BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**4849 of 2024**
Date of complaint	:	**25.10.2024**
Date of order	:	**14.08.2026**

Kapil Bajwa And Karan Bajwa,
Both R/o:- OD-62, First Floor, Malibu Town, Sector- 47, South City-2, Gurugram, Haryana- 122003 **Complainants**

Versus

DLF LTD.
Regd. Office at: 3rd floor, Shopping Mall, Arjun Marg, DLF City Phase I, Gurgaon, Haryana **Respondent 1**

DLF New Gurgaon Home Developers Pvt Ltd **Respondent 2**
Regd. Office at: 3rd floor, Shopping Mall, Arjun Marg, DLF City Phase I, Gurgaon, Haryana

ICICI Bank Ltd **Respondent 3**
Regd. Office at: ICICI Bank Ltd, No 6,8- 13,Ground Floor , Shanta Tower, Sanjay Place, Agra - 282002, Agra, Uttar Pradesh, 282002

CORAM:
Shri Arun Kumar **Chairman**

APPEARANCE:
Ayush Tyagi (Advocate) Complainant(s)
JK Dang (Advocate) Respondent(s)

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation

and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Project and unit related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"The Skycourt", sector-86, DLF Gardencity, Gurgaon
2.	Total area of the project	12.858 acres
3.	Nature of project	Residential Group Housing Complex
4.	RERA registered/not registered	Not registered
5.	DTPC License no.	31 of 2010 dated 05.04.2010 44 of 2012 dated 09.05.2012
6.	Date of Application	11.02.2013 (as per payment receipt on page 131 of reply)
7.	Allotment letter	13.02.2013 (page no. 132 of reply)
8.	Date of buyer's agreement	27.09.2013 (page no. 173 of reply)
9.	Apartment no.	04, 4th floor, Block G (page no. 179 of reply)
10.	Unit admeasuring	1852 sq. ft. (page no. 179 of reply)
11.	Possession clause	*11(a) Schedule for possession of the said apartment*

		The Company based on its present plans and estimates and subject to all just exceptions endeavours to complete construction of the Said Building/said Apartment within a period of ***48 months from the date of Application*** *unless there shall be delay or failure due to Force Majeure conditions including but not limited to reasons mentioned in clause (b) and 11(c) or due to failure of the Allottee(s) to pay in time the Total Price and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement.*
12.	Due date of delivery of possession	11.02.2017 (calculated from the date of application i.e. 11.02.2013)
13.	Total sale consideration	Rs. 1,50,21,572/- (as per payment plan at page 203 of reply)
14.	Total amount paid by the complainant	Rs. 59,61,095/- (as per SOA at page 352 of reply)
15.	Payment Plan	Construction linked (page 134 of reply)
16.	Offer of possession	16.03.2018 (Page no. 350 of reply)
17.	Demand and reminders	29.07.2014, 22.08.2014, 08.09.2014, 25.09.2014, 28.11.2014, 15.12.2014, 02.01.2015, 05.01.2015, 08.01.2015, 12.02.2015, 09.03.2015, 23.03.2015, 10.04.2015, 20.04.2015,

		13.05.2015, 28.05.2015, 18.06.2015, 21.07.2015, 28.08.2015, 16.09.2015, 21.01.2016, 29.02.2016, 15.02.2016, 03.07.2018, 09.10.2018, 04.12.2018, 30.01.2019, (page 257- 366 of reply)
18.	Letter by ICICI bank taken over symbolic possession	19.09.2018 (page 367 of reply)
19.	Letter by ICICI bank taken over possession	12.03.2019 (page no. 372 of reply)
20.	Letter by respondent that some dues are pending on behalf of complainant, possession can be handed over after payment of such dues	20.04.2019 (Page no. 374 of reply)
21.	Legal notice by respondent to ICICI bank	20.06.2019 (Page no. 378 of reply)
22.	Respondent filed CWP-28262-2019 in High court against ICICI bank (date of decision) ICICI bank stated that they have stopped SARFAESI proceedings	22.07.2022 (Page no. 384 of reply)
23.	Reminder to Complainant for payment	27.01.2020, 06.08.2020 (final notice) (page 556-557 of reply)
24.	Letter by bank to promoter for remitting the refundable amount after cancellation to the bank i.e. Rs.33,21,839/-	20.10.2020 (page 563 of reply)
25.	Final notice	06.08.2020 (page 557 of reply)

