BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUHORITY, GURUGRAM.

Complaint No. :5057 of 2025
Date of Decision: 14.10.2026

1. Mr. Naveen Sharma
2. Ms. Preety, both residents of H.No.395, POL No.47, Gaal Pana, Malikpur village, South West, Delhi-110073.

.....Complainants.

Versus

Roshni Builders Pvt. Ltd. through its Managing Director/ Principal Officer, LGF, F-22, Sushant Shopping Arcade, Sushant Lok-1, Gurugram, Haryana-122002.

.....Respondent.

APPEARANCE

For Complainants: **Mr. M.K. Sanwariya, Advocate.**
For Respondent: **Ms. Shriya Takkar, Advocate.**

ORDER

This is a complaint filed by Mr. Naveen & Ms. Preety (allottees), under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in brief The Act of 2016) against Roshni Builders Pvt. Ltd. (promoter/developer).

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2. Briefly stated, according to the complainants, they booked a commercial unit No. R4K216 having carpet area 82.99 sq. ft. and super area 505.66 sq. ft. type Food Court, situated on 2nd Floor Corner shop, Block-4, in the project "M3M Broadway" being developed by the respondent on a parcel of land measuring approx. 7.84875 acres situated at Sector-71, Revenue Estate of village Fazilpur Jharsa, Tehsil, Gurugram and allotment was made on 02.02.2019. Till 22.12.2018, they (complainants) had paid Rs.17 lakhs to the respondent.

3. That thereafter, another allotment letter was issued to them (complainants) on 01.08.2020. By 10.10.2019, they (complainants) had paid a sum of Rs.25 lakhs to the respondent. An agreement to sell between the parties was executed on 24.02.2021. Total sale consideration was agreed as Rs. 71,68,157/-.

4. That during the proceedings, it was found that the respondent has cancelled their (complainants) unit by making false notices and cancellation letters which were never served upon them (complainants). They (complainants) got notice for offer of possession from the respondent vide letter dated 16.12.2021. When they (complainants) visited the site, they were astonished to see that the

shop was incomplete and lots of work was pending. Till September 2022, the unit was not complete in any manner, as agreed. It was almost in same condition as was on 15.02.2022. The respondent instead of curing the defects in the unit, cancelled their (complainants) allotment unit and resold the same.

5. That being aggrieved with the acts of the respondent, they (complainants) filed a complaint before the Authority seeking refund of Rs.23,14,285/-, but after going through statement of account, they found that they had paid a total sum of Rs.25 lakhs to the respondent as per payment schedule. However, during the pendency of the complaint, on 21.11.2023, the respondent paid directly in their (complainants) account Rs.11,66,095/- as cancellation amount without any prior consent or admission on their part.

6. That the Authority vide its order dated 21.11.2024 was pleased to allow the complaint and passed an order for refund of amount of Rs.23,14,285/- after deduction of 10% of sale consideration of Rs.71,68,157/- as earnest money and amount already refunded/pre handed over amount paid to them (complainants) along with interest at

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the rate of 11.10% per annum on such balance amount from the date of cancellation i.e. 01.02.2022 till actual date of refund of amount.

7. That the respondent failed to comply with the orders passed by the Authority and paid only an amount of Rs.2,47,052/- on 17.03.2025 and it (respondent) still withholding an amount of Rs.3,26,832/- from the total amount of Rs.25 lakhs paid by them(complainants).

8. Citing facts as described above, the complainants have sought following compensation/reliefs: -

i) to direct the respondent for refund of the balance amount of Rs.3,26,832/- to the complainants from the payment made in lieu of unit/apartment till date i.e. Rs. 25,00,000/- towards the principal amount along with interest till the date of realization;

ii) to direct the respondent to pay to the complainants Rs.71,68,157/- along with interest till actual payment for causing financial losses, manifold increase in real estate sector;

iii) to direct the respondent to pay to the complainants Rs. 50 lakhs along with interest till actual payment for causing financial/economic crisis, physical and mental harassment for not constructing and delivering promised unit as per the terms of agreement between the parties;

iv) to impose penalty upon the respondent as per provisions of Section 60 of RE (R&D) Act for wilful default committed by them.

v) to impose penalty upon the respondent as per provisions of Section 61 of RE (R&D) Act for contravention of Sections 12, 13, 14 &16 of RE (R&D) Act.

vi) to direct the respondent to refund the amount collected from the complainants in lieu of interest, penalty for delayed payments under Rule 21(3)(c) of HRERA Rules, 2017.

vii) to issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent company at whose instance, connivance, acquiescence, neglect any of the offences has been committed;

viii) to recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under Sections 420,406& 409 of the Indian Penal Code.

ix) to award/allow costs of these proceeding to the complainants and against the respondent.

x) to direct the respondent to pay Rs.3 lakhs towards litigation charges.

9. The respondent contested the claim of complainants by filing written reply. It is averred that the respondent i.e. M/s Roshni Builders Pvt. Ltd. has been amalgamated with M/s M3M India Pvt. Ltd. It (respondent) in compliance of the order 21.11.2024 passed by the Authority made the payment of Rs.2,47,052/- after deduction of TDS amounting to Rs.6418/- on 17.03.2025. That an amount of

Rs.11,66,095/- has already been refunded to the complainant No.1 on 21.11.2023 after deducting 10% of sale consideration i.e. Rs.7,16,815.7P towards earnest money and further an amount of Rs.2,42,088/- has also been refunded separately.

