BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 3057 of 2025
Order reserved on : 05.02.2026
Order pronounced on : 12.03.2026

1. **TANUJ KUMAR SAHOO**
   R/o - F-1101, Anant Raj, Maceo, Near Beshtech Sanskriti, Sector-91, Meoka 121, Gurgaon, Haryana - 122505
2. **ANKIT KUMAR MITTAL**
   R/o - B-1, IInd Floor, JBM Residency, Plot no.8, Gali no. 1, block -A, Palam Vihar, Extension, Carterpuri, Gurgaon, Haryana – 122017

Complainants

Versus

K.S. PROPMART PVT. LTD.
Office : T-24, T-25, 3RD Floor, Block- D, Baani Square, Sector-50, Gurugram-122018

Respondent

CORAM:

Shri Phool Singh Saini — **Member**

APPEARANCE:

Shri Pawan Kumar (Advocate) — **Complainants**
Shri Jagdeep Yadav (Advocate) — **Respondent**

ORDER

1. The present complaint dated 07.07.2025 has been filed by the complainants/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in

short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees 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 complainants, 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	PARK STREET, Sector-85, Gurugram
2.	Nature of the project	Commercial Complex
3.	RERA Registered/ not registered	41 of 2019 dated 30.07.2019, valid upto 31.12.2021
4.	License no. and validity	100 of 2013 date 02.12.2013
5.	Unit no.	F-20, 1st floor *[pg. 25 of complaint]*
6.	Unit area admeasuring	374.80 *super area [pg.26 of complaint]* / 564.76 sq. ft. *[vide intimation letter dt.20.05.2024 at pg.80 of complaint]* Which is approx. more than 45% increase in area
7.	Date of booking	15.03.2022 *[As per ATS dt. 05.05.2022 at pg. 25 of complaint]*
8.	Date of allotment	05.05.2022 *[Pg.17 of complaint]*
9.	Date of Agreement to Sale	05.05.2022 *[Pg.22 of complaint]*
10.	Payment Plan	**S.No.** / **Payments to be made** (i) EDC/IDC as and when demanded. (ii) PLC Charges – As applicable (iv) **Rs.22,11,320/- (Rupees Twenty Two Lakh Eleven Thousand Three Hundred and Twenty Only)** being part of agreed sales consideration plus

		taxes on the application of Occupation Certificate of the Retail Block (v) Power Back Up Charges + Air Condition Charges + ECC +FFC + IFMS + IFCRF + Bulk Electricity + MCG + Advance Maintenance and such other charges a sper this MOU at the time of offer of possession of Retail Block. Registration Cost + Stamp Duty and such other charges as per the Agreement For Sale. (vi) Registration Cost + Stamp Duty and such other Charges as per the Agreement For Sale. *[Pg.64 of complaint]*
11.	Possession clause	***7.POSSESSION OF THE UNIT FOR COMMERCIAL USAGE:*** ***7.1 Schedule for possession of the said Unit for Commercial usage-*** *The Promoter agrees and understands that timely delivery of possession of the Unit for Commercial usage with parking (if applicable) to the Allottee(s) and the common areas to the association of allottees or the competent authority* ***within a period of 60 months with additional grace of 5 months from the date of execution of this Agreement*** *subject to such extension as may be permitted by terms and conditions of this Agreement including the extension arising out of force majeure conditions or by the order of the competent authorities.* *[Pg.32 of complaint]*
12.	Due date of possession	05.11.2027 *[as per possession clause 60 months with additional grace of 5 months from the date of execution of this Agreement i.e., 05.05.2022]*
13.	Basic sale consideration [including EDC/IDC/rate]	Rs.25,32,452/- *[as per allotment at pg.17 of complaint]*
14.	Amount paid by the complainants	Rs.22,08,172/- *[as per sworn affidavit dated 12.03.2026 submitted during proceedings dt.12.03.2026 by the complainants]*
15.	Occupation certificate /Completion certificate	Not obtained
16.	Notice of possession	Not offered

17.	Date of Cancellation notice, that only Rs.3,76,160/- is due towards complainants *[which they can collect]*, after forfeiture of booking/earnest amount & applicable charges.	28.05.2024 and 09.01.2025 *[Page 104-105 of complaint]*

B. Facts of the complaint:

3. The complainants have made following submissions by filing the present complaint: -

i. The respondent is a private limited company incorporated under the provisions of companies Act, 1956 and is *inter alia* engaged in the business of providing real estate services, construction and development of commercial as well as residential real estate projects.

ii. The respondent as part of its commercial operations is engaged in the development of a commercial project in the name of "PARK STREET", situated in Sector 85, Tehsil Manesar, District Gurugram, Haryana, which is subject matter of dispute before the Authority.

iii. That the present complaint is being filed by the complainants against the respondent as the respondent has, in a pre-planned manner, cheated and defrauded the complainants of his hard-earned money and have rendered deficient services by not fulfilling the obligations, the promoter was bound on to as per Section 12, 14, 18 of the RERA Act, 2016.

