

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

Complaint no. :	1029 of 2024
Order pronounced on:	09.01.2026

Umravati

Address: - 15, V.P.O. Sikanderpur Barha,
Tehsil Manesar, Distt. Gurugram, Haryana.

Complainant

Versus

1. M/s Hometown Properties Private Limited

Address: - 294/1, Vishwakarma Colony, Opp. ICD,
M.B. road, Lalkuan, New Delhi

2. M/s Mascot Buildcon Pvt. Ltd.

Address: 294/1, Vishwakarma Colony, Opp.
ICD, M.B Road, Lalkuan, New Delhi

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Arun Sharma (Advocate)

Complainant

Gulshan Sharma (Advocate)

Respondents

ORDER

1. The present complaint has been filed by the complainant under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made

thereunder or to the allottee as per the agreement for sale executed inter se.

A. Project and unit 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, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Project name and location	"Oodles Skywalks" Sector- 83, Gurugram.
2.	Project area	3.0326 acres
3.	Nature of the project	Commercial
4.	MOU	18.10.2013 (Page 25 of complaint)
5.	Unit no.	F-05A, Ground Floor,
6.	Letter regarding change of the allotted unit	From G-5A, to G6
7.	Unit measuring	650.15 sq. ft.
8.	Date of execution of buyer's agreement regarding G6, ground floor	05.04.2016 (Page 44 of complaint)
9.	Assured return clause as per MOU	3. Till the notice of possession is issued the developer shall pay to the allottee an assured return @ Rs.121.75 per sq. ft. per month. The assured return shall be subject to tax deduction at source which shall be payable on or before 10 days of every English calendar month on due basis. (Page 33 of complaint)
10.	Assured return paid till date	Paid till 31.03.2017 and later on some amount was paid by the respondent
11.	Possession clause	36(a) within 36 months from the date of start of construction or signing of buyer's agreement whichever is later with a grace

		period of 3 months subject to force majeure circumstances.	
12.	Due date of delivery of possession	05.07.2019 (Note: - Due date of possession can be calculated 36 months from the date of execution of buyer's agreement)	
13.	Total consideration	Rs. 1,00,25,314/- (as per BBA)	
14.	Total amount paid by the complainant	Rs.77,15,560/- (as per payment receipts on page 23-24 of complaint)	
15.	Occupation certificate	26.10.2023 (Page 59 of reply)	
16.	Demand cum Offer of possession	08.11.2023 (Page 31 and 32 of reply)	
17.	Reminder letter	10.01.2018, 07.08.2018, 15.01.2019, 30.05.2019 (Page 21-29 of reply)	
18.	Cancellation letter	20.12.2019 (Page 29 of reply)	11.01.2024 On 28.02.2024 stating Rs. 53,88,711/- has been transferred to the Bank after forfeiting 10% of the BSP (Page 34-36 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - i. That the complainant came to know about the said project namely "Oodles Skywalk" at Sector 83, Gurugram, Haryana, of the respondent company from various advertisements published by the respondents for the purpose of promotion in various newspapers. The respondent company had created great aura about the project and represented that the respondent company is a company of repute and is developing a

world class commercial project. It was also promised that the project will be delivered on the assured delivery date.

- ii. That after relying on the representations made by the respondent, the complainant had booked one unit in Respondent's project above mentioned in the year 2013 and had paid an amount of Rs. 77,00,000/- through Cheque bearing no. 047193 dated 10.10.2013 and Rs. 15,560/- in cash and thereafter, a memorandum of understanding dated 18.10.2013 was signed between the complainant and the respondent in respect of the allotted unit bearing no. G-05, Ground Floor admeasuring 650 Sq. ft. at a total consideration of Rs. 83,67,430/-.
- iii. That out of the total consideration of Rs. 83,67, 430/-, an amount of Rs. 77,15,560/- was paid by the complainant to the respondent and as per the terms of the MOU, the remaining/balance consideration had to be paid on the notice of offer of possession by the respondent. It is also important to mention over here that as per clause 3 of the MOU dated 18.10.2013, the respondent has to pay an assured return at the rate of Rs. 121.75/- per sq. ft. of super area of premises per month to the complainant till the notice for offer of possession.
- iv. That the thereafter, the respondent sent a letter dated 15.12.2015 regarding the change of the allotted unit from G-5/5A to G-6 and accordingly an allotment letter dated 18.01.2016 of unit no. G-6 was issued in favour of the complainant.
- v. That the complainant was shocked to the see the allotment letter dated 18.01.2016 with the consideration of Rs. 1,00,25,314 including the preferred location charges of Rs. 16,57,883/- as such PLC charges was neither mentioned by the respondent to the complainant at the time of booking and nor in the memorandum of understanding dated

18.10.2013 and thereafter, a Space buyer agreement was also signed by both the parties on 05.04.2016. The complainant also filed an application dated 18.01.2016 for the removal of such PLC charges before the respondent but the respondent completely ignored the request of the complainant.

