solution, allowing the complainants ample time to arrange their finances. This, in turn, led them to believe that the process would be smooth and manageable, aligning with their expectations for an easy transition into ownership of the property.
- iii. Believing the promises made by the representatives of the respondent no.1 and respondent no.2, the complainants vide application dated 05.09.2017 booked an apartment in the project of the respondent company by paying an amount of Rs. 7,50,000/- vide instrument bearing no. 000014 dated 05.09.2017.
  - iv. After almost 3 months from the date of booking, on 12.12.2017, an allotment letter was executed between the complainants and the respondent company no.1 thereby allotting unit bearing no. GGN-04-GF-01 on ground floor, located in tower/building no.04, ad measuring carpet area of 1022 sq. ft. and super area of 1650 sq. ft. (*hereinafter called as the 'unit'*).
  - v. Subsequently, after a delay of 10 months, builder buyer agreement (*hereinafter referred to as the "BBA"*) was executed on 18.10.2018 between the complainants and respondent no.1 against the total sale consideration of Rs. 86,99,796/- towards the unit in question wherein as per clause 7(a) of the said agreement, the respondent no.1 undertook to complete construction, handover possession of the unit in question along with parking within a period of 30 months from the date of execution of builder buyer agreement i.e. by 18.04.2021.
  - vi. Accordingly, the complainants continued to make payments without fail, only to later discover that the respondent no.1 had deceived them and taken their hard-earned money. As of 10.10.2018, the Complainants had paid a total of Rs. 13,38,800/- which exceeds 10% of the total sale consideration of the unit in question. This payment was



made prior to the execution of the BBA dated 18.10.2018. Notably, the complainants had already complied with the payment demands made by the respondent company no.1, even though the BBA had not yet been formalized at that time. The respondent no.1 demanded more than 10% of the total sale consideration before executing BBA which is a clear contravention of section 13 of RERA Act, 2016. Following the demands raised by the respondent no.1, the complainants paid a total sum of Rs.20,07,530/- by 20.04.2019 against a total sale consideration of Rs.86,99,796/- towards the aforementioned residential unit question, as per the payment plan.

- vii. That to the utter shock of the complainants, the respondent no.1 issued a letter of offer of possession dated 18.07.2019, notifying the complainants that the occupation certificate for the unit in question has been obtained and that the unit was now ready for possession thereby raising the amount due as per the statement of final dues which was to be paid on or before 19.08.2019.
- viii. Upon receiving the offer of possession and the final demand for payment, the complainants sent an email dated 25.07.2019 to the respondent no.1 referencing a prior meeting held at the office of respondent no.1 which was attended by Mr. Dhruv Suri, along with the representatives of respondent no.2, Mr. Puneet Prashar and Mr. Varun Bansal. During this meeting, the complainants were promised a 30-month period from the date of booking to take possession of the unit in question. Additionally, they were assured that they would be allowed to pay 80% of the total payment only after the completion of this 30-month period. In response, the respondent no.1 sent an email dated 26.07.2019, clearly stating that they had obtained the occupation certificate for the unit in question, further requesting the complainants to complete the possession formalities, as outlined in the letter of offer

of possession, on or before the specified due date. Despite the respondent company's offer/promise regarding the 30-month period for payment as well as taking possession of the unit in question, the respondent no.1 and respondent no.2 failed to adhere its commitments. Resultantly, the said email left the complainants in a state of significant distress and mental agony. The abrupt request placed immense mental pressure on the complainants causing considerable financial strain, as they were expected to meet an obligation they believed could be deferred.

- ix. The disappointed complainants again approached the respondent no.1 and respondent no.2 via email dated 27.07.2019 mentioning the offer given to them by the representatives earlier and further requesting to arrange a meeting with the said representatives namely Mr. Dhruv Suri, Mr. Puneet Prashar and Mr. Varun Bansal but to no avail. Subsequently, after a delay of 6 days i.e. on 05.08.2019, respondent no.1 sent an email explicitly stating that the BBA was sent to the Complainants post their meeting with the sales team of respondent no.1. Furthermore, the respondent no.1 further emphasized that the complainants were bound by the terms of the BBA and, as such, were obligated to comply with its conditions. In addition to that, the respondent company even threatened the complainants to take legal action against the complainants if they do not act as per the terms mentioned in BBA. The respondent no.1's decision to disregard and ignore the complainants' repeated and persistent requests not only demonstrated a lack of consideration for their concerns but also caused them significant mental distress thereby leading to financial harassment. This act of turning a blind eye to the complainants' situation exacerbated their emotional well-being leaving them in a state of great anxiety and frustration.