iv. That the promoter portrayed its project "PARK STREET" to be one of the best commercial projects and trusting upon the assurances and promises made by the promoter in its advertisement and their prospectus, the promoter had proved to be a fraud person who had

made such incorrect and false statements in his advertisement and prospectus so that he could defraud innocent investors like complainants and many other persons.

v. that the respondent issued an advertisement of launching of its commercial project namely "PARK STREET", situated in Sector-85, Tehsil Manesar, District Gurugram, Haryana. The complainants after seeing the advertisements, came into the contact with the sales executives/representatives of the respondent who embarked upon the complainants with various promises of timely completion of the project and swift delivery of possession of the unit on time. During several meetings that took place between the complainants and the representatives of the Respondent it was explicitly assured to the complainants that apart from delivering the possession of the unit as per the schedule, the respondent shall ensure ample time to make the payment in regard to the unit purchases and the same is flexible.

vi. That the complainants, trusting and believing the representations, warranties, assurances and towering claims advanced by the promoters and representatives of the respondent, fell into their trap and agreed to book a commercial unit in the project namely "PARK STREET" of the respondent vide an application dated 15.03.2022.

vii. Based on the application filled by the complainants, the respondent issued an allotment letter dated 05.05.2022 in favour of the complainants for allotment of the commercial unit bearing shop no. F-20 on 1st floor ad measuring super area of 374.8 sq. ft in the project "Park Street" situated at Sector 85, Gurugram, (hereinafter

referred to as the 'unit'), in the project namely, "Park Street", situated at Sector 85, Gurugram, Haryana. It is pertinent to mention here that the complaint paid an amount of Rs. 1,12,000/- at the time of allotment of the unit and the same is reflected in the allotment letter dated 05.05.2022.

viii. That in terms of the agreement to sale dated 24.06.2022 issued by the respondent, the complainants was obligated to make the payment to the respondent as per the payment plan set out in Schedule C of the agreement for sale. However, to utter shock and surprise, the payment plan had been intentionally left blank by the respondent so that he can raise untimely demands of payment to the complainants as per his wish and desires and can create a pressure upon the complainants. That the floor plan in Schedule B and the payment plan in Schedule C of the agreement to sale dated 05.05.2022 are purely blank documents on page no. 30 and 31 of the agreement.

ix. That the respondent builder never provided any payment plan to the complainants because it was mutually decided between the complainants and the respondents that the remaining payment shall be made to the respondent builder at the time of offer of possession. That apart from such mutual understanding, the respondent builder with the malafide intention to harass the complainants got signed an MOU dated 05.05.2022 wherein an ambiguous payment plan had been enumerated in Schedule 1 at page no. 13 of the said MOU. That the said MOU dated 05.05.2022 is neither registered before any Sub-Registrar office nor the said

MOU had been notarized. Hence the said MOU does not possess any value and it's just a piece of paper.

x. That despite no payment plan issued by the respondent builder, the complainants still had made regular payments to the respondent builder as per the following: -

S. NO.	DATE	AMOUNT
1.	13.04.2022	12,000/-
2.	13.04.2022	1,000/-
3.	14.04.2022	7,80,000/-
4.	16.04.2022	3,00,000/-
5.	26.04.2022	2,20,000/-
6.	26.04.2022	4,00,000/-
7.	05.05.2022	1,12,000/-
8.	18.06.2022	1,06,913/-
9.	31.01.2023	1,10,566/-
10.	08.02.2023	1,10,566/-
11.	30.04.2024	55,667/-
	TOTAL	22,08,712/-

xi. That the respondent had never explained the reason about keeping the floor plan as well as payment plan to left blank in ATS even at the time of registration. It was mainly because to cheat and defraud the complaint and to manipulate the terms and conditions of the agreement as per his whims and fancies and to further grab the property as well as the hard-earned money of investors like complainants with malafide intention.

xii. That the complainants have asked the respondent vide mails and whatsapp chats multiple times to provide the layout plans as well as the account statement in regard to the payment made till so far by the complaint in lieu of the retail unit allotted i.e., shop no. F-20 on 1st floor ad measuring super area of 374.8 sq. ft in the project "Park Street" situated at Sector 85, Gurugram. But the respondent

builder had never provided any of the information asked by the complainants and also had never responded to the mails of the complainants.

xiii. That the layout plan in the brochure and advertisement clearly showed the unit no. F- 20 adjacent to unit no. F-20A. That both the units are of small sizes similar to each other. It is because of the small size and good location that both the complainants were ready to invest in the said unit. That the respondent builder without taking previous consent and without even informing the complainants, the respondent builder increased the size of the allotted unit F-20 from 374.8 sq. ft. To 564.76 sq. ft. That the said intimation was given by the respondent builder vide a letter of intimation dated 20.05.2024 intimating the complainants regarding change in area of allotted unit F20. That the respondent builder had referred to an MOU dated 23.02.2021 while explaining the reason for increasing the size of the allotted unit F-20 but the complainants have never signed any MOU dated 23.02.2021.

xiv. That the complainants were surprised and shocked to receive such Letter of Intimation dated 20.05.2024 regarding the change of size of their allotted unit and the complainants tried to ask the reason about the same to the respondent builder through whatsapp and mail communication but no satisfactory response was given by the respondent builder.