- vi. That moreover, the assured return was continued after the execution of the space buyer agreement dated 5.04.2016 and the respondent also settled the same vide letter dated 20.05.2017 and paid the assured return till 31.03.2017. It is also important to mention over here that the respondent also sent a letter dated 20.05.2017 mentioning that the balance payment of assured return from 01.04.2017 to till possession will be adjusted against the due payment of PLC, IFMS, IFCRF, Power Backup, Air conditioning cost and other charges.
- vii. That it is also pertinent to mention over here that in the month of July, 2023, the complainant was also in conversation with the respondent regarding the lease of the allotted unit. The respondent also sent the draft of the lease deed to the complainant and the complainant sent back the same after signing to the respondent along with the authority letter but the respondent did not send back the final signed copy of the lease deed till date.
- viii. Thereafter, the respondent instead of paying the assured return and handing over the possession of the allotted unit to the complainant, raised an arbitrary demand of Rs. 73,17,302/- through demand letter for offer of possession dated 08.11.2023. The respondent raised the arbitrary and illegal demand in order to extort more money from the complainant.

- ix. That after receiving the said demand letter, the complainant sent several e-mail and letters to the respondent to seek the explanation of the amount demanded through the demand letter dated 08.11.2023 but the respondent did not pay any heed to reply the mails and letters of the complainant. But the respondent was adamant to extort the payment which was illegal and unlawful and therefore, again sent a reminder letter for the payment on 18.12.2023.
- x. That thereafter, despite sending the reply cum demand notice dated 08.01.2024, the complainant and her family members visited the office of the respondent and the officials of the respondent even not ready to listen the grievance of the complainant and they told the complainant that they have cancelled the unit of the complainant.
- xi. That the complainant time and again asked for the balance assured return w.e.f. 01.04.2017 and the rent due but the respondent failed to clear the assured return of the complainant. That as a result of continues persuasion on the part of the complainant, the respondent deposited the part amount of Rs. 53,88,711/- to the complainant as part assured return amount but the respondent failed to deposit full assured return amount of the complainant and the complainant further demanded the remaining assured return through email dated 06.03.2024 and also cancelled the lease of the unit through email dated 06.03.2024.

C. The complainant is seeking the following relief:

4. The complainant has sought following relief(s):
- i. Direct the respondent to handover the possession of the unit.
 - ii. Direct the respondent to recall the cancellation and to restore the commercial unit.
 - iii. Direct the respondent to complainant on account of delayed possession charges in delivering possession of the unit.

D. Reply filed by the respondent.

5. The respondent has contested the complaint on the following grounds:
- i. The SBA was executed between the parties on 5.4.2016 and as per Clause 38 of SBA, the possession of the Unit was to be given to the Allottee within 36 months of signing the Agreement with grace period of 3 months, subject to force majeure events or Governmental action/inaction. If the Covid Relation period of six months, which this Hon'ble Authority has granted in many cases, if be computed, then the due date of possession would be 39 + 6 months, which comes to the date 5.1.2019, the due date of possession in the present case. Further, as per the plan taken/chosen by the Complainant in the present case, Plan B - Down Payment Plan of Schedule of Payment-Annexure III (at page 68 of RERA Petition), she was to make the payment of 95% of BSP+100% of PLC+100% of EDC & IDC within 30 days of booking, which in the present case. Admittedly, in the present case, the Complainant, out of total sale consideration of Rs. 1,00,25,314/- (plus other charges) has paid only Rs. 77,15,560/- (including taxes), which if be calculated on percentage terms, comes to only around 60% of the basic sale price consideration as around 7-8 lacs were the taxes and other charges. Thus, the Complainant, failed to make the payment of dues prior to the due date of possession i.e. 5.1.2019. Moreover, prior to 5.1.2019, the due date of possession, the tentative booked Unit, has already been cancelled due to non-payment of dues i.e. Rs. 23,99,438.03/-, for which, prior to due date of possession and prior to expiry of the terms of SBA, the respondent sent demand notice dated 10.1.2018, followed by reminders of demand notice dated 7.8.2018, 15.1.2019, 30.5.2019, followed by cancellation notice dated 20.12.2019. It is respectfully submitted

that all the said letters/demand letters / cancellation letters were sent prior to the due date of possession 5.1.2019, which means that complainant / allottee in the present case failed to pay the due instalments / demand, prior to due date of possession, which led to sending of cancellation notice dated 20.12.2019, cancelling the tentative booked unit. Thus, in any eventuality, the Complainant is not entitled for any equity claimed from this Hon'ble Authority as her tentative booked unit has already been cancelled prior to the due date of possession.

