

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

<b>Complaint no.:</b>	<b>5433 of 2023</b>
<b>Date of complaint:</b>	<b>12.12.2023</b>
<b>Date of decision:</b>	<b>07.04.2026</b>

<b>Vivek Khanna</b> R/O: K 84, 3rd Floor, Lajpat Nagar - 2, New Delhi - 110024	<b>Complainant</b>
Versus	
<b>M/s Manglam Multiplex Pvt Ltd</b> Regd. Office at: I.GF, F-22, Sushant Shopping Arcade, Sushant Lok-1, Gurugram-122002	<b>Respondent</b>
<b>CORAM:</b>	
Shri Arun Kumar	<b>Chairman</b>
<b>APPEARANCE:</b>	
Bhriugu Dhami (Advocate)	Complainant
Shreya Takkar (Advocate) Meenal Khanna (Advocate)	Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed

that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S.N.	Particulars	Details
1.	Name and location of the project	M3M Heights, Sector 65, Gurugram, Haryana
2.	Project area	14.4125 acres
3.	Nature of the project	Mixed land use development colony
4.	DTCP license no. and validity status	15 of 2017 dated 02.05.2017 Valid till 01.05.2022
5.	RERA registered/ not registered and validity status	GGM/688/420/2023/32 dated 02.02.2023 Valid up to 01.05.2024
6.	Welcome letter issued in favour of the complainant	21.06.2021 (As per page no. 45 of the complaint)
7.	Allotment letter issued in favour of the complainant	22.06.2021 (As per page no. 44 and 45 of the complaint)
8.	Unit no.	MH TW-06-508, 5 <sup>th</sup> floor, Tower-6 (As per page no. 60 of the complaint)
9.	Unit admeasuring	1261 sq. ft. (super area) 725.28 sq. ft. (carpet area) (As per page no.60 of the complaint)
10.	Flat buyer's agreement executed between the	11.08.2021 (As per page no. 56 of the complaint)

	complainant and the respondent on	the
11.	Possession Clause	<p><b>7 POSSESSION OF THE APARTMENT</b></p> <p><i>7.3 The Promoter assures to offer the handover of possession of the Apartment along with the parking (if applicable), if any, as per the agreed terms and conditions, unless there is a delay due to Force Majeure, court orders, Government Policy/ guidelines, policy guidelines of Competent Authorities, decisions affecting the regular development of the real estate Project/ infrastructure Project or any other event / reason of delay recognized or allowed in this regard by the Authority, duly completed with all Specifications, Amenities, Facilities as mentioned in "Schedule F" hereto, prior to the expiry of the <b>Commitment Period...</b></i></p> <p><b>Definition: (m)</b> "Commitment Period" shall mean 30.06.2024 as notified by the Promoter to the Authority, at the time of registration of the Project under the Act, for completion of the Project, or as may be further revised/ approved by the authorities.</p> <p>(As per page no. 76 &amp; 62 of the complaint)</p>
12.	Due date of Possession	<p>30.06.2024</p> <p>(As mentioned in the possession clause)</p>
13.	Clause of Pre handover amount as per letter dated 05.10.2021	<p>4. ...In order to ensure you, the Allottee of the timely delivery of possession of the Unit and to provide you with comfort of our commitment, Company shall allow an accumulated Pre handover amount of ₹ 39,469/- Per month to you, the Allottee, with effect from completion of payment</p>



		<p><i>of ₹ 13,05,580/- Plus GST till the date of Filing of application for grant of occupancy certificate of the unit. Further, Company shall allow an accumulated Pre handover amount of ₹39,457/-Per month to you, the Allottee, with effect from completion of payment of ₹13,05,580/- Plus GST till the date of Filing of application for grant of occupancy certificate of the unit. Once the Commitment Period has expired, no further amount will be allowed as accumulated pre handover amount by the Company to you, the Allottee.....</i></p> <p>(As per page no. 139 of the reply)</p>
14.	Total consideration	₹ 1,26,53,103/-  (As per payment plan on page no. 104 of the complaint)
15.	Total amount paid by the Complainant	₹ 13,70,858/-  (As per ledger dated 17.07.2023 at page 146 of the complaint)
16.	Pre-cancellation letter	27.04.2021  (As per page no. 26 of the application filed by the respondent)
17.	Cancellation letter	26.05.2021  (As per page no. 27 of the application filed by the respondent)
<p><u>The subject unit was restored on the request of the complainant after clearing the pending dues on 01.06.2021.</u></p>		
18.	Applied for oc on	11.01.2023  (As stated by the respondent at page 9 of the reply)
19.	Demand letter	29.05.2023  (page 142 of reply)
20.	Pre cancellation letter	04.07.2023  (As per page no. 143 of the reply)

21.	Email to pay dues	13.07.2023 (At page no. 136 of the complaint)
22.	Reminder email	17.07.2023 (page no. 144 of complaint)
23.	Cancellation letter	01.08.2023 on account of non-payment (As per page no. 144 of the reply)
24.	Occupation certificate	16.10.2023 (As per page no. 28 of the rejoinder)
25.	Offer of possession	Not offered