26.	Occupation certificate	17.07.2017 (page no. 99 of reply)
27.	Completion certificate	23.05.2023 (page no. 101 of reply)
28.	Cancellation letter	19.10.2020 (Page no. 560 of reply)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

i. That the respondent company is in the business of developing of real estate project and represented itself as one of the flagship companies having its registered office at Registered Address, 3rd floor, shopping mall, Arjun marg. DLF City Phase 1, Gurgaon, Haryana 122002 and also at 1-E, Jhandewalan Extension, Central Delhi, NEW DELHI, Delhi, India, 110055.

ii. That the respondent company through their representative approached the complainant and represented that the respondent residential project namely 'THE SKY COURT' will effectively serve the residential purpose of the complainant and his family. That the representative of the respondent company then persuaded the complainant through repeated request to visit the office for detailed representation pertaining to their aforesaid project.

iii. That the complainant was looking for a good residential property for his own personal use therefore on persuasion of the respondent company the complainant visited the corporate office of the respondent company situated in Jhandewalan Extension, New Delhi to further know about the said project THE SKY COURT.

iv. That based upon the assurance giving by the respondent the complaint got read to book the Flat, No. SG044, Block G, 4th Floor, at THE SKY COURT, Sector-86, Gurgaon, measuring 2295 sq. ft in the project of the respondent. That the company entered into a builder buyer agreement dated 27.09.2013 and subsequently the payment was made by the complainant in instalment i.e. Rs. 10,31,000/-, Rs. 6,00,000/-, Rs. 10,45,858/-, Rs. 6,00,000/-, Rs. 1,78,000/-, Rs. 19,28,031/- was made by self- funding. Thus, the complaint till date has made the total payment of Rs. 53,82,889/- to the respondent.

v. That in deficiency of fund the applicant also availed loan of Rs. 44,19,692/- to pay the remaining due payment to the respondents. Furthermore, the complainant has paid the EMI's but due to the illegal act of the respondent, the complainant stopped the EMI's, as the respondent has stopped the construction of the unit which is nothing but violation of the BBA and RERA Act, 2016.

vi. That out of the total sale consideration of Rs. 1,50,21,592/- of the said unit booked the complainant has already paid Rs. 53,82,889/-however it is important to mention here that the construction in the project has not been developed as per the payment made by the complainant. Moreover, there is no sign of project been developed since past many years. It is further submitted that as per the agreement to sale the possession was to be delivered within 48 months from the date of sanction of the building plans and the possession was delivered by 29.07.2017. However, the respondent has hopelessly failed to deliver the possession of the said unit even after passing over of 83 months from the proposed date of handover of the possession.

vii. That the respondent failed to complete the project within the stipulated time period as per the agreement to sale. Thus, feeling aggrieved from the inaction of the respondent to deliver the possession of the unit booked the complainant made no of telephonic calls, reminders, emails and personal visits in the office of the respondent but the respondent failed to refund the total amount paid by the complainant.

viii. That the complainant has suffered grave harassment and mental agony due to the deprivation of the property. That the complainant has been denied the use of their own property purchased from their hard-earned funds and savings for no apparent reasons. Moreover, a huge amount of money has been lying stagnant with the respondent and the complainant has been deliberately derive from enjoying the benefits of the same since past many years.

ix. Thus, from the above-mentioned facts and circumstances of the case it is abundantly crystal clear that the respondent has failed to deliver the possession of the said unit within the stipulated time period and there has been a considerable delay of more than till date. Therefore, the complainant has filed the present complaint seek refund of entire amount paid till date along with interest @MCLR +2% from the date of respective payment till actual realization of the said amount.