10. That despite requests, the complainants failed to clear their outstanding dues. Consequently, it (respondent) cancelled the allotment vide letter dated 01.02.2022. The Authority has upheld order of cancellation of allotment vide its order dated 21.11.2024. The said order of the Authority has attained finality, as no appeal has been preferred against the same.

11. That it (respondent) fulfilled its promise and constructed said food court unit of the complainants, way before the agreed timeline i.e. 31.10.2023 by investing its own funds. It (respondent) vide offer of possession dated 16.12.2021 requested the complainants to clear outstanding dues amounting to Rs.54,33,090/- on or before 15th Jan,2022 and take possession of the food court unit and also requested to pay other charges as stipulated thereunder. That even after continuous reminders, the complainants failed to come forward to clear their outstanding dues and take over the possession of the food court

unit. Therefore, it(respondent) issued a pre-cancellation notice dated 17.01.2022.

12. That on account of wilful breach of the terms of the Buyers Agreement by failing to clear outstanding dues despite repeated requests, it (respondent) terminated the allotment of the unit in question vide cancellation notice dated 01.02.2022.

13. Contending all this, the respondent has prayed to dismiss the complaint.

14. Both of the parties filed affidavits in support of their claims. I have heard learned counsels appearing on behalf of both of parties and perused the record on file.

15. As described above, the complainants approached the Haryana Real Estate Regulatory Authority (in short "the Authority") by filing complaint No.5042 of 2022 seeking refund of entire amount paid by the same along with interest. The complaint has been decided by the Authority vide order dated 21.11.2024. The respondent has been directed to refund the amount i.e. Rs.23,14,285/- received by it from the complainants after deduction of 10% of sale consideration of Rs.71,68,157/- as earnest money and amount already refunded/pre-

handover amount paid to the complainants/allottees along with interest at the rate of 11.10% p.a. on such balance amount from the date of cancellation i.e. 01.02.2022 till the actual date of refund of the amount. A period of 90 days has been given to the respondent-builder to comply with the directions given in the order.

16. It is contended by learned counsel for the complainants that after receiving offer of possession dated 16.12.2021 when his clients inspected the site, they found that the unit was nowhere near completion, as per agreement for sale dated 24.02.2021. Even till September 2022, the unit in question was not complete in any manner. Therefore, his client had no option but to withdraw from the project. On the other hand, according to learned counsel for the respondent, the complainants defaulted in making payments as per agreement and hence, his client i.e. the respondent cancelled the unit vide letter dated 01.02.2022. According to learned counsel for the respondent, the complainants are not entitled to any relief.

17. The powers conferred by The Act of 2016 upon this Forum (AO) are limited. Rule 29(1)(a) of Rules of 2017, provides that any aggrieved person may file an application/complaint with the

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adjudicating officer for adjudging quantum of compensation as provided under sections 12, 14, 18 and 19, **where violation by the promoter has been established by the Authority in an inquiry under section 35 in form CAO**.... Similarly, Rule 28(2)(m) of said Rules mentions the procedure for filing a complaint before the Adjudicating Officer. The relevant portion of same is reproduced here as under: -

> *"If the complaint in form 'CAO' filed before the adjudicating officer for adjudging quantum of compensation,* ***the complaint shall be admissible from the stage of concluding inquiry by the Authority*** *...."*

18. This Forum (Adjudicating Officer) cannot adjudge amount of compensation for loss allegedly suffered by an allottee unless violation by the promoter has been established by the Authority. Finding fault in the complainants themselves, the Authority in its order has noted as:

> *"The respondent has obtained the Occupation Certificate on 13.12.2021 from the competent Authority and thereafter offered the possession of the unit on 16.12.2021 along with*

demand of payment of outstanding dues but the complainants have failed to pay the same. The respondent has issued various reminder letters and thereafter, pre-cancellation letter and cancellation letter dated 17.01.2022 and 01.02.2022 respectively."

19. From perusal of the aforesaid order of the Authority, it is abundantly clear that it was not fault on the part of the respondent to deliver possession in time, rather due to the continued inaction i.e. default in fulfilling payment obligations on the part of the complainants despite receiving multiple reminders and demand letters, the respondent cancelled the subject unit vide letter dated 01.02.2022. The cancellation letter issued by the respondent in relation to the unit was deemed valid. In this way, the complainants are not entitled to any relief as claimed by them.

20. If the respondent is not ready to refund paid-up amount, despite order of Authority as claimed by the complainants, same could approach the Authority by filing an execution petition but complaint before this forum seeking compensation is not maintainable

Complaint is thus dismissed. File be consigned to the record room.

Announced in open court today i.e. on **14.10.2026**.

(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority, Gurugram.

Present: Mr. M.K. Sanwaria, Advocate for complainants.
Ms. Shriya, Advocate for respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.

(Rajender Kumar)
Adjudicating Officer,
14.10.2026