xv. That when the complainants ask the respondent builder regarding the change in size of their allotted unit and the reason behind the same, the respondent builder provided a revised layout plan dated 30.04.2024 wherein the size of the allotted unit F-20 was shown as

a clubbed size of F-20 and F-20A. That the revised layout plan was never provided to the complainants and it appears that it was the conspiracy of the respondent builder who had concealed the actual size of the unit F-20 and had intentionally shown the size of allotted unit F-20 in the brochure to be of 374.8 sq. ft. That the said incorrect and false information intentionally included in the prospectus/ advertisement/ brochure had affected the complainants and have ensued losses to them.

xvi. that the respondent builder had not adhered to the sanction plans and had not provided a copy of the sanction plans and the layout plans to the complainants. That the respondent builder had not taken any previous consent of the complainants before making any addition to the size of the allotted unit. That the respondent builder was under an obligation as per Section 14 of RERA act, to take permission of atleast 2/3rd of the allotees before increasing the size or area of the allotted unit but the respondent builder failed to comply with the same. That the respondent builder had straight away increased the size of the allotted unit of the complainants from 374.8 sq. ft. To 564.76 sq. ft which is a 50% increase in the area of the unit and such increase is against the provisions of the RERA act.

xvii. That the respondent builder did not stop here and instead started creating a pressure upon the complainants to make the payment and clear all dues as according to the size of 564.76 sq. ft.

xviii. It is pertinent to mention here that the respondent builder had never issued any intimation letter and permission letter before the increase in size of the unit. It is also pertinent to mention here that

the respondent builder does not have any consent letter from the complainants in regard to the change in size of their allotted unit.

xix. That the respondent builder use to call the complainants to his office to clear all the misunderstandings and to discuss about the details but never responded to any mail to exempt from creating any liability/evidence against him.

xx. that the total sale consideration of the above said retail unit had also discrepancy in various documents such as it had been mentioned that total sale consideration in the :-

- allotment letter dated 05.05.2022 is Rs. 25,32,452/-
- provisional allotment Letter is Rs.25,36,272/-
- agreement for sale dated 24.06.2022 is Rs. 25,32,452/-

xxi. The material breaches committed by the respondent along with the malicious conduct has caused wrongful loss to the complainants and wrongful gains to the respondent, which has constrained the complainants to approach the Authority seeking redressal of its grievances.

xxii. That the respondent issued an advertisement of launching of its commercial project namely "PARK STREET", situated in Sector 85, Tehsil Manesar, District Gurugram, Haryana. The complainants after seeing the advertisement, came into the contact with the sales executives/representatives of the respondent who embarked upon the complainants with various promises of timely completion of the project and swift delivery of possession of the unit on time. During several meetings that took place between the complainants and the representatives of the respondent it was explicitly assured to the complainants that apart from delivering the possession of the unit

as per the schedule the respondent shall ensure timely payments of the assured rentals/returns, but the complainants never received any amount as a part of assured return from their allotted unit.

xxiii. That the complainants, trusting and believing the representations, warranties, assurances and towering claims advanced by the promoters and representatives of the respondent, fell into their trap and agreed to book a commercial unit in the project namely "PARK STREET" of the respondent vide an application dated 15.03.2022.

xxiv. That the respondent builder had issued a termination /cancellation letter on dated 28.05.2024 where in the respondent builder had clearly threatened the complainants that the complainants did not adhere and complied with the demands of the respondent builder to make the complete payment as per the increased size of the allotted unit failing which the respondent builder unilaterally and without giving an opportunity to the complainants, took a decision to cancel the allotment of the complainants vide termination / cancellation letter dated 28.05.2024. That the respondent builder also issued another cancellation letter on dated 09.01.2025.

xxv. That the respondent builder along with the termination /cancellation letter dated 28.05.2024, also issued cheques in favour of both the complainants of an amount of Rs.1,88,080/- respectively. That despite making a payment of Rs. 22,08,712/- to the respondent builder in lieu of allotted unit F-20, the respondent builder with malafide intention and with an ulterior motive to defraud the complaints, issued cheques for a total amount of

Rs.3,76,160/- as refundable amount in favour of the complainants after cancellation of their allotment.

xxvi. That the respondent builder had failed to show any proof of the calls, messages or courier receipts wherein the respondent builder had awaited to give an opportunity to be heard to the complainants before issuing the termination / cancellation letter of the Allotment of the complainants. That the respondent builder had a pre - planned conspiracy which was hatched as per the planning and every mistake and non-fulfilment of the obligations of the builder was a part of it. That the respondent builder issued a Legal Notice for the cancellation of the unit but there was not date mentioned in the entire legal notice so that the respondent builder can manipulate the dates and everything as per his whims and desires. That the complainants after receiving the arbitrary and unjustified legal notice intimating the cancellation of their allotted unit, also sent a reply to the legal notice on dated 29.03.2025 to the respondent builder and briefly explained that the said cancellation of the allotment is wrong, arbitrary and against the prevalent laws of the RERA Act.