C. Relief sought by the complainants: -

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

I. Refund the paid up amount with interest.

II. Direct the respondent to pay the interest on the total amount paid by the complainants – at the prescribed rate of interest as per RERA, from due date of possession till the actual realization of the unit.

5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent no. 01 and 02

a) The application for issuance of occupation certificate in respect of the project in question was submitted on 17th of February, 2017, i.e. well before the notification of the Haryana Real Estate Regulation and Development Rules, 2017. The occupation certificate has been thereafter issued on 17th of July 2017. Hence the project does not fall in the definition of "ongoing project". Thereafter completion certificate dated 23.05.2023 has also been issued by the competent authority. This Authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.

b) That the complainants have not disclosed the real and true facts of the case and have intentionally withheld the correct factual background leading to the cancellation of allotment in their favour in accordance with the terms and conditions set out in the buyer's agreement dated 27th September 2013.

c) The complainants are conscious and aware that respondent no 1 is a reputed and renowned real estate developer, enjoying an impeccable reputation in the real estate industry for the disciplined and time bound execution of projects undertaken by it. The projects

implemented and executed by the respondents are considered to be architectural landmarks. The respondents, to a considerable extent can be legitimately credited for positioning Gurugram as the "Millennium City".

d) That the complainants had made detailed and elaborate enquiries with regard to all aspects of the residential group housing project known as "The Sky Court, DLF Garden City, Sector 86, Gurugram" conceptualised and promoted by the respondents. After completely satisfying themselves with regard to the specifications of the apartments, competence and capability of the respondents to successfully undertake the construction, development and implementation of the said project, the complainants had approached the answering respondents through their property dealer, M/s Dua Realtors and proceeded to book for purchase residential apartment in the said project. Application for provisional allotment had been submitted by the complainants with the respondents on 4th of February 2013 .

e) That sum of Rs. 10,31,000/- had been paid by the complainants to the respondents for the purpose of making booking referred to above. Receipt dated 11th of February 2013 had been issued by the answering respondents in favour of the complainants pertaining to payment of the aforesaid amount. Allotment letter dated 13.02.2013 whereby apartment bearing number SCG 044 in The Sky Court, DLF Garden City, Sector 86, Gurugram located on the 4th floor in Block G having super area admeasuring 1852 square feet, was provisionally allotted in favour of the complainants.

f) That right from the very beginning, the complainants defaulted in timely payment of sale consideration. Consequently, the respondents were compelled to issue notices and reminders for payment.

g) That the complainants still did not come forward to clear their outstanding dues but instead addressed a letter dated 09.05.2013 informing the respondents that the complainants had applied for a home loan from ICICI Bank and hence requested extension of time till 30.05.2013 to clear their outstanding dues. It is pertinent to mention herein that was specifically mentioned in the said letter dated 13.06.2013 that as agreed by the party in case of cancellation of the allotment for any reason whatsoever, the respondents shall refund all amounts received over and above the earnest money and other dues which are forfeitable as per the terms and conditions of the agreement, directly to the ICICI Bank Ltd and thereafter the ICICI Bank shall release their lien on the said apartment.

h) That final notice dated 17.06.2013, letter dated 11.07.2013 informing the complainants about dishonour of cheque issued by the complainants for a sum of Rs 6 lacs due to insufficient funds in the account of the complainants.

i) That the apartment buyers agreement pertaining to the said apartment had been sent for execution to the complainants on 16th of April 2013. Eventually apartment buyers agreement dated 27th of September 2013 had been executed by the complainants in respect of the Said apartment. Needless to say that the said contract had been executed by the complainants voluntarily and consciously after deliberating over its contents and fully realising the implications thereof. The total sale consideration in respect of the said apartment had been settled at Rs

1,50,21,572/-. The complainant's copy of the Buyer's Agreement was returned to them under cover of letter dated 27.09.2013.