- ii. It is further respectfully submitted that after cancellation of unit, the complainant has not approached the respondent and has not made the requisite due payment of Rs. 23,99,438.03/-. Thereafter, sometime, in or around early part of July, 2023, after expiry of more than 3 years from the date of issuance of the cancellation notice, when the project was ready and the Occupation Certificate was about to be received by the Respondent and when the Complainant and her family members came to know about the discussion of renting and leasing out of said Unit by the Respondent to the IDBI Bank, the complainant and her family members approached the respondent and requested / begged the respondent with a proposal to pay all the remaining outstanding dues with interest. The respondent, once again, relied upon their assurances and were ignorant about their malafide intent a letter dated 29.7.2023, was changed, the complainant and her family member kept delaying the payment of the outstanding dues for different-different reasons. Thereafter, again, the complainant and her family members again approached in November, 2023 before the Respondent and justified the delay in payment on the ground of some

family issues / problems. They requested the respondent to issue a demand letter to pay the entire outstanding amount with interest in one go and accordingly, based on their request, the respondent issued a further demand letter 8.11.2023, apprising the complainant and her family members about the total outstanding payment of Rs. 73,17,302.13/-. The respondent clearly stated/apprised to the complainant and her family members that since the respondent had already cancelled their tentative booked unit way back on 20.12.2019 by way of cancellation letter, the respondent would reinstate the said cancelled unit, subject to receiving of aforesaid amount of Rs. 73,17,302.13/-. The Complainant and her family members assured to pay the said total outstanding amount within 15 days. However, since, once again, the Complainant failed to deposit the said outstanding amount, the Respondent Company, waited for another 15 days and after completion of one month almost, sent another reminder letter dated 18.12.2023 (whereby the Complainant should deposit the entire outstanding amount of Rs. 73,17,302.13/- on or before 31.12.2023. Since, Complainant failed to deposit the said amount once again, the Respondent issued a letter dated 11.1.2024, thereby cancelling the Unit as per SBA executed between the parties.

iii. Thus, from the aforesaid, it became clear that Complainant has had no intention to make any payment despite granting of several opportunities, which led to Cancellation of tentative Booked Unit on 20.12.2019. After cancellation of Unit on 20.12.2019, the Complainant and her family members again approached before the Respondent and requested for reinstatement of Unit, after coming to know about the fact that Respondent is leasing out her Unit (including

other allotted Units) to the IDBI Bank, more so, citing personal family issues. The respondent once again considered her request and gave her time to make the outstanding payment and clearly conveyed that reinstatement of Unit was subject to clearance of outstanding payment, which Complainant miserably failed to adhere, which led to sending once again the Second Cancellation Notice on 11.01.2024 and refunding of amount of Rs. 53,88,711/- in her bank account. Since, the Complainant herein was the repeated defaulter and has failed to clear the due instalment amount as per terms of SBA, which led to Cancellation of tentative booked Unit on 20.12.2019 and again on 11.1.2024, the Respondents, acting on SBA, deducted 10% amount including other deductions and refunded an amount of Rs. 53,99,711/- to the Complainant through Letter dated 28.2.2024. Hereinbelow, is the Chart, showing deductions.

- iv. Thus, in view of the fact that the Complainant is the defaulter in making the due payments and had not made the "due payment" as per Space Buyer Agreement dated 5.4.2016, which led to Cancellation of her Unit first on 20.12.2019 and, thereafter, on 11.1.2024, which finally culminated in Refund of Amount in her bank account, after due deductions as per SBA, executed between the parties, it is humbly prayed before this Hon'ble Authority that Complainant is not entitled for grant of any Equity in her favour and she is not entitled for reinstatement of her Unit in anyway.
- v. Secondly, the Complainant on the strength of MoU, initially executed between the parties was regularly receiving the "assured return" and, admittedly, thereafter, after execution of SBA (on 5.4.2016) between the parties, the payment of said "assured return" was stopped. Now,

through the “prayers” sought for in the present Complaint, she is claiming the “assured return” in the present case, which due to following reasons and submissions including the latest dictum laid down by this Hon’ble Authority, is not permissible in the eyes of law and, accordingly, the said prayer is to be rejected by this Hon’ble Authority.