xxvii. That the respondent builder is neither ready and willing to revoke the cancellation of the allotment of the complainants nor issuing the refund along with interest as per the RERA rules and regulations. That the complainants had visited the office of the Respondent Builder

xxviii. That the said complaint is well within the limitation as the cause of action arose on 09.01.2025 when the respondent builder cancelled the allotment of the complainants. The respondent has miserably

failed to complete all his obligations as per section 12, 14 and 18 of the RERA Act, 2016.

xxix. That the complainants is filing the present complaint in order to seek refund of Rs. 22,08,712 (principal) + Rs.7,34,491.17 (interest till 02.07.2025) = Rs.29,43,203.17 (total amount)

4. Written Submission by complainants dated 20.02.2026:

xxx. That the respondent had entered into an agreement to sell vide Vasika No. 2864 dated 24.06.2022 registered in the office of the Sub-Registrar, Manesar, Gurugram, Haryana. That the said agreement had been registered pertaining to all the details regarding the floor plan, payment schedule etc., enumerated in the Schedule-B and Schedule-C respectively on page no. 30 and 31 of the agreement to sell dated 24.06.2022.

xxxi. That the complainants were shocked to seek that both the Schedule-B and Schedule-C are blank documents and the complainants were in apprehension that the respondent builder can misuse the said agreement as per his wish and desire because he had intentionally left the floor plan (Schedule-B) and Payment Plan (Schedule-C) blank.

xxxii. That from the agreement to sell dated 24.06.2022, the respondent had also got an MOU dated 05.05.2022 signed by the complainants, however, the MOU dated 05.05.2022 had neither been attested / notarized nor registered before any office of Sub-Registrar, Gurugram, Haryana. That apart from this, the MOU bears no signature of the witnesses.

xxxiii. That as per the MOU dated 05.05.2022, the complainants have paid the full amount as per the payment plan in Schedule-I on page no.

13 of the MOU but however, the respondent have not obtained any occupation certificate till date and have also not offered possession to the complainants.

xxxiv. That the respondents had also increased the area of the size of the unit allotted to the complainants without any consent, permission, prior notice to the complainants. That not only this, the respondents started demanding double the amount already paid by the complainants. That the complainants when raised objections to the same and started asking to return their payment made so far, pertaining to the unit no. F-20 allotted to them, the authorized agents of the respondents never responded to the same and ignored all the request of the complainants received by them through e-mail and Whatsapp messages.

xxxv. That as per the layout plan issued by the respondent builder clearly shows that the shop no. F-20 allotted to the complainants is a small shop adjacent to F-20A and the size of both the shops are equivalent to each other and small than rest of the shops. It is because of the size of the unit F-20 that the complainants had shown their interest to purchase the said unit because had the complainants have a capacity to purchase a big size shop, the complainants would have never opted the said small shop i.e., F-20. That the revised layout plan annexed on page no. 101 of the complaint clearly shows the defrauding intention of the respondent builder who had not only increased the size of shop no.F-20 but had also disappeared the shop no.F-20A. It is mainly because the respondent builder had never been habitual in following any laws and regulations and always violates the laws and legal obligations.

xxxvi. That despite making the complete payment pertaining to the shop no.F-20, the respondent builder had issued a termination/cancellation letter dated 28.05.2024 without any prior notice or warning. That after that the respondent builder had issued a cancellation of allotment dated 09.01.2025 to the complainants directing them to collect their payment of Rs.3,76,160/- from the office of the respondent builder.

xxxvii. That after this, the respondent builder had issued a legal notice for cancellation of unit allotted to the complainants but the respondent very smartly did not mention any date throughout the legal notice and the complainants eventually filed a reply to the said legal notice on dated 29.03.2025 explaining all the violations did by the respondent builder and unveiling true picture intentionally concealed by the respondent builder. That the builder did not respond to the same and upheld the cancellation of the unit being stubborn and reluctant to follow any rule, regulation and laws

C. Relief sought by the complainants:

5. The complainants have sought following relief(s):

   I. Direct the respondent to refund a sum of Rs.22,08,712/- along with an interest of Rs.7,34,491.17 till the date of 02.07.2025.

6. 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. Written Submission by Respondent:

7. The respondent put in appearance through its counsel and marked attendance on 25.09.2025. Thereafter none appeared on behalf of

respondent on 06.11.2025, 18.12.2025, 05.02.2026. Despite specific directions for filing of reply, the respondent has failed to comply with the orders of the Authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding filing of reply in the matter. Therefore, in view of above, the defence of the respondents was struck off vide proceedings dated 05.02.2026. However, in the interest of justice on 05.02.2026 respondent was given opportunity to file written submission, which was filed by respondent on 20.02.2026 and the same has been taken on record.