- x. The frustrated complainants sent an email dated 06.08.2019 raising concerns over false commitments made by Mr. Dhruv Suri and the representatives of respondent no. 2, including misleading explanations regarding the sale agreement. Furthermore, the complainants again requested a meeting with Mr. Dhruv Suri to clarify matters urging the respondent no. 1 to provide time as per the commitment. To this, the respondent no.1 scheduled a meeting with Mr. Dhruv on August 09.08.2019 @4:30 pm. On the following day, the complainants sent an email dated 07.08.2019 to respondent no.2, expressing their confusion and frustration regarding the ongoing situation and the apparent disregard by respondent no.1. The complainants emphasized that all terms and conditions had been clearly discussed and finalized earlier, with repeated assurances that they would not be required to bear any costs until the 30-month period as per the offer made earlier thereby further requesting the respondent no. 2 to attend the meeting scheduled for 09.08.2019 @4:30pm and assured that they would facilitate the matter.
- xi. On 09.08.2019, the scheduled meeting took place but to the utter shock of the complainants, Mr. Dhruv Suri simply turned his back and said that such offer was never made and the complainants is bound by the terms and conditions of the BBA. In addition to that the respondent no.1 even got furious and ended up scuffling with complainant's father. Following the said incident, the complainants urged the respondent no. 2 to facilitate the resolution of the ongoing issue and to honor the commitments made by them as per the email dated 15.09.2018 in which, respondent no. 2 explicitly assured that the complainants would not be required to take possession of the unit until December 2019. Furthermore, in that email, respondent no. 2 had promised that if any charges or holding charges were to be imposed during this period, they



- would bear all such costs until December 2019. The complainants emphasized that these assurances were critical to their understanding of the agreement and expected respondent no. 2 to uphold their commitment.
- xii. Throughout the period from booking till execution of Allotment letter cum agreement and even after that, the complainants showed utmost faith in the respondent company despite collusive and fraudulent acts on the part of the respondent, however the respondent company miserably failed in fulfilling what was promised.
- xiii. The complainants booked the flat with high hopes and dreams that they will be able to live in the same unit along with their family and give them a safe and comfortable environment to live in. However, the respondent no.1 simply refrained from adhering to its commitments. To this, the infuriated complainants sent an email dated 25.08.2020 stating that due to the ongoing pandemic i.e. COVID-19, the complainants aren't in a position to pay the final demand raised and take possession as there is a financial crunch on their end hence they desire to cancel the booking/allotment of the unit in question and initiate the refund of all the payments made by the complainants. The respondent no.1 did not pay any heed towards the cancellation request against the unit in question and hence failed to execute a cancellation letter till date.
- xiv. The respondent simply duped the complainants of their hard-earned money and life savings. The aforesaid arbitrary and unlawful acts on the part of respondent have resulted into extreme kind of financial hardship, mental distress, pain and agony to the complainants.
- xv. The present complaint has been filed in order to seek refund of the principal amount paid by the complainant along with interest at the

prescribed rate in accordance with RERA, 2016 and HRERA, 2017 from the date of payments till the date of actual receipt of refund.

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

4. The complainant has sought following relief(s):
  - i. Direct the respondent to refund amounting to Rs.20,07,530/- for the total amount paid by the complainants along with the interest as per RERA Act.

**D. Reply by the respondent:**

5. The respondent contested the complaint on the following grounds:
  - i. The complainants had approached the respondent through brokers and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent known as "Gurgaon Greens" situated in Sector - 102, Village Dhankot, Tehsil & District Gurgaon. Prior to making the booking, the Complainants conducted extensive and independent enquiries with regard to the project and it was only after they were fully satisfied about all aspects of the project, they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
  - ii. Thereafter the complainants vide an application form dated 07.09.2017, applied to the respondent for provisional allotment of a unit in the project. The complainants, in pursuance of the aforesaid application form, was allotted an independent unit bearing no GGN-04-GF-01, Tower-04 admeasuring 1650 sq. ft., in the project vide provisional allotment letter dated 17.11.2017. The respondent had no reason to suspect the bonafide of the complainants and proceeded to allot the unit in question in his favor.
  - iii. Thereafter, buyer's agreement dated 18.10.2018 was executed between the complainants and the respondent. The delay in signing the