j) That it is pertinent to mention herein that the draft buyer's agreement had been uploaded on the website of the respondents even before the application form of the complainants was accepted. The complainants duly went through the draft buyer's agreement and also acknowledged this fact in the application form duly executed by them.

k) That clause 11 (a) of the apartment buyers agreement dated 29th of September 2013 provided that the respondent subject to all just exceptions would endeavour to complete the construction of the said apartment within a period of 48 months from the date of submission of application for allotment by the allottee unless there occurred any delay or failure due to force majeure conditions, including but not confined to failure of the allottee to pay in time the total price and other charges and due mentioned in the aforesaid agreement or to abide by terms of the said agreement.

l) That clause 11 (b) of apartment buyers agreement dated 29th of September 2013 clearly provided that in case delay occurred in the delivery of physical possession of the said apartment due to force majeure conditions, in that event the respondent would be entitled to extension of time for delivery of physical possession of the said apartment.

m) That it is pertinent to mention that clause 56 (i) of apartment buyers agreement dated 29th of September 2013 specifically provided that in case there occurred any failure on the part of the allottee in making payments within time stipulated in the schedule of payments and even failure to pay the stamp duty, legal, registration and incidental charges,

any increase in security including but not limited to interest-bearing maintenance security as demanded by the respondent or any other charges, in that event the same would be construed as commission of default on the part of the allottee in complying with conditions of the aforesaid agreement.

n) That clause 58 of the apartment buyers agreement dated 29th of September 2013 specifically provided that disputes between the parties arising out of or touching upon or in relation to the terms and conditions of the aforesaid agreement would be subject to adjudication under The Arbitration and Conciliation Act or any statutory amendments/modifications thereof. It was further provided in the aforesaid clause that the disputes would be adjudicated upon by sole arbitrator would be appointed by the respondent and whose decision would be final and binding upon the parties. The complainants had categorically conveyed the no objection to the appointment of sole arbitrator by the respondents.

o) That since, the parties by mutual consent had decided by way of validly and legally executed contract that the disputes arising out of apartment buyers agreement dated 27th of September 2013 and pertaining to said apartment would be resolved by arbitration, the invocation of jurisdiction of this Authority by the complainants is barred under law. The complaint is liable to dismissed on this ground alone.

p) That application for grant of occupation certificate to Directorate of Town & Country Planning, Haryana, Chandigarh on 17th of February 2017. The concerned statutory authority had issued the Fire NOC on 28th of June 2017. The occupation certificate in respect of the Said

Project had been issued by Directorate of Town & Country Planning, Haryana, Chandigarh on 17th of July 2017.

q) That vide letter dated 24th of August 2017 the answering respondents had conveyed to the complainants that occupation certificate in respect of the said project had been granted by Directorate of Town & Country Planning, Haryana, Chandigarh.

r) That subsequently, vide letter dated 16th of March 2018 the complainants had been called upon to obtain physical possession of the said apartment subject to payment of outstanding amount of Rs. 1,55,39,182/- as detailed in the statement of account annexed along with the said letter. It is pertinent to mention that during the course of construction there had occurred a minor increase in super area of the said apartment. The same had been fairly calculated and had been found to be 1928 square feet against the original area of 1852 sq ft. complete details with regard to payments made by the complainants as well as quantification of outstanding amount had been provided by the respondents to the complainants in the said letter. An early payment incentive had also been offered by the respondents to the complainants.

s) That the complainants did not come forward to clear their outstanding dues and take possession of the apartment. Hence reminders for possession were issued by the respondents to the complainants.

t) That due to defaults on the part of the complainants in repayment of the loan availed by the complainants from ICICI Bank, the said bank took symbolic possession of the apartment under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. By order dated 05.02.2019, the District

Magistrate, Gurugram directed appointment of a receiver to take possession of the apartment.