8. The respondent vide written submission dated 20.02.2026 made the following submissions:

   i. That the present complaint is not maintainable either in law or on the facts and is liable to be dismissed at the threshold on account of concealment of material facts and suppression of true and correct particulars by the complainants.

   ii. That the complainants have neither any cause of action nor any locus standi to maintain the present complaint against the Respondent, especially when the complainants defaulted in making payment and are now seeking the complete amendment/ modification/ re-writing of the terms and conditions of the agreement/understanding between the parties. This is evident from the averments as well as the prayers sought in the complaint.

   iii. That the complaint filed by the complainants is baseless, vexatious and is not tenable in the eyes of law; therefore, the complaint deserves to be dismissed at the threshold.

   iv. That the complainants made an application for provisional allotment of a unit bearing no F-20 on the first floor, admeasuring a

tentative super built-up area of 374.80 sq. ft in the project developed by the respondent, now as VSR 85 Avenue, which is now as Park Street (hereinafter referred to as the "project") vide application form. That in terms of the application form submitted by the complainants unit bearing no F-20, having a tentative super built-up area of 374.80 sq. ft, was provisionally allotted to the complainants vide allotment letter dated 05.05.2022. That the basic sale price of the unit in question, as per the allotment letter, was 25,36,272/-exclusive of EDC, IDC, Power backup charges, IFMS, IFCRF, FFC, AC, ECC, PLC, taxes and such other charges extra as applicable and more particularly defined under the agreement.

v. That as per the memorandum of understanding (MOU), the price of the unit for an area admeasuring a tentative super area of 374.80 sq. ft. was Rs.25,36,272/- Exclusive of EDC, IDC. Interest-free maintenance security (IFMS), electricity connection charges, power backup charges, air conditioning charges, tax and other such levies/cesses/VAT as may be imposed by any statutory authority and more particulars defined.

vi. That the complainants have made a payment of Rs.5,08,712/-, including service taxes, to the respondent at the time of the allotment. However, in addition to the above additional cost, the complainants are also supposed to make their other payments in the nature of EDC, IDC, interest-free maintenance security, electricity collection charges, power backup charges, air conditioning charges, service tax and such other levies/cesses/VAT as per the demand raised by the respondent.

vii. Further, as per the payment plan attached as Schedule 1 to the MOU, the complainants was liable to make a payment toward EDC and IDC as and when demanded and is also liable to pay other charges at the time of offer of possession.

viii. That, as per the MOU executed between the parties on 05.05.2022, the possession of the retail unit was supposed to be handed over to the complainants within a period of 60 months, with an additional grace of 5 months from the date of execution of the agreement, subject to force majeure conditions.

ix. That the possession of the unit has to be handed over to the complainants within 60 months, with an additional grace of five months from the date of execution of the MOU, which was executed between the parties on 05.05.2022, and hence the due date for delivery of possession comes to 05.11.2027. Further, the aforementioned clause would clearly show that only symbolic/constructive possession is to be handed over to the complainants since the unit booked by the complainants is for leasing purposes.

x. The answering respondent respectfully submits that before the COVID-19 pandemic, the respondent company was undertaking the development of the project in accordance with the Non-TOD (Transit-Oriented Development) Policy, 2016. However, due to significant regulatory changes introduced after the COVID-19 pandemic, the applicable policy was revised from Non-TOD to TOD by the competent authority, i.e., the Directorate of Town and Country Planning (DTCP), Haryana.

xi. In compliance with the regulatory shift, the respondent company duly revised the building construction plan as per the guidelines and approval from DTCP, Haryana. This revision necessitated changes in the layout and areas of all units within the project, including the unit provisionally allotted to the complainants.

xii. That pursuant to the revision in the Transit Oriented Development (TOD) Policy in the year 2022, the subject project was brought under the ambit of the non-TOD Policy. Consequently, the building plans were revised and duly approved by the office of the Director, Town and Country Planning (DTCP), Haryana, vide Memo No. _____ dated _____. Owing to the said policy change and the resultant approval process, the completion of the project has been delayed, a fact that is duly acknowledged and accepted by the purchaser/second party. It is further agreed that such delay, being attributable to statutory changes and approvals beyond the control of the developer/first party, shall not be construed as a default, breach, or deficiency in service on the part of the developer/first party in any manner whatsoever. The parties further agree that the period of possession stipulated under this agreement shall automatically stand extended by the period equivalent to such delay, without imposing any liability, penalty, or adverse consequence upon the developer/first party.

xiii. that the respondent company, acting in good faith and in adherence to transparency, communicated a proposal to the complainants regarding the potential increase in the area of his unit. However, it is pertinent to note that no formal acceptance of the proposed change was received from the complainants. It also mentions here

that the respondent submits that there has been no unilateral alteration to the complainants's unit, and the respondent has acted in strict compliance with contractual obligations and applicable regulations. The principle of consensus ad idem (meeting of the minds) is fundamental to any modification of contractual terms, and in the absence of such consensus, no alteration can be deemed valid or enforceable.

xiv. That, in the absence of any written acceptance or agreement from the complainants, the respondent company refrained from making any changes to the area of the complainants's unit. As such, the unit's area remains unchanged and is consistent with the specifications outlined in the Memorandum of Understanding (MOU) executed between the parties.

xv. The answering respondent respectfully submits that due to the change in construction policy from Non-TOD to TOD, as notified and implemented by the competent authorities, there arose certain necessary revisions arose in the sanctioned building plan of the project. Consequent to such revision, the sizes of several units within the project, including that of the complainants, were either increased or decreased, depending upon the re-allotment and reconfiguration of the layout approved by DTCP, Haryana.