- buyer's agreement was solely attributable to the complainants, who had to be sent numerous reminders for the execution of the buyer's agreement.
- iv. The complainants were irregular in payment of instalments. The respondent was constrained to issue reminders and letters to them requesting them to make payment of demanded amounts. Payment request letters, reminders etc., were sent to the complainants by the respondent clearly mentioning the amount that was outstanding and the due date for remittance of the respective amounts as per the schedule of payments, requesting the complainants to timely discharge their outstanding financial liability but to no avail. Statement of account correctly maintained by the respondent in due course of its business depicting delay in remittance of various payments by the complainants.
- v. The complainants are not "allottees" but are investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainants as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favour of the complainants.
- vi. Even after sending the payment requests letters to the complainants, the complainants gave no heed to the said letters. The complainants consciously and maliciously chose to ignore the letters issued by the respondent and flouted in making timely payments of the instalments which was an essential, crucial and an indispensable requirement under the buyer's agreement. Furthermore, when the proposed allottees, such as the complainants, default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases



exponentially and further causes enormous business losses to the respondent. The complainants chose to ignore all these aspects and wilfully defaulted in making timely payments. The respondent despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainants.

- vii. The rights and obligations of the complainants as well as the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continues to be binding upon the parties thereto with full force and effect. Clause 7 of the buyer's agreement provides that subject to force majeure and the allottees having complied with all the terms and conditions of the buyer's agreement, and not being in default of the same, possession of the unit would be handed over within 30 months from the date of execution of the agreement, i.e. by 18.04.2021.
- viii. The complainants have defaulted in timely remittance of the instalments. The complainants are conscious and aware of the said agreement and have filed the present complaint to harass the respondent and compel the respondent to surrender to their illegal demands. The filing of the present complaint is nothing but an abuse of the process of law.
- ix. Despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 11.02.2019. Occupation Certificate was thereafter issued by the concerned statutory authority in favour of the Respondent dated 16.07.2019. Once an application for grant of occupation certificate is submitted for approval in the office of the



concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. as far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case.

- x. Without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. Merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement. The interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.
- xi. The construction of the project/allotted unit in question already stands completed and the respondent has already offered possession of the unit in question to the complainants. Furthermore, the project of the respondent has been registered under RERA Act, 2016 and HRERA Rules, 2017. Registration certificate granted by the Haryana Real

Estate Regulatory Authority vide memo no. HRERA-139/2017/2294 dated 05.12.2017. That the respondent had applied for extension of the registration and the validity of registration certificate was extended till 31.12.2019. However, since the respondent has delivered possession of the units comprised in the relevant part of the project, the registration of the same has not been extended thereafter.

- xii. The complainants were offered possession of the unit in question through letter of offer of possession dated 18.07.2019 and subsequently, several reminders were sent to the complainants to take the possession. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainants. However, the complainants failed to make the due payments.
- xiii. Since no payments were forthcoming from the complainants, the respondent was constrained to cancel the allotment of the complainants vide cancellation letter dated 27.11.2020. That subsequent to the cancellation of the allotment of the complainants, the unit has been transferred to a third party and the conveyance deed in favour of a third party also stands executed.
- xiv. Complainants have preferred the instant complaint in complete contravention of their earlier representations and documents executed by them. The complainants has filed the instant false and frivolous complaint in order to mount undue pressure upon respondent in order to make it succumb to their unjust and illegitimate demands.
- xv. That several allottees, including the Complainants, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and

development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. That the construction of the tower in which the unit in question is situated is complete and the respondent has already offered possession of the unit in question to the complainants. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

**E. Reply by the respondent no.2**

6. The respondent contested the complaint on the following grounds:
  - i. The present reply is being filed by respondent no.2 M/s RPM Advisory Pvt Ltd, a professional real estate brokerage firm incorporated under The Companies Act, 1956, engaged solely in facilitating introductions between prospective buyers and real estate developers for the purpose of property transactions, on a brokerage/ commission basis. That the respondent no.2 co, has been wound up /dissolved/strike off somewhere in the year 2020.