- vi. It is a matter of record that SBA was admittedly executed on 5.4.2016 between the parties, after fulfilling all the formalities and procedures. It is also a matter of record that admittedly, the Complainant admitted/executed the said SBA with the respondent. So far as claim of “assured return”, after execution of SBA, is concerned, it is respectfully submitted that after execution of Space Buyer Agreement dated 5.4.2016, the “assured return” payable to the complainant under MOU stands extinguished, which is clear from the language of the terms and conditions contained in the SBA. For ready perusal of this Hon’ble Authority, the said terms/clauses, are extracted as under:

Clause 79 and 83 of the Agreement

“79. It is specifically understood by the Allottee (s) that upon execution, the terms and conditions as set out in the Agreement shall supersede the terms and conditions as set out in the application and/or any other document, mail or correspondence in this regard.

83. That this Agreement which has been titled as “Space Buyer’s Agreement” constitutes the entire Agreement between the parties and revokes and supersedes all previous discussions/correspondence, application and Agreement between the parties, if any, concerning the matters covered herein whether written, oral or implied. This Agreement shall not be changed or modified except by written amendments duly agreed by the parties. The terms and conditions and various provisions embodied in this Agreement shall be incorporated in the sale deed and shall form part thereof.”

- vii. Thus, in view of aforesaid, it cannot be said that Complainant is liable for any assured return after execution of SBA, whereby all previous discussions / correspondence, application and Agreement between the



parties stands revoked and superseded. Rather, it is relevant to state here that under the MOU, the total AR paid was Rs. 32,83,699/- to the Complainant and by default of the Department of Accounts, an excess amount of Rs. 10,21,112/- was paid to the Complainant after execution of SBA, which amount was duly deducted at the time of refunding the amount to her:

- viii. Thirdly, the Complainant has sought for 'Delayed Possession 'Charges' in the present case, which, in the facts, circumstances and the submission stated hereinabove, the Complainant is not entitled for as it is an admitted fact that Complainant failed to pay her due instalments as per SBA and became "defaulter" prior to the due date of possession and it is a well settled principle of law that an Allottee, who fails to pay his/her due instalments and had stopped making payment prior to the completion of his due date of possession, he is not entitled for 'Delayed Possession Charges', more so, when in the present case, despite cancelling twice the Unit and granting time to her and despite repetitive assurances reposed by the Complainant, she failed to deposit the due amount to the Respondent. Thus, after becoming the "defaulter", the Respondent acting on the terms of SBA, has cancelled the Unit and already refunded the amount in her bank account, after deducting earnest money and necessary deductions, as per settled law. Thus, it is humbly prayed that the Complainant is not entitled for the 'delayed possession charges and her claim qua this has to be rejected out-rightly in lieu of "defaults" occurred at her end which commenced / started prior to the due date of possession as per SBA.
- ix. Moreover, the complainant consciously and maliciously chose to ignore the payment schedule issued by the respondent and flouted in making

timely payment of the instalment, which was an essential, crucial and an indispensable requirement under the agreement. Furthermore, when the complainant defaulted in her payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost of the project increases exponentially and further causes enormous business losses to the respondent. The complainant 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 agreement and completed the project as expeditiously as possible. Therefore, there is no equity in favour of the Complainant, more so, when the refund of amount has already been received by her after cancellation of the Unit in question. Thus, the Complainant after receiving Refund Amount, is not entitled for any reliefs, as prayed for, in the present petition as she has lost the title of "Allottee" after cancellation & refund of Money.

- x. The respondent submitted that despite exercising diligence and continuous pursuance of project to be completed, project of answering Respondent is completed and the Occupation Certificate has been obtained by the Respondent on 26/10/2023 from the Competent Authority, thus, in totality, the Project in question is "Completed" in its true letter and spirit. However, due to prevailing of certain "Force Majeure" situation existed viz., Corona Pandemic in the entire Country, which led to Lockdown of entire Country for quite certain long period of time twice in two years, there existed various difficulty faced by the Respondent Builder including many other reputed Builders, in completing timely successful of the Project in question, which reasons,

though this Hon'ble Authority is well aware are enumerated hereinbelow for ready perusal and kind consideration.

6. 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.

E. Jurisdiction of the authority

7. 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

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

E. II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act 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.

10. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding delay in completion of construction of project due to force majeure conditions.