**B. Facts of the complainant:**

3. The complainants have made the following submissions: -

- I. That the complainant had initially booked a unit bearing no. 208 in the project of the respondent, namely, Emporis Tower (Indo World Infrastructure Pvt. Ltd) in the year 2017, being developed at Sec-140, Noida, for which the complainant had duly paid part sale consideration amount. The said unit was later cancelled and it was agreed between the parties that the said paid amount would be equally adjusted in the 4 current/ fresh bookings made by the complainant in the project "M3M Heights".
- II. That around february 2021, vide advertisement(s), publication(s) and physical representations made by the respondent, the respondent had enticed and invited applications from buyers and investors in its project. It is submitted that Ms/. Investor Clinic was agent/property dealer involved in the booking of the subject unit as well as the other 3 units booked in the subject project.
- III. That the complainant had invested his hard earned money and booked 4 units, i.e. unit no. 508 tower – 6, unit no. 1105 tower – 1,

unit no. 2005 tower – 1, and unit no. 705 tower – 1, in the project of the respondent based on the representation and assurances of the respondent, which have later on proved to be false. Out of the four units booked, the complainant was allotted the present subject unit being, MII TW-06-508, having carpet area of 725.28 sq. ft. (67.38 sq.mtrs.) and corresponding super area admeasuring 1261 sq. ft./ 117.15 sq. mtrs, on the 5<sup>th</sup> floor, of tower no. 6, along with exclusive usage of 1 number of car parking spaces.

IV. That the respondent vide its e-mail dated 03.03.2021, had shared the cost sheet for the said unit, wherein the total sale value of the unit was duly intimated as Rs. 1,53,84,200/- (which includes 1,50,68,950 as total cost value + ifms on possession as Rs 1,89,150/- + 1,26,100/- as power backup charges to be paid on possession). in terms of the new payment plan presented vide the e-mail dated 18.03.2021, the new total sale consideration was reduced by the respondent to Rs. 1,23,84,205/-.

V. That in terms of the information provided and the representations offered by the staff of the respondent company, the scheme for investment offered to the complainant was an assured return scheme wherein, an amount of Rs. 39,468/- per month, calculated at Rs. 31.30 per sq. ft. per month, stated to be pre-handover amount, was to be paid to the complainant from the date of completion of 40% till a valid application of OC. Furthermore, another amount of Rs. 39,463/- per month calculated at Rs. 31.30 per sq. ft. per month, stated to be pre-handover amount on old investment, which was to also start from completion of 40% till valid application of occupation certificate to be paid as interest

@11% p.a. (accumulation per month). Therefore, what was to be paid to the complainant was an Assured return amount, for every preceding English calendar month, starting from 31.03.2021 onwards, which was a recurring payment of Rs. 78,936/- per month. However, despite repeated follow-ups, personal meetings and reminders over E-Mail's and call, the respondent till date has wilfully neglected to make any payment towards the same, neither any adjustment of the outstanding assured returns amount has been made in the ledger of the complainant as maintained by the respondent.

- VI. That at the time of initial booking of the subject unit, it was promised to the complainant that the assured return amounts will be paid till the obtaining of the occupation certificate, however later the said terms same were unilaterally changed by the respondent and the documents had only captured the payment of the AR amounts only till a valid application for occupation certificate. The complainant having already invested huge sums in the subject unit as well as 3 other booked units in the same project, was constrained to accept the said unilateral change under the threat and fear of cancellation and forfeiture of paid amounts by the respondent company.
- VII. That vide an e-mail dated 18.06.2021 the respondent had sought to share a revised payment plan with the complainant, whereby now the payments were to be made as;

NEW PAYMENT PLAN:- MH TW- 06 - 508	
Within 15 days of Booking	INR 13,05,580.00/- + GST

On Application of OC	90% of TCV + GST to be completed
On offer of notice of possession	Balance Amount

VIII. That shortly thereafter the respondent shared a pre-set allotment letter/ tax Invoice along with a letter dated 22.06.2021 for the subject unit. That in terms of the allotment letter the total consideration value of the unit was now presented as Rs. 1,26,53,106.00/-.

IX. That in terms of the allotment letter the payment plan now offered to the complainant was whereby the payments were to be made as;

Name of Instalment	Instalment Amount in INR (including Tax component)
Within 5 days of Booking	10,99,999.00/-
Within 15 days of Booking (subject to signing of BBA)	2,70,859.00/-
On Application of OC	1,00,16,938.00/-
On Notice of Offer of Possession	12,65,310.00/-
<b>Total</b>	<b>Rs. 1,26,53,106.00/-</b>

X. That as per the payment plan offered for other charges, the complainant was to pay Rs. 1,58,329.00/- as 100% power backup charges and Rs. 1,99,452.00/- as ifms charges at the time of notice of offer of possession (which shall be only after obtaining the requisite occupation certificate. After the finalisation of the allotment/ booking the parties executed the agreement for sale dated 11.08.2021 for the said unit.