- ii. The respondent no.2 operates in the capacity of intermediaries and have no direct contractual agreements, obligations or financial liabilities arising out of any such transactions.
- iii. In the present case, the role of respondent no. 2 was limited to introducing the complainants to the housing project "Gurgaon Greens" being developed by respondent no. 1 and arranging the introductory meeting/ discussions between the parties.
- iv. In the present matter, respondent no. 2 merely acted as a facilitator in connecting the complainant with the developer/ builder in relation to the housing project titled "Gurgaon Green." The involvement of respondent no.2 herein was limited to the extent of introduction and facilitation, and was not part of any further dealings between the parties.
- v. Respondent no. 2 was not a signatory or party to any agreement, contract, allotment letter, or builder buyer agreement hereinafter referred to as (BBA) executed between the complainants and the developer. Further, there exists no privity of contract between respondent no. 2 and the complainants.
- vi. The offer of a special 30-month payment plan was formulated, managed, and implemented exclusively by and between respondent no. 1 and the complainants herein. The respondent no. 2 merely communicated this proposal as part of its facilitative function, i.e., the respondent no.2 was a mere messenger of the said plan. All commitments or representations regarding the structure of the said plan were made and acted upon exclusively by respondent no. 1 alone.
- vii. The complainant voluntarily booked a flat bearing unit no. GGN-04-GF-1 on ground floor, located in tower/ building no.04 (hereinafter the "said property"), in the said housing project and paid a sum of Rs.7,50,000/-only directly to the Builder (the respondent no.1 herein)

- as the initial booking amount on 05.09.2017. Respondent no. 2 was neither involved in collecting nor receiving any portion of the said amount and had no role in determining the terms or schedule of further payments.
- viii. It is a well-established industry practice that brokers are entitled to brokerage/commission only after a buyer has paid a certain percentage (usually 10%) of the total sale consideration to the builder. Even assuming that the respondent no.2 has received the brokerage amount, even then the respondent is not the beneficiary of the amount so transferred by the complainant and thus is not entitled to refund any monies back to the complainant. It's between the respondent no.1 & 2, therefore the complainant in no manner what so ever any right to claim any amount form the respondent no.2.
- ix. That for the sake of clarity, it is pertinent to mention that the contract was signed exclusively between the complainant, and the respondent no.1 herein. All/ any monies paid towards purchase of the said property were paid by the buyer (the complainants herein) directly to the seller (the respondent no.1 herein). Further, the prayer of the present complaint under reply also craves leave of this Hon'ble Tribunal for the refund of all amounts/ monies paid to the respondent no.1 towards purchase of the said property.
- x. The allotment letter dated 12.12.2017 and the BBA dated 18.10.2018 were executed exclusively between the buyer and the seller, the complainants and respondent no. 1 herein respectively. Respondent no. 2 being in the capacity of a mere broker, had no reason/ purpose for any further involvement or knowledge of the internal terms, deadlines, or any execution-related responsibilities, the same now being the exclusive domain between the buyer and the seller.

- xi. The contractual relationship and obligations in the matter are exclusively between the complainant and the builder/developer. Therefore, the answering respondent cannot be held responsible for any grievance or financial default arising between those two parties, i.e., for a money transaction exclusively between the complainants and the respondent no.1. Furthermore, the complainant vide email dated 25.08.2020 written to respondent no.1, requested to respondent no.1 to cancel the booking and refund the amounts paid to respondent no.1 towards the purchase of the said property.
- xii. All parties to the buyer builder agreement (BBA) are bound to abide by the terms and conditions stipulated therein, and admittedly, the said agreement was executed solely between the complainant and respondent no.1. Therefore, respondent no.2 has no role whatsoever in the dispute arising between the complainant and respondent no.1.
- xiii. The complainant has made respondent no.2 a party to the present proceedings arbitrarily and in a routine manner, solely with the intention to exert undue pressure on respondent no.1 to settle the matter. Otherwise, there is no reason or occasion whatsoever to implead respondent no.2, who has no role in the dispute in question, or has any relief been claimed against the said answering respondent no.2. Even in the prayer clause also there is no distinction with respect to the demand of money, just randomly the complainant prays from the 'Respondents' to refund the amount in routine manner. Furthermore, there is no specific demand, statement, or allegation made by the complainant against respondent no.2 anywhere in the entire complaint, which clearly establishes that the complainants paid any sum of the claimed monies to respondent no.2.
- xiv. The entire set of payment instructions, BBA terms, and possession offer dated 18.07.2019, and demand for balance payment by

19.08.2019 were actions taken unilaterally by and between the respondent no. 1 and the complainants herein, without any role, interference, or requirement on the part of the answering respondent no. 2.