u) That pertinently, all the aforesaid proceedings were carried out without any notice to the respondents. The respondents only came to know about the SARFAESI proceedings against the complainants after letter dated 13.03.2019 was issued to "The Manager", DLF Skycourt, Garden city enquiring about the pending builder dues. Surprisingly, the said letter was not even addressed to the respondents herein.

v) That respondent no. 1 issued a notice dated 20.04.2019 to the ICICI Bank, with copies addressed to the complainants herein as well as the District Magistrate, Gurugram. Respondent no. 1, inter alia, pointed out that possession had not yet been handed over to the allottees and remained with respondent no. 1 and hence could not have been taken over by the bank. It was pointed out the apartment had been illegally sealed without proper notice and intimation to respondent no. 1 and that the order of the District Magistrate had been obtained by concealing the said fact. It further was mentioned in the said notice that an amount of Rs 1,72,88,458/- was due towards respondent no. 1 and Rs 2,89,200/- was payable to the SkyCourt residents condominium association towards interest bearing maintenance security and that possession could be handed over only after receipt of complete amounts payable by the allottees. It was further conveyed that no action should be taken until payment of all outstanding dues against the apartment.

w) That reply dated 29.04.2019 was received from the ICICI Bank intimating to respondent no. 1 that the matter was under consideration.

x) That there was no response from the ICICI Bank and hence legal notice dated 20.06.2019 was issued on behalf of respondent no. 1 to the ICICI Bank calling upon them to recall all its actions under the SARFAESI Act, 2002, to restore physical possession of the apartment and to pay usage charges for illegal possession of the same.

y) That eventually, respondents were constrained to file writ petitions bearing numbers 28202 of 2019 and 28262 of 2019 before the Hon'ble Punjab and Haryana High Court challenging the proceedings under the SARFAESI Act, 2002 initiated by the ICICI Bank.

z) That in view of the statement made by the counsel for ICICI Bank that the bank had stopped SARFAESI proceedings under the Act in respect of the apartment in question, the writ petitions referred to above were disposed off with the observation that it shall be open to the complainants herein and the respondent to seek adjudication of any inter se disputes between them at an appropriate forum. It is pertinent to mention herein that the complainants herein were represented through their counsel in the proceedings before the Hon'ble Punjab and Haryana High Court.

aa) That after disposal of the writ petitions referred to above, the respondents addressed a letter dated 27.01.2020 calling upon the complainants to clear their outstanding dues and to take possession of the unit. Since the complainants failed to do so, final notice dated 06.08.2020 was sent to the complainants by email as well as by post. The notices were duly received by the complainants, however, the complainants wilfully refrained from fulfilling their contractual obligations and remitting their outstanding dues and take possession of the apartment.

bb) That left with no option and in view of the continuing, wilful and persistent defaults on the part of the complainants, the respondents cancelled the allotment in favour of the complainants vide cancellation letter dated 19.10.2020. The cancellation letter was sent by registered post and courier at the address provided by the complainants and also by email, with a copy marked to the ICICI Bank Ltd. It is pertinent to mention herein that the complainants have duly received the cancellation letter but have not chosen to challenge the same in the present complaint or in any other proceedings. The complainants are deemed to have accepted the factum of cancellation and are estopped from filing the present complaint or claiming any refund.

cc) That it was communicated to the complainants that after deduction of earnest money, brokerage paid, GST and VAT paid along with maintenance charges till 31.10.2020, a sum of Rs 33,21,838.36 was refundable. The complainants were informed that the balance shall be refunded to the complainants/ICICI Bank after confirmation from ICICI Ltd which holds a lien over the property.

dd) That vide letter dated 20.10.2020, ICICI Bank Ltd informed the respondents that an amount of Rs 86,54,806/- was due and payable to it by the complainants towards repayment of loan availed by the complainants and the complainants had defaulted in repayment thereof. The respondents were requested to transfer the balance refundable amount to the ICICI bank Ltd as per the details provided in the said letter and that after payment of the said amount by the respondents, the lien over the property shall be removed.