- XI. That the respondent in and around November, 2021 had raised a fresh demand on the complainant, for an amount of Rs. 52,222/- for each unit booked stated to be towards GST amount. The complainant had raised several issues and had sought clarifications with respect to the new demands being raised as all payments as per the own calculation of the respondent company were duly made earlier. The complainant had also raised the issue of non-payment of the assured return amounts, which were contractually due and payable but not paid/ defaulted to by the respondent company.
- XII. That on the persistent enquiries by the complainant, Mr. Hanish Kumar (from M/s. Investors Clinic) vide his e-mail dated 20/11/2021, addressed to the respondent and M/s. Investors Clinic, had duly raised the said issue on behalf of the complainant. It is pertinent to state that, the fact of starting of the assured return payments for two units from 31.03.2021 and for the other two units from 31.05.2021 was duly captured vide the said e-mail. The complainant being cheated out of his contractual payment of assured return amounts for the said 4 units booked by him, was made to run from pillar to post and despite his repeated requests, reminders, and pleas the respondent wilfully neglected to make any payment towards the said assured return amounts and neither adjusted the said amounts against the total sale consideration for each unit. The complainant yet again vide his e-mail dated 11.11.2022 had raised the issue of unpaid assured return amounts with the respondent. The complainant being constrained yet again vide its e-mail dated 16.11.2022 had raised the issue of non-payment of the assured return amounts which were due for unit

no's. 508 (tower - 6) and unit no. 705 (tower - 1) from 31.03.2021 and for units no's. 2005 and 1105 (tower - 1) from 31.05.2021. Further, the issue of wilful neglect on the part of the respondent with regards to the non-payment of the assured return amounts was also raised. the respondent had failed to pay the assure return amounts, the complainant vide its e-mail of the same date, i.e. 16.11.2022, had even agreed to make part payment of an amount of Rs. 25,00,000/- each for three units, subject to receiving the statement of accounts for the said units and a confirmation from the respondent via e-mail.

- XIII. Thereafter the complainant in a follow up e-mail dated 17.11.2022 had shared with the respondent the payments receipts for calculation of the assured return amounts and had again requested for payment of the same. The complainant was yet again constrained to send another e-mail dated 22.11.2022, whereby it was duly communicated that, the balance payments were duly available with the complainant through Bank (loan) and part by self-funding. However, it was duly contented that the same would only be released once the updated demand was received, wherein the credit amount of Rs. 43,05,000/- was duly adjusted against the sale consideration along with adjustment or payment of the assured return amount till the said date. It was also duly informed that the complainant had issued 3 cheques of Rs. 25,00,000/- each for three (3) units and the same were being handed over to Mr. Hanish Palta from Ms/ Investors clinic. Since the respondent had miserably failed to complete the requirements as raised on 20.10.2022 by the complainant, it was duly apprised that as the said requirements

were not met, no penalty could be imposed upon the complainant for the delay caused owing to the wrongdoings on the part of the respondent.

- XIV. Thereafter, the complainant vide another e-mail dated 19.12.2022, had yet again requested the respondent company and its staff to provide the copy of the occupation certificate application submitted by the respondent with the concerned govt. department, which was required by the complainant for the purpose of financing and re-financing of the units booked. However, the said request was plainly and arbitrarily rejected/ not acted upon by the respondent and its staff. Thus, the complainant has till date paid an amount of Rs. 56,75,858.00/- against the total sale consideration as payable as on date, i.e. Rs. 13,70,858/-, which is till the stage of "Within 15 days of booking". The respondent has till date despite repeated requests, abstained from sharing any application filed for occupation certificate / completion certificate for the said tower/ unit. Therefore, as and when the said application, if any, filed with the concerned authority is shared, the next stage of amounts would become due and payable by the complainant, which the complainant undertakes to pay and when called upon with adequate proof of achieving the agreed milestone.
- XV. That whilst the respondent itself was delaying the process of obtaining and release of funds through Bank (Loan), the complainant for the first time was intimated a fresh demand now towards the milestone of "On application of occupation certificate" vide e-mail dated 07.06.2023, whereby the respondent had shared the soft copy of demand note for the above milestone, without

addressing any issues as raised by the complainant earlier or any adjustment of the credit amount or the outstanding assured return amounts against the demand raised. The respondent vide the said e-mail had demanded an amount of Rs. 1,00,16,938/- from the complainant. As the complainant was trying to get the loan processed and disbursed for the said unit from Icici bank (financier), the complainant vide its e-mail dated 05.07.2023 had duly requested the respondent company to help in arranging some documents. Vide the e-mail it was duly pointed out to the respondent that all details for the loan were already completed from the complainant's end, however, the hold up for some unknown reason was at the end of the respondent company. It was even apprised that ICICI Bank vide its e-mail dated 02.06.2023 had requested the respondent to provide the necessary details/documents, but the respondent had neglected to act on the said e-mail.