xvi. The respondent company, acting in good faith and maintaining full transparency, duly issued a letter dated 20.05.2024 to the complainants, thereby intimating him about the proposed revision in the area of his unit as per the revised building plan. It was clearly communicated that only upon the complainants's acceptance of the

said revision would the changes be effected in the records of the respondent company.

xvii. That the complainants, upon receipt of the said intimation, gave his acceptance for the revised unit area. Accordingly, the area of the complainants's unit was increased from 374.80 sq. ft. to 564.76 sq. ft., only a 189.96 sq. ft. area increase (approx. 50% of the super area) in line with the approved building plan and in accordance with the applicable TOD policy guidelines.

xviii. That the respondent company, to place the matter beyond any ambiguity, further issued an intimation letter dated 20.05.2024, which was duly dispatched to the complainants through speed post. Said communication clearly reflected the revised area of the complainants's unit, i.e., 564.76 sq. ft.

xix. Significantly, despite receipt of the said communication, the complainants have to date not raised any objection or protest regarding the revision in the unit area. The absence of any objection amounts to implied acceptance of the revised unit area, thereby estopping the complainants from now disputing or challenging the same. In view of the above, the respondent submits that the increase in the complainants's unit area was carried out strictly in compliance with the revised policy and building plan approved by the competent authorities, and only after due acceptance by the complainants himself. Hence, no grievance or cause of action survives in favour of the complainants on this account.

xx. That, to date, the complainants have paid a total sum of ₹5,08,712/- to the respondent company, and beyond the said amount, not a single rupee has been paid to the answering respondent.

xxi. The respondent submits that pursuant to the policy revision, discussions were held with the complainants regarding possible reconfiguration/shifting of the unit, including through WhatsApp communication.

xxii. That such communication was only in the nature of a proposal and exploratory discussion and was subject to formal execution of revised documentation.

xxiii. No formal amendment to the memorandum of understanding was executed between the parties. In the absence of execution of a revised agreement and payment of differential consideration, no modification was legally effected. Accordingly, the unit allotted to the complainants continues to remain admeasuring 374.80 sq. ft. as per the original MOU dated 05.05.2022.

xxiv. The respondent submits that the mere exchange of messages cannot be construed as a concluded and binding modification of contractual terms in the absence of formal documentation and compliance of payment obligations.

xxv. That the complainants, in the statement of account annexed with the present complaint, has alleged that a sum of ₹17,00,000/- was paid to a separate and distinct legal entity, namely M/s B&M Construction Pvt. Ltd., purportedly towards handing over of the respondent company. The said allegation is wholly misconceived and legally untenable. Any payment, if at all made, to M/s B&M Construction Pvt. Ltd. was in relation to a property/unit about the said sister company concern, in which the complainants himself had committed default. The consequences arising out of such default,

including forfeiture, are independent transactions to which the respondent is neither a party nor liable in any manner whatsoever.

xxvi. The complainants have failed to place on record any documentary evidence whatsoever to demonstrate that the alleged amount of ₹17,00,000/- was paid on behalf of, or for and on account of, the respondent. Furthermore, the complainants have deliberately omitted to implead M/s B&M Construction Pvt. Ltd. as a necessary and proper party to the present proceedings, despite raising allegations concerning payments allegedly made to it.

xxvii. The complainants is thus attempting to recover, from the respondent, amounts allegedly paid to a separate corporate entity in respect of a different unit/transaction, which have already been forfeited in accordance with the applicable terms and conditions. The present complaint is therefore a clear abuse of the process of law and is based on suppression of material facts and misrepresentation, with the sole intent to mislead the Authority/Court.

xxviii. That the complainants have conspicuously failed to disclose, in the entire complaint, the bifurcation and specific amounts allegedly paid to two distinct companies, thereby rendering the complaint vague, misleading, and liable to be dismissed with exemplary costs.

xxix. That, as per the payment plan, the complainants was supposed to make payment towards EDC/IDC as and when demanded by the respondent company. The respondent company issued a demand through WhatsApp towards payment of increased area, EDC/IDC and PLC amounting to rupees Rs.8,47,140/-, and along with the

balance sale consideration amounting to Rs.20,23,740 /-, along with interest till date.

xxx. That as per the allotment letter dated 05.05.2022, it is expressly mentioned under the headnote, point no. 1, MOU and agreement to sale dated 05.05.2022, clause 1.2 that "PLC Charges as applicable" shall be payable by the allottee. Further, the agreement to sale dated 06.05.2022 also explicitly records in page no. 5, Clause 1.2, Sub-point 1(b) that "PLC Charges as applicable" shall be borne by the allottee. The complainants, having signed both the allotment letter and the agreement to sale, duly accepted these terms and obligations.

xxxi. That the complainants, despite being fully aware of her contractual obligation to pay the PLC charges, has failed and refused to make the payment, which is in clear violation of the executed agreements. The respondent reserves the right to recover the said charges along with any lawful interest and costs as per the terms of the agreements.