- xv. The inclusion of respondent no. 2 as a party to the present complaint is an abuse of legal process and an attempt to cause undue harassment to an unrelated third party. The answering respondent has no interest, liability, or gain in the outcome of the transaction.
- xvi. The present complaint does not fall under the more commonly seen category of consumer disputes involving delays in possession. In fact, in this matter, the builder delivered possession well before the promised date, and therefore, no allegation or cause of action arises against any party with respect to delay. The complainant cannot arbitrarily request respondent no.1 to cancel the allotment without citing any valid reasons for doing so. The complainant has conveniently forgotten that they are bound by the terms and conditions expressly set out in the agreement, which govern such cancellations and the consequences thereof. Even otherwise, the same are in the domain of a money transaction, exclusively between the buyer and the seller.
- xvii. No monetary claim has been raised against respondent no. 2 in the body of the complaint. No evidence, receipt, or transaction has been produced to show that respondent no. 2 received any amount from the complainants.
- xviii. The grievance of the complainant is entirely due to his own inability to make subsequent payments as per the agreed instalment plan. The financial difficulty or default on part of the complainant cannot be attributed to respondent no. 2, who had no role or participation in the payment schedule or contractual enforcement. The complainants must



- be put to strict proof that even Rs.1 out of the claimed amount paid of Rs.20,07,530/- was paid by the complainants to respondent no.2.
- xix. The record reflects that the complainant booked the said property in 2017, and remained in touch with the developer until 2020. After that, there appears to have been a complete break in communication for nearly five years. It is only in 2025 that the complainant has suddenly initiated this complaint, also arraying the respondent no. 2 without any legally justifiable purpose.
- xx. No relief has been claimed against respondent no. 2 in the entire body of the complaint. There is no allegation that the complainant has paid any amount to the answering respondent no.2, nor is there any document or evidence to suggest that respondent no. 2 is in breach of any duty.
- xxi. The core dispute clearly lies between the complainants (the buyer) and the developer seller (being respondent no. 1) regarding alleged payment irregularities, delayed formalization of the BBA, and final possession terms. These are beyond the scope of any broker's duties, obligations.
- xxii. Even if one assumes, purely for the sake of argument, that some relief is to be claimed by the complainant, the only monetary liability of respondent no.2 that may arise would be in the form of brokerage, which also, as per industry norms, is paid by the builder and not by the buyer. Hence, even in such a hypothetical situation, the respondent no. 2 is not liable to refund any monies to the complainants herein.
- xxiii. Respondent no. 2 has never been a beneficiary of any amount from the complainant. On the contrary, since the brokerage was never paid due to non-fulfilment of the transaction, the answering respondent has suffered a financial loss, rather than gaining anything from the transaction. To add to it, the answering respondent no.2 has been

arrayed as a party in the present complaint, for the recoveries of monies paid by the complainants to the respondent no.2.

xxiv. In light of the above facts and circumstances, it is respectfully submitted that respondent no. 2 has been wrongly and malafidely impleaded, and has no connection whatsoever with the prayers made in the present complaint. That in view of the above, the answering respondent no.2 accordingly submits that the present complaint, as against respondent no. 2, is liable to be dismissed at the threshold and the answering respondent may kindly be deleted from the array of parties in the interest of justice.

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 submission made by the parties.

**F. Jurisdiction of the authority:**

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

**E.I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**



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

**Section 11(4)(a)**

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

**Section 34-Functions of the Authority:**

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

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 objections raised by the respondents**

**G.I Objection raised by respondent no.2 seeking deletion of its name from array of parties.**

12. The Authority has considered the preliminary objection raised by respondent no. 2 seeking deletion of its name from the array of parties on the ground that it merely acted as a broker/intermediary and had no privity of contract with the complainant.
13. At the outset, it is observed that respondent no. 2 has consistently taken the stand that its role was limited to facilitating the introduction between the complainant and respondent no. 1 (the developer), and that it was neither a signatory to the allotment letter or the builder buyer agreement (BBA), nor did it receive any amount from the complainant. It has further been contended that no specific relief has been claimed against it and that the entire dispute pertains to transactions between the complainant and respondent no. 1.