- XVI. That the respondent had sent another e-mail dated 11.07.2023, now calling upon the complainant to make further payment towards the sale consideration for the subject unit and surprisingly also for the first time sharing a scanned copy of an alleged pre-cancellation letter dated 04.07.2023 which was attached with the said e-mail. It is reiterated that the demand of Rs. 1,00,68,529/- raised by the respondent was unfounded and without sharing any proof of reaching the said milestone. the complainant has been constantly requesting the respondent to share the coy of OC/ CC if obtained or copy of the OC/ CC Application duly submitted with the concerned govt. authority, however the respondent till date has failed to share

any such information/ document with the complainant. Thus, the said demand was illegal and against the terms and conditions of the bba, therefore liable to be set aside.

- XVII. That the innocent complainant under the threat of cancellation of the subject unit was coerced by the respondent into offering payment via cheque and to that effect was constrained to raise a request vide e-mail dated 12.07.2023 for the same to be picked by any representative of the respondent. The respondent vide its e-mail dated 12.07.2023 had duly acknowledge the said request and had assured for the cheque to be picked by its representative. That as even after sending its acknowledgement, the respondent had failed to get the said cheques collected, the complainant was forced to reiterate its request vide another e-mail dated 13.07.2023. Despite its acknowledgment for arranging for the collection of the said cheques, the respondent vide its e-mail dated 13.07.2023 raised a bogus dispute with respect to the payable amounts and made an unfounded demand for an amount of Rs. 51,02,322/- without providing any basis for the same. The complainant in reply to the said communication had sent a reply e-mail dated 15.07.2023 duly attaching the relevant and actual payment plan. However, rather than correcting its own records or acting upon the issues raised by the complainant vide its numerous e-mails, had shared another e-mail dated 21.07.2023 thereby rejecting accepting any amount apart from the arbitrary amount of Rs. 51,02,322/-.
- XVIII. That another arbitrary action on the part of the respondent wherein vide respondent e-mail dated 17.07.2023 it was now arbitrarily communicated that the credit amount of Rs. 43.05 Lakhs,

which was to be adjusted from the get-go, would now be adjusted only at the time of possession and the assured return (Pre-Handover Amounts) of Rs. 17,38,918/- will be deducted in this demand after completion of payment. As per the agreed terms the credit amount of Rs. 43.05 Lakhs was to be adjusted from the get-go, and the respondent as per the agreed terms had to make payment of the assured return amounts on monthly basis from 31.03.2021 onwards. However, the respondent has till date failed to pay any amount towards the same or adjust the credit amount against the sale consideration

XIX. That the complainant yet again under the fear and threat of cancellation had to act on the said threats and had vide his e-mail dated 21.07.2023 duly intimated to the respondent that the payment for the subject unit was ready and had also enclosed his bank statement and passbook as proof of the same. It was again reiterated that the payment was not made earlier despite being available owing to no positive response from the Respondent and its staff. The said contention was reiterated by the complainant vide its follow up e-mail's dated 03/08/2023 and 28.09.2023. The complainant thereafter vide his e-mails dated 14.07.2023 and 04.08.2023 had yet again requested the respondent to act upon the earlier e-mail dated 19.12.2022 of the complainant which was not acted upon by the respondent or its staff.

XX. That under the fear of cancellation of the unit by the respondent while not taking any action on the issues raised by the complainant, the complainant in order to show its bonafide had yet again brought it to the knowledge of the respondent vide his e-mail dated

05.09.2023 that the payment for the subject unit was ready and was not being transferred owing to no positive response from the respondent and its staff. The complainant had duly referred to its earlier e-mails on the said point. The respondent to the utter shock and dismay of the complainant had sent an alleged cancellation letter dated 01.08.2023 for the subject unit. The said alleged cancellation letter was issued despite the fact that there was a credit amount of Rs. 43.05 Lakhs which was to be adjusted and also an hefty amount of Assured Return which as remained unpaid had to be adjusted in the said demand, as and when it became due. However, the respondent despite complying with its obligations had sought to arbitrarily issue the alleged cancellation letter.

- XXI. That the complainant being constrained by the inaction on the part of the respondent to act upon its e-mails has sent its reply to cancellation letter dated 01.08.2023 vide its e-mail dated 07.08.2023, whereby the constant requests made to the respondents were pointed out on which the respondent and its staff had failed to act upon. The complainant had to get issued a legal notice dated 14.09.2023 through his lawyer. That vide the said legal notice the fact of total payments made with respect to all 4 units was brought to the attention of the respondent, which was Rs. 56,85,861/- for the subject unit, without adjustment of the outstanding assured return amounts. The complainant vide the said legal notice duly brought to the notice of the respondent the non-payment of outstanding assured return amounts which were due/ outstanding from 31.03.2021. It is further pertinent to point out that vide the said legal notice the complainant had duly called upon

the respondent company and its staff to provide a cumulative ledger account of the 4 booked units, as extra amounts were paid for certain units which were over and over the milestone demands as on the said date.