11. The respondent raised the contention that the construction of the project was delayed due to force majeure conditions such as the Covid-19 pandemic among others, but all the pleas advanced in this regard are devoid of merit.
12. As far as delay in construction due to outbreak of Covid-19 is concerned, **Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/ 2020 and I. As 3696-3697/2020 dated 29.05.2020 has observed that:**
- 69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*
13. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 05.07.2019 and the builder buyer's agreement was executed between the parties on 05.04.2016 and the respondent are claiming benefit of lockdown which came into effect on 23.03.2020 whereas the date of builder buyer agreement was after the

event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract as the relationship between the allottee and the promoter has been created before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to handover the possession of the unit.

G.II Direct the respondent to recall the cancellation and to restore the commercial unit.

G.III Direct the respondent to complainant on account of delayed possession charges in delivering possession of the unit.

14. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
15. In the present complaint, the complainant was allotted a plot bearing G6, Ground Floor admeasuring 650.15 sq. ft. vide allotment letter dated 18.01.2016, for the sale consideration of Rs.1,00,25,314/-. Thereafter, a builder buyer agreement was executed between the complainant-allottee and the respondent-promoter on 05.04.2016.
16. The complainant-allottee have paid a total amount of Rs.77,15,560/- against the sale consideration of Rs.1,00,25,314/-. The plea of the complainant is that the plot of the complainant was cancelled by the respondent vide termination letters dated 20.12.2019 and 11.01.2024 on account failure of the complainant to make payment of the outstanding dues.
17. Herein, the complainant intends to continue with the project and are seeking quashing of notice for termination dated 20.12.2019 and 11.01.2024. The Authority has gone through the payment plan which was

duly agreed between the parties and the same is reproduced below for ready reference:

ANNEXURE III: Down Payment Plan

Instalment	Percentage of total sale consideration
At the time of booking	20% OF BSP
Within 30 days	75% OF BSP + 100% of PLC +100% of EDC & IDC
On possession	5% OF BSP +IFMS+ Power backup +IFCRF+ registration charges+ other charges as applicable

18. It is matter of record that the complainant booked the aforesaid plot under the above-mentioned payment plan and paid an amount of Rs.77,15,560/- towards total consideration of Rs.1,00,25,314/-. The complainant has submitted that as per payment plan agreed between the parties vide buyer's agreement dated 05.04.2016, the complainant was obliged to make payments as per the payment plan and the same were not paid by him. The respondent sent demand notice dated 10.01.2018, followed by reminders of demand notice dated 07.08.2018, 15.01.2019, 30.05.2019, followed by cancellation notice dated 20.12.2019. Therefore, the respondent have submitted that they have raised all the demands as per the payment plan, but the complainant had miserably failed in making the complete payment, upon which, the respondent had issued several reminders, and upon the continuous non-compliance on part of the complainant, which categorically noted that upon the non-payment by the complainant, the complainant will have noted to have waived his allotment. Upon the continuous act of non-payment, the unit was terminated on 20.12.2019. Now, the question before the Authority is whether the cancellation made by the respondent is valid or not.
19. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that as per the payment plan agreed between the parties, the complainant was obliged to make payments

on time. The respondent sent demand notice dated 10.01.2018, followed by reminders of demand notice dated 07.08.2018, 15.01.2019, 30.05.2019, followed by cancellation notice dated 20.12.2019. Thereafter, sometime, in or around early part of July, 2023, after expiry of more than 3 years from the date of issuance of the cancellation notice, the complainant approached the respondent and requested the respondent with a proposal to pay all the remaining outstanding dues with interest. The Complainant assured to pay the said total outstanding amount within 15 days. However, since, once again, the Complainant failed to deposit the said outstanding amount, the Respondent Company, waited for another 15 days and after completion of one month almost, sent another reminder letter dated 18.12.2023. Since, Complainant failed to deposit the said amount once again, which led to sending once again the Second Cancellation Notice on 11.01.2024.

20. Further, Section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 05.04.2016 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. However, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land 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."

21. Keeping in view the aforesaid factual and legal provisions, the respondents/promoter is directed to refund the paid-up amount of Rs.77,15,560/- after deducting 10% of the basic sale consideration of Rs.1,00,25,314/- being earnest money along with an interest @10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable

amount, from the date of cancellation i.e., 20.12.2019 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the authority

22. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- I. The respondents/promoter is directed to refund the paid-up amount of Rs. 77,15,560/- after deducting 10% of the sale consideration of Rs. 1,00,25,314/- being earnest money along with an interest @10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 20.12.2019 till its realization.
 - 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.
23. Complaint as well as applications, if any stands disposed of accordingly.
24. File be consigned to registry.

Dated: 09.01.2026


(Arun Kumar)
Chairman
Haryana Real Estate Regulatory
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