xxxii. The answering respondent respectfully submits that the complainants has persistently failed to clear the outstanding dues payable towards the unit allotted in the project. Despite repeated reminders and requests, both oral and written, the complainants have neglected and failed to fulfil his financial obligations under the Memorandum of Understanding and allotment terms. The respondent company, to avoid any coercive action, made several telephonic calls and personal requests to the complainants, urging him to clear the outstanding dues. However, the complainants, despite assurances, neither made the requisite payment nor furnished any plausible explanation for his default. Finding no other

alternative, the respondent company was constrained to issue a formal cancellation letter dated 09.01.2025 to the complainants, clearly intimating him that in case of continued default in clearing the dues, the allotment of his unit would stand cancelled. The said cancellation notice was duly served upon the complainants, yet no response was received from him.

xxxiii. Even thereafter, the complainants neither responded nor discharged his financial obligations. Consequently, the respondent company, after providing sufficient opportunity and in compliance with principles of natural justice, again issued a demand letter dated 06.10.2022. Despite the same, the complainants failed to take any corrective steps or regularise his account. In these circumstances, the cancellation of the complainants's unit was a lawful and justified action on the part of the respondent company, arising solely due to the complainants's willful and deliberate default. The respondent has, at all times, acted fairly, transparently, and in good faith, while the complainants has been in continuous breach of his contractual obligations. It is further submitted that under settled principles of law, a defaulting allottee who fails to comply with the financial terms of the allotment cannot claim any equitable relief. The complainants, having failed to perform his reciprocal promises, is estopped from raising any grievance against the respondent. The doctrine of default disentitles equitable relief and squarely applies to the present case.

xxxiv. That the respondent, vide its letter dated 22.11.2025, issued a reminder–i to the complainants, reiterating its earlier communications and calling upon the complainants to comply with

the required formalities as per the agreement to sell and the mutual understanding between the parties. The said letter was duly share to the complainants through whatsapp number on 22.11.2022, which was successfully delivered at the address of the complainants. However, despite receipt of the said communication, the complainants neither raised any objection nor furnished any reply thereto to date, which clearly establishes that the complainants have nothing to rebut and has accepted the contents of the said letter by his silence

xxxv. That in continuation of its previous communication, again issued a reminder ii dated 09.1.2022 to the complainants through speed post, thereby once again calling upon the complainants to comply with its obligations and to complete the necessary formalities. The said letter was duly received by the complainants, yet no response or objection was ever raised. The deliberate silence on the part of the complainants clearly indicates his acceptance of the terms and conditions already communicated by the answering respondent company.

xxxvi. That respondent company, having received no response to its earlier two reminders, issued a cancellation letter dated 28.05.2024 to the complainants through speed post, reminding him once again to fulfil his part of the obligations and formalities. The said communication was also duly served upon the complainants; however, despite repeated reminders, the complainants failed to furnish any reply or compliance. The continuous non-response on the part of the complainants substantiates that the present

complaint has been filed as an afterthought, only with the intent to harass and pressurise the answering respondent company.

xxxvii. That the complainants was very well aware that timely payment was the essence of the agreement for sale and the MOU executed between the parties as per clause 9.3 of the agreement for sale and clause 1.5.

xxxviii. That the demand by the respondent for EDC/IDC & PLC is as per the schedule of the payment appended with the MOU, Hence, Being aware about the payment as per the payment plan, the failed to make timely payment and therefore is a chronic defaulter and is liable to pay interest to the respondent company for the delay in payment under section 19(6) RERA which stated that the complainants is responsible to make the necessary payments in the manner and within time as specified in the agreement and in case of default the complainants is liable to pay interest for delay under section 19(7) of RERA.

xxxix. That the complainants were very well aware that they were under an obligation to make timely payments, despite receiving the demand letter, the complainants failed to clear outstanding dues and perform their contractual obligations. The complainants have chosen to approach the authority with a frivolous complaint, only with a malafide intention to unjustly enrich themselves and, in one way or the other, cover up their breaches and non-performance of their contractual obligations. Hence, the complainants is not entitled to any relief whatsoever from the Authority. It is well-settled law as held by the Hon'ble Supreme Court of India; a defaulter is not entitled to get any equitable relief. Thus, the complaint must fail.

That the complainants herein, cannot be entitled to seek any relief from the Authority

E. Jurisdiction of the authority

9. 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

10. 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

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

> ***Section 11***
> .....
> *(4) The promoter shall-*
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
> ***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.

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

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to refund a sum of Rs. 22,08,712 along with an interest of Rs.7,34,491.17 till the date of 02.07.2025.

13. Briefly, the facts of the case are that the unit bearing no. F-20, 1st floor admeasuring 374.80 sq. ft. super area was allotted in favour of the by the respondent vide allotment letter dated 05.05.2022 and thereafter the agreement to sale was executed between the complainants and the respondent on 05.05.2022. The complainants have paid Rs.22,08,172/- against total consideration of Rs.25,32,452/-.