14. Upon perusal of the record, the Authority notes that the allotment letter dated 17.11.2017 and the BBA dated 18.10.2018 have been executed exclusively between the complainant and respondent no. 1. There is no material on record to establish that respondent no. 2 was a party to these agreements or that any contractual obligation existed between the complainant and respondent no. 2. Further, no documentary evidence has been placed on record by the complainant to show that any amount was paid to respondent no. 2 or that respondent no. 2 had undertaken any enforceable obligation in respect of the subject unit.
15. It is also pertinent to note that the reliefs sought in the present complaint primarily relate to refund of the amount paid towards the unit, which admittedly has been paid to respondent no. 1. No specific or independent relief has been sought against respondent no. 2, nor has any deficiency in service or violation of provisions of the Act been substantiated against it.
16. In such circumstances, the role of respondent no. 2 appears to be limited to that of a facilitator/broker, and in the absence of any privity of contract, monetary transaction, or specific allegation of wrongdoing, no cause of action is made out against respondent no. 2. Accordingly, the objection raised by respondent no. 2 is found to be sustainable, and respondent no. 2 is liable to be deleted from the array of parties. The complaint shall, therefore, proceed only against respondent no. 1. Hence, objection allowed.

**G. Findings on relief sought by the complainant:**

**G.1 Direct the respondent to refund amounting to Rs.20,07,530/- for the total amount paid by the complainants along with the interest as per RERA Act.**

17. The complainant was allotted a unit vide allotment letter dated 17.11.2017 in the project of respondent namely "Emmar Gurgaon Greens" in Sector-102, Gurugram for a total sale consideration of

Rs.1,05,78,833/-. A builder buyer's agreement was executed between the parties on 18.10.2018 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.20,07,530/-.

18. The complainant contended that the respondents have violated section 13 of the Act of 2016 as the respondent kept raising illegal demands contrary to the payment plan agreed between the parties. The complainant also contended that the unit in question has been arbitrarily cancelled by the respondent.

19. The respondent no.1 mentioned that the unit was cancelled by the respondent no.1 on 27.11.2020 on account of non-payment after issuance of multiple reminders. The occupation certificate of the unit of the complainant was obtained on 16.07.2019 and the complainants have paid only Rs.20,07,530/- against the sale consideration of Rs.1,05,78,833/-.

Now, the question arises whether the cancellation is valid or not?

20. The complainants have opted for time linked payment plan. As per the opted payment plan, the complainants had to pay 8.95% of the total sale consideration on booking, 1% on 10.01.2017 and 0.33% on 10.11.2017 and so on and last payment was to be done on intimation of possession. Though the respondent no.1 has raised a demand letter dated 16.07.2019 on obtaining OC for payment of outstanding dues. Subsequently, the respondent no.1 has sent reminder letters dated 22.08.2019, 23.09.2019, 23.10.2019 and 02.01.2020 and thereafter issued a final reminder for payment of outstanding amount due against demand letter dated 01.03.2020. Upon non-compliance on part of the complainant, the respondent no.1 finally terminated the unit of the complainant vide termination letter dated 27.11.2020. The

complainants have paid only Rs.20,07,530/- which is 18.97% of the total sale consideration i.e., Rs.1,05,78,833/-.

21. As per Section 19 (6) & 19 (7) of the Act, 2016, the complainants-allottees were under an obligation to make timely payment as per the agreed payment plan towards consideration of the allotted unit. In the present complaint, despite being granted several opportunities to comply with his obligations, the complainant failed to discharge his obligation for making timely payment of the outstanding dues and the respondent has obtained the completion certificate on 16.07.2019 i.e., prior to the due date of possession i.e., 18.04.2021. In view of the aforementioned facts, the cancellation of the unit dated 27.11.2020 stands valid.
22. Furthermore, 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 Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Indian 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 Private Limited*** decided on 26.07.2022, held that 10% of basic sale price is a reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the

Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

***"5. Amount Of Earnest Money***

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

23. 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, the respondent/builder can't retain more than 10% of sale consideration as earnest money on surrender by the complainant-allottee or cancellation by the builder but that was not done. So, the respondent no.1 is directed to refund the amount received from the complainant i.e., Rs.20,07,530/- after deducting 10% of the basic sale consideration i.e., Rs. 97,43,772/- 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%) on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation i.e., 27.11.2020 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**H. Directions of the Authority:**

24. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent/promoter no. 1 directed to refund the amount i.e., Rs.20,07,530/- to the complainants after deduction of 10% of basic sale consideration of Rs. 97,43,772/- as earnest money along with interest at the rate of 10.80% p.a. on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation i.e., 27.11.2020 till the actual date of realization.
- ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

25. Complaint stands disposed of.

26. File be consigned to the registry.



**(Phool Singh Saini)**  
**Member**

Haryana Real Estate Regulatory Authority, Gurugram

**Dated:12.03.2026**