XXII. That by the said legal notice the respondent was duly called upon to make payment of Rs. 30,94,096/- along with interest @11% p.a. till date of payment of said amount or adjust the same with the demand amount for the subject unit. The complainant as a word of caution had yet again sent a follow up e-mail dated 28.09.2023 reiterating the fact that the payment for the subject unit was ready and was only held up due to inaction on the part of the respondent. Till date the respondent(s) have not given the possession of the said unit after obtaining the requisite OC. Neither paid the assured return amounts to the complainant for any unit

XXIII. That the entire premise of filing the said four complaints was the inaction/ wilful neglect on the part of the respondent despite receipt of the major part of the sale consideration, was firstly the denial to share the alleged application for OC which was a benchmark for the calculation of the pre-handover amounts, secondly, its refusal to make adjustment of the pre-handover amounts in the soa and raised demands accordingly, thirdly, to revise the demands in order to safeguard the credit amount of Rs. 43,05,000/- (each for the 4 units) and the pre-handover amounts, as the demands so raised without adjusting the said credit amount and the pre-handover charges were infact ging way over and above the sale consideration and fourth the wilful neglect on the part of the respondent to share any details w.r.t the delay of more than one

year from the date of alleged and wrongful application of OC and the alleged date of receipt of OC, fifth, failure on the part of the respondent to pay pre-handover charges till atleast 60 days prior to the date of issuance of OC for the respective units and lastly, to set aside the wrongful cancellation letter which came to be issued despite payment of almost 90% of the total sale consideration of all 4 units to the respondent.

- XXIV. That despite repeated arguments the respondent has till date failed to place on record the alleged application for occupation certificate, allegedly dated 11.01.2023 (different from other complaint as this is field for tower 6), which is the primary document in contention, the respondent has failed to place on record the alleged application for OC for Tower – 6 till date.
- XXV. That the main objection to the alleged application of OC stems from the fact that admittedly in the filings for the project before this Hon'ble Authority, the building plans were revised after the date of the alleged application of occupation certificate, the fire scheme approval was revised after the same and also the occupation certificate in itself records deviations from the approved plans. The said clearly goes to show the said application for occupation certificate was defective and thus the complainant is entitled to pre-handover charges as stated below atleast till 60 days prior to the date of alleged occupation certificate, i.e. from 31/03/2021 till 17.08.2023.
- XXVI. That the respondent had issued a discount/ rebate/ credit letter dated 16.04.2021, whereby the respondent had assured for the adjustment of an amount of Rs. 43,05,000/- from the total sale

consideration of the subject unit. The said amount should have been adjusted at the get go as the same was an amount actually transferred from the earlier unit of the complainant in the project, "Emporis Tower" to the subject unit in "M3M Heights". In actuality said was only a transfer of amounts already paid and not any discount or rebate granted by the respondent.

- XXVII. That if the application of occupation certificate was correct and the development done was as per the Approved plans then as per the Haryana building code, the occupation certificate is to be granted by the Govt. department within 60 days of Application, but the said occupation certificate itself makes it clear that the delay was occasioned due to the sole fault of the respondent. Therefore, the complainant is entitled to the pre-handover amount at least till 60 days before the receipt of occupation certificate, i.e. till 17.08.2023. Despite regular follow ups through personal visits, e-mails and numerous calls by the complainant requesting for supply of copy of application of occupation certificate for raising the said demand and to help with the bank loan, the respondents despite numerous follow ups wilfully neglected to supply or even show the copy of application of occupation certificate or supply the copy of occupation certificate for the subject Tower.
- XXVIII. That the respondent vide its e-mail dated 30.11.2023 had asked the complainant to take possession of the unit bearing no. 705, tower - 1. The complainant vide its e-mail dated 02.12.2023 had accepted the same and confirmed that as all payments for the said unit have already been made, he is ready to take possession of the unit no. "705 Tower –

1".The respondent however took a complete U-turn and vide its e-mail dated 10.12.2023 now rejected the handing over of possession and ordered the complainant to take back all legal notices issued, if not then the possession shall not be handed over.

XXIX. That till date the possession of the unit has not been handed over. furthermore, the pre-handover amount is to be adjusted till august, 2023 and the respondent be directed to handover the possession of the unit at the earliest and set aside the illegal cancellation dt. 01.08.2023.

XXX. Written submissions have been filed by the complainant. The same are taken on record and perused further.

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

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

- I. Direct the respondent to pay outstanding assured return amounts from the date of inception i.e., 31.03.2021 till the date of actual handover of possession or service of copy of occupation certificate to the complainant along with applicable interest till the actual realization of the said amounts.
- II. Direct the respondent to handover possession of the subject unit after obtaining and sharing requisite occupation certificate/completion from the concerned govt. department.
- III. Direct the respondent to set aside the alleged cancellation letter dated 01.08.2023 issued by the respondent for the subject unit.
- IV. Impose appropriate penalty upon the respondent in terms of the provisions of the Act and applicable rules for violation of the provisions of the Act.