14. That the due date of possession as per clause 7 of agreement to sale dated 05.05.2022, that possession of the unit within a period of 60 months with additional grace of 5 months from the date of execution of this agreement. The relevant clause is reproduced below:

7.POSSESSION OF THE UNIT FOR COMMERCIAL USAGE:

7.1 Schedule for possession of the said Unit for Commercial usage- *The Promoter agrees and understands that timely delivery of possession of the Unit for Commercial usage with parking (if applicable) to the Allottee(s) and the common areas to the association of allottees or the competent authority* ***within a period of 60 months with additional grace of 5 months from the date of execution of this Agreement*** *subject to such extension as may be permitted by terms and conditions of this*

Agreement including the extension arising out of force majeure conditions or by the order of the competent authorities.

15. Therefore, as per possession clause the due date of possession comes out to be 05.10.2027, which has not yet come.

16. As per documents available on record, the Authority observes that, as per payment plan (Schedule-1) annexed with agreement at page 64 of complaint, complainants have to pay Rs.22,11,320/- being part of sales consideration plus taxes on the application of Occupation Certificate of the Retail Block. The payment plan is reproduced below herewith:

S.No.	Payments to be made
(i)	EDC/IDC as and when demanded.
(ii)	PLC Charges – As applicable
(iv) *[sic. (iii)]*	**Rs.22,11,320/- (Rupees Twenty Two Lakh Eleven Thousand Three Hundred and Twenty Only)** being part of agreed sales consideration plus taxes on the application of Occupation Certificate of the Retail Block
(v)	Power Back Up Charges + Air Condition Charges + ECC +FFC + IFMS + IFCRF + Bulk Electricity + MCG + Advance Maintenance and such other charges a sper this MOU at the time of offer of possession of Retail Block. Registration Cost + Stamp Duty and such other charges as per the Agreement For Sale.
(vi)	Registration Cost + Stamp Duty and such other Charges as per the Agreement For Sale.

17. In light of the aforesaid facts, it is observed that as per the payment plan, a sum of ₹22,11,320/- towards part of the agreed sale consideration, along with applicable taxes, was payable upon application for the occupation certificate of the retail block. However, the complainants had already paid an amount of ₹22,08,172/-. Further, there is nothing on record to indicate the present status of the project or to demonstrate whether the respondent has applied for the occupation certificate.

18. It is further noted that on 20.05.2024, the respondent issued an intimation letter informing the complainants that the area of the allotted unit had been unilaterally increased from 374.80 sq. ft. to 564.76 sq. ft., reflecting an increase of 189.96 sq. ft., i.e., approximately 45% of the originally allotted area. Consequently, the total consideration for the unit was enhanced from ₹25,32,452/- to ₹49,14,550/-. The complainants was further called upon to clear the alleged outstanding dues within a period of 10 days, failing which the respondent stated that it would be at liberty to take an appropriate decision, including shifting of the complainants's unit or refund of the deposited amount with interest in accordance with the provisions of the RERA guidelines.
19. Subsequently, the respondent issued a letter dated 28.05.2024 seeking the complainants's final decision as to whether the complainants was willing to accept shifting of the unit or opt for refund of the deposited amount along with interest as per the RERA guidelines. Thereafter, vide letter dated 09.01.2025, the respondent cancelled the allotment of the complainants's unit on account of alleged non-payment of outstanding dues amounting to ₹26,54,501/-. Further, the respondent proposed to refund only ₹3,76,160/- out of the total amount of ₹22,08,172/- paid by the Complainants, while forfeiting the remaining amount.
20. The Authority observes that the aforesaid cancellation cannot be sustained in the eyes of law, as the demands raised by the respondent were not in accordance with the terms of the agreement or the agreed payment plan.
21. However, it is noted that the complainants have not sought any relief for setting aside the cancellation or challenging the said demands. Instead, the complainants have preferred the present complaint seeking refund of

the deposited amount, despite the fact that the stipulated date for completion of the project is 05.11.2027.

22. Moreover, 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 Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) ***and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022***, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was 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. Also, Hon'ble Apex Court in ***Civil Appeal no.3334 of 2023*** titled as ***Godrej Projects Development Limited Versus Anil Karlekar*** decided on 03.02.2025 has held that 10% of BSP is reasonable amount, which is liable to be forfeited as earnest money.

24. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of basic sale consideration as earnest money on cancellation. So, the respondent is directed to refund the paid-up amount to the complainants after deducting 10% of the basic sale consideration being earnest money along with interest at prescribed rate i.e., 10.80% on the balance amount from the date of cancellation i.e., 09.01.2025 till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 ibid. Out of the amount so assessed, the amount already credited by the respondent, if any, shall be deducted from the refundable amount.

G. Directions of the authority

25. 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 is directed to refund the paid-up amount to the complainants after deducting 10% of the basic sale consideration

being earnest money along with interest at prescribed rate i.e., 10.80% on the balance amount from the date of cancellation i.e., 09.01.2025 till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 ibid. Out of the amount so assessed, the amount already credited by the respondent, if any, shall be deducted from the refundable amount.

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

26. Complaint stands disposed of.

27. File be consigned to registry.

Dated: 12.03.2026

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