**D. Reply by respondent:**

5. The respondent by way of written reply made following submissions: -
- i. That the complainant after conducting his own due diligence and market research through his broker M/s. Investors Clinic Infratech Pvt. Ltd. applied for booking of four apartments in the "M3M Heights", residential component of mixed land use development being undertaken by respondent company in Sector 65 Gurugram. The complainants booked 4 apartments which are - MH TW-06-508, MH TW-01-2005, MH TW-01-705, MH TW-01-1105. The present complaint relates to apartment bearing no. MH TW-06-508.
  - ii. That complainant applied for booking of apartment no. MH TW-06-508. and paid an amount of Rs.5,00,000/- towards part booking amount on 17.02.2021. The complainant on his own free will and understanding after reading all the clauses of the Application Form, signed the said application form. In light of the commitment to make timely payments the complainant was allotted unit bearing no. MH TW-06-508 vide allotment letter dated 02.03.2021. The cost of the unit for an area admeasuring 725.28 sq. ft. carpet area was fixed at Rs. 1,58,03,099/- plus other applicable charges. That thereafter, the respondent as per the payment plan opted by the Complainant, raised the demand due within 30 days of booking vide letter dated 06.03.2021 and requested the respondent to pay an amount of Rs. 40,20,860/- on or before 31.03.2021.
  - iii. That in lieu of the demand letter, complainant paid made part payment of Rs. 8,05,580/- on 18.03.2021 vide cheque no. 009724. Since the complainant failed to clear its outstanding dues, the respondent company issued reminder letter-1 dated 09.04.2021 for payment of the outstanding amount immediately, to avoid further

accrual of interest/penal consequences. Thereafter, the respondent company vide cover letter dated 15.04.2021 sent three copies of the buyer's agreement for due execution at the complainant's end. However, for the reasons best known to the complainant, the complainant failed to return the duly executed triplicate copies of the buyer's agreement and did not come forward for the registration process.

- iv. That it is pertinent to mention here that the respondent as a goodwill gesture offered the complainant a discount/rebate of Rs. 43,05,000/- against the total consideration amount of the said unit vide letter dated 16.04.2021. It was specifically stated in the said letter that the complainant shall be entitled for the abovesaid discount at the time of final/last demand, subject to the condition that the Complainant makes timely payment of all the instalments. Despite issuance of the reminder letter, the complainant did not come forward to clear its outstanding dues, therefore the respondent issued a pre-cancellation letter dated 27.04.2021 to the complainant finally calling upon the complainant to make payment of the outstanding dues, failing which the allotment shall be cancelled/terminated.
- v. That the complainant even after the issuance of the above-mentioned pre-cancellation letter failed to clear its dues and continued to breach the terms of the application form/allotment nor did come forward to execute the buyer's agreement. As a consequence of the same, the respondent was constrained to cancel the allotment of the complainant vide cancellation letter dated 26.05.2021 and forfeit the amount deposited as per the terms of the application form/allotment. Thereafter, the complainant approached the respondent and

requested to reinstate the unit. The respondent company being a customer-oriented company agreed to the request of the complainant, subject to the complainant clearing his pending dues. The complainant made payment of Rs. 13,05,580/- in order to revive the unit. the respondent company, on the assurance given by the complainant, acceded to the said request of the complainant. thereafter on request of the complainant, the respondent company revised the payment plan of all the four units of the complainant vide email dated 17.06.2021 and requested the complainant to give the confirmation/consent for the same. That vide email dated 18.06.2021 the Complainant consented to the revised payment plan of the units of the complainant. Accordingly, the previous documentation issued by the respondent Company was annulled.

- vi. That as far as letter dated 16.04.2021 pertaining to alleged adjustment of Rs.43,05,000/- is concerned the same was offered earlier when the price of the unit was Rs. 1,58,03,999/- plus other applicable charges. However, the allotment of the complainant was cancelled vide cancellation letter dated 26.05.2021 and consequently all documents were annulled. It is submitted that although the letter dated 16.04.2021 was annulled however, still the respondent company as a goodwill gesture agreed to give the credit subject to terms and conditions stated in the letter dated 16.04.2021. It is submitted that as per the letter dated 16.04.2021 the said adjustment was to be made in the final demand subject to the terms and conditions stated therein i.e. timely payment of demands the allottee cannot claim any other benefits, rebates, compensation, credit etc. That fresh documentation pertaining to the unit was issued i.e. allotment letter and the buyers

agreement was executed on 11.08.2021 as per the revised terms and pricing of the unit.

- vii. Thereafter, a fresh application form was signed by the complainant on 21.06.2021 and fresh allotment letter dated 21.06.2021 was issued and apartment bearing no. mh tw-06-508 was allotted to the complainant. The fresh allotment letter was duly collected by the complainant. As per the fresh allotment letter the cost of the unit for carpet area admeasuring 725.28 sq. ft. was Rs. 1,26,53,106/- plus other charges. It is submitted that the total consideration value of the unit in question was reduced after the revision in the payment plan.
- viii. That thereafter, the respondent company as per the payment plan opted by the complainant, raised the demand due within 15 days of booking vide letter dated 22.06.2021 and after adjustment of the previous amounts requested the complainant to deposit a sum of Rs. 65,278/- on or before 05.07.2021. Since the complainant failed to clear his outstanding dues, the respondent company issued reminder letter-1 dated 07.07.2021 requesting the complainant to make payment of outstanding dues. The buyer's agreement was executed between the parties on 11.08.2021 and the same was duly registered. In view of the booking and commitment to make timely payments, the respondent company vide acknowledgment letter dated 05.10.2021 offered the complainant a monthly pre-handover amount to provide the complainant the comfort of the company's commitment to deliver the unit on time. It is submitted that as per clause 4 of the letter, the respondent company was to pay the accumulated pre-handover amount of rs.39,469/- per month with effect from the completion of Rs. 13,05,580/- plus GST till the date of filing of application for grant

of the occupation certificate . Further, company shall allow an accumulated pre handover amount of Rs.39,457/- per month to you, the Allottee, with effect from completion of payment of Rs.13,05,580/- plus GST till the date of filing of application for grant of occupancy certificate of the unit. The accumulated pre-handover shall be adjusted from the demand payable on application of grant of occupation certificate of the unit. However, in this letter, it was made clear that the said accumulated pre-handover given shall be given to the complainant only on making the payments of the remaining demands in a timely manner as per the payment plan opted by the complainant. It is submitted that the pre-requisite for availing accumulated pre-handover was timely payment of all demands in accordance with the agreed payment plan. Thereafter the complainant made part payment of Rs. 52,222/- on 20.11.2021 which was duly acknowledged by the respondent vide receipt.

- ix. That the respondent fulfilled its promise and completed the construction before the agreed timeline by investing its own funds. The respondent completed the construction of the project much prior to the agreed timeline and applied for the grant of occupation certificate on 11.01.2023.
- x. That thereafter, the respondent as per the payment plan opted by the complainant, raised the demand due on application of occupation certificate vide letter dated 29.05.2023 and requested the complainant to pay an amount of Rs. 1,00,16,938/- on or before 18.06.2023. The complainant did not come forward to clear his dues against the demand raised, therefore the respondent company issued a pre-

cancellation letter dated 04.07.2023, calling upon the complainant to make payment of the outstanding dues.

- xi. That the complainant even after the issuance of the above-mentioned pre-cancellation letter failed to clear his dues and continued to breach the terms of the buyer's agreement. As a consequence of the same, the respondent company was constrained to cancel the allotment of the complainant vide cancellation letter dated 01.08.2023 and forfeit the amount deposited as per the terms of the buyer's agreement
- xii. That despite repeated requests the complainant failed to clear his outstanding dues therefore, the respondent company was constrained to cancel the unit on account of non-payment of demands raised. The respondent has incurred various losses/damages on account of the breach of the terms of the buyer's agreement by the complainant, which the complainant is liable to pay as per the terms of agreement. It is submitted that the complainant had deposited an amount of Rs. 13,70,858/- against total sale consideration of Rs. 1,26,53,106/- plus other charges.
- xiii. Thus, the total loss calculated comes to Rs. 18,14,774/- (approx.) which includes earnest money deduction @10% to the tune of Rs. 12,65,311/-, loss of statutory dues and taxes deposited Rs. 65,278/- and further a sum of Rs.4,84,185/- towards interest payable by the complainant for delayed payment. Despite adverse circumstances like NGT orders, COVID 19 pandemic completed the construction of the residential component and applied for the grant of Occupation Certificate on 11.01.2023. The occupation certificate was granted by the Competent Authorities on 16.10.2023\_ after due verification and inspection.

- xiv. That the complainant has failed to fulfil his contractual obligations stated in the terms of the buyer's agreement executed between the parties and has filed the present complaint to take advantage of his own wrongs. despite being well aware that timely payments is the essence of the transaction the complainant failed to make payments despite issuing reminders.
- xv. That vide acknowledgment letter dated 05.10.2021 it was agreed by the respondent that subject to the complainant making timely payments of all demands that the respondent shall adjust accumulated pre-handover from the demand payable on application of grant of Occupation Certificate of the unit It is submitted that the pre-requisite for availing accumulated pre-handover was timely payment of all demands in accordance with the agreed payment plan.
- xvi. That the complainant was a defaulter who failed to make payments, despite repeated reminders and follow ups, as per the terms of the acknowledgment letter dated 05.10.2021, he was not entitled to credit of pre-handover amount. The fact that the complainant is a defaulter is evident from the issuance of the following reminders/ requests :

S. No.	<u>Demand/Notice issued</u>	<u>Date</u>
1.	<u>Cancellation letter</u>	<u>26.05.2021 (@ Annexure-R/3 @ page no. 60-61 of reply)</u>
2.	<u>Demand</u>	<u>22.06.2021 (@ Annexure-R/7 @ page no. 73-74 of reply)</u>
3.	<u>Reminder letter 1</u>	<u>07.07.2021 (@ Annexure-R/8 @ page no. 75 of reply)</u>
4.	<u>Demand</u>	<u>29.05.2023 (@ Annexure-R/12 @ page no. 142 of reply)</u>

5.	<u>Pre-cancellation notice</u>	<u>04.07.2023 (@ Annexure-R/13 @ page no. 143 of reply)</u>
6.	Email to pay dues	11.07.2023 ( @ page no. 128 of reply)
7.	Email to pay dues	13.07.2023 ( @ page no. 136 of reply)
8.	Reminder email	17.07.2023 ( @ page no. 144 of complaint)
9.	<u>Cancellation notice</u>	<u>01.08.2023 (@ Annexure-R/14 @ page no. 144 of reply)</u>

xvii. That from the averments made hereinabove, it is clear that the complainant defaulted in making payments of the due amounts and was not entitled to any payment of pre-handover amount as per the terms of the acknowledgment letter dated 05.10. 2021.As far as the said unit in question is concerned, the same stands re-allotted to a third party. Therefore, the present complaint is infructuous.

xviii. Written submissions have been filed by the respondent. The same has been taken on record and perused further.

6. Copies of all the relevant documents have been filed and placed on 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, 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**

9. 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.*

10. 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.

#### **F. Findings on the relief sought by the complainants:**

**F.I Direct the respondent to pay outstanding assured return amounts from the date of inception i.e., 31.03.2021 till the date of actual handover of possession or service of copy of OC to the complainant along with applicable interest till the actual realization of the said amounts.**

**F. II. Direct the respondent to handover possession of the subject unit after obtaining and sharing requisite occupation certificate/completion from the concerned govt. department.**

**F.III Direct the respondent to set aside the alleged cancellation letter dated 01.08.2023 issued by the respondent for the subject unit.**

**F.IV Impose appropriate penalty upon the respondent in terms of the provisions of the Act and applicable rules for violation of the provisions of the Act.**

11. The above-sought relief(s) by the complainant is taken together being inter connected.
12. The complainant was allotted an apartment bearing no MH TW-06-508, 5<sup>th</sup> floor, Tower-6 in the project of the respondent named "M3M Heights" at Sector-65, Gurugram vide allotment letter dated 22.06.2021. Thereafter a buyer's agreement was executed between the parties on 11.08.2021 for a sale consideration of Rs.1,26,53,103/-. Out of the said sale consideration, the complainant has paid an amount of Rs.13,70,585/- in all against the said allotment.
13. The complainant in his facts have stated that they have paid an amount of Rs. 56,75,858/-. However as per customer ledger placed in the documents the total amount paid comes out to be Rs. 13,70, 858/- .Therefore the Authority is proceeding with the documents available on record.
14. The complainant has submitted that he was ready to pay the balance amount but the same cheque was never collected by the respondent. However, the complainant is still ready and willing to pay the balance amount. The respondent has submitted that as per the payment plan the demand was to be raised on application of OC. The same was raised on 29.05.2023. Thereafter the respondent sent pre cancellation on 04.07.2023. Following the same on non-payment of the outstanding dues, emails dated 13.07.2023 following with a reminder email dated 17.07.2023 was issued to the complainants to pay the outstanding dues.

Finally, the respondent terminated the allotment of the unit on 01.08.2023 on failure of payment of outstanding instalments as the complainants never paid the said raised demand. Copies of the same is available on record and are not in dispute. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 01.08.2023 is valid or not.

15. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainant has paid an amount of Rs. 13,70,858/- against the sale consideration of Rs.1,26,53,103/-and no payment was made by the complainant as per the demands which were raised by the respondent. The occupation certificate for the tower in question was obtained by the respondent on 16.10.2023. The possession was never offered to the complainant in the present case. As per the payment plan agreed between the parties, 'on application of OC', the complainant was obligated to pay 79.17% of TCV i.e Rs. 1,00,16,935/-. Therefore, the occupation certificate was applied on 11.01.2023. However, the complainant defaulted in making payment and the respondent was to issue demand letter dated 29.05.2023 to the complainant to comply with their obligation to make payment of the amount due as per the payment plan, but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 01.08.2023. The Authority observes that Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. As per clause 9.3(ii) of the buyer's agreement if the allottee fails to make payments for a period of beyond ninety days after notice from the promoter, then the promoter may cancel the allotment.

of the unit. Hence, cancellation of the unit in view of the terms and conditions of the buyer's agreement and the payment plan annexed with the buyer's agreement dated 11.08.2021 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**

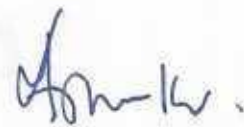
*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission 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."*

16. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.13,70,858/- after deducting 10% of the sale consideration of Rs.1,26,53,103/- 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., 01.08.2023 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid. The respondent-promoter shall also adjust the amount being already refunded to the complainant, from the refundable amount.
17. In view of the findings detailed above, the rest of the reliefs sought by the complainant became redundant and no direction to the same is given.

**H. Directions of the Authority:**

18. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the paid-up amount of Rs. 13,70,858/- after deducting 10% of the sale consideration of Rs. 1,26,53,103/- 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., 01.08.2023 till its realization.
  - ii. The respondent-promoter shall also adjust the amount being already refunded to the complainant, if any, from the refundable amount.
  - iii. 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.
19. The complaint stands disposed of.
  20. Files be consigned to the registry.



**(Arun Kumar)**  
**Chairman**

**Haryana Real Estate Regulatory Authority,  
Gurugram**

**Dated: 07.04.2026**