ee) That in furtherance to the cancellation letter dated 19.10.2020 as well as the letter dated 20.10.2020 from the ICICI Bank Ltd, the respondent

no 1 refunded an amount of Rs 33,21,839/- by RTGS dated 01.02.2021 against the pending dues of ICICI Bank and an amount of Rs 1,79,379/- vide RTGS dated 01.02.2021 towards pending site dues to the sky court residents condominium association.

ff) That after sleeping over the matter for a period of about almost 4 years from the date of cancellation, the complainants have now proceeded to file the present false and misconceived complaint. From the facts and circumstances of the case, it is evident that the complainants are defaulters and there is no lapse of shortcoming in so far as the answering respondents are concerned.

gg) It is respectfully submitted that once physical possession of the said apartment had been offered by the respondent to the complainants and the complainant had been called upon to make payment of the outstanding amount and to complete of formalities for the purpose of obtaining physical possession of the said apartment, the wilful and deliberate non-payment of outstanding amounts on the part of complainants debars and precludes the complainants from demanding refund of the amount paid by them to the respondents. As highlighted earlier, the conscious non-payment of outstanding amount in respect of the said apartment by complainants to the respondents despite repeated requests and demands being made by the respondents is a deliberate breach of terms and conditions incorporated in apartment buyers agreement dated 27th September 2013.

hh) That clause 14 of apartment buyers agreement dated 27th September 2013 specifically provided that if for any reasons other than those given in clauses 11 (b), 11 (c) and clause 46 of apartment buyers agreement dated 27th September 2013, the respondents were unable

to deliver physical possession of the said apartment to the complainants within a period of 48 months from the date of submission of application for booking, in that event the complainants would be entitled to give notice to the respondents within 90 days from the expiry of said period of 48 months for termination of the said agreements. In such event also, the respondent had the discretion to sell the said apartment, to realise the sale consideration amount and to thereafter refund the amount paid by the complainants to them without any interest. However, no such action was taken by the complainants.

ii) That in so far as the respondents are concerned, the respondents have duly constructed the project in accordance with the apartment buyers agreement dated 27th September 2013. Several flats in the project are already under occupation. Evidently, the complainants breached their obligations under the apartment buyers agreement dated 27th September 2013 and are resorting to false and specious pretexts to try and justify their defaults. It is pertinent to mention that in the present case the complainants have defaulted in making payment of agreed sale consideration amount in respect of the said apartment. Consequently, they cannot be permitted to take advantage of their own contractual breaches on financial non-compliance. The complainants have chosen to file a false, frivolous and baseless complaint after concealing the real and true facts. The said complaint deserves to be dismissed.

E. Reply by the respondent no. 03

a. That the plaintiff, ICICI Bank Limited is a company incorporated under the Companies Act, 1956 and a banking company within the meaning of

Banking Regulation Act, 1949 having its Registered Office at ICICI Bank Tower, Near Chakli Circle, Old Padra Road, Varodara-390007 and Branch Central Square, DCM Plaza II, Manohar Lal Khurana Marg, Delhi-110006, is filing this reply through its Authorized Representative, Kewal Verma, who has been duly by Power of Attorney.

b. That besides the project's details, the present complaint is a narration of a concocted, misrepresented, and a bundle of baseless distorted facts, wherein there is no role of the answering respondent except to finance the proposed residential unit no. SG 044, Block G, 4th Floor in the residential project 'The Sky Court', The Garden City, Sector-86, Gurugram strictly in terms of a 'housing loan A/c No. LBAGR00001994367' and the facility agreement dated 19.04.2023'. The respondent no. 3 has performed/discharged all its obligations truly in accordance with the above-mentioned 'agreement' in disbursing a 'housing loan' of Rs. 44,19,692/-Since the complainant has miserably defaulted in repayment of the balance EMI for a long period of time in spite of repeated reminders, the answering respondent no. 3 had no other option but to initiate proceedings to recover its debts under the provisions of SARFAESI Act, 2002 after legally declaring the loan account of complainant as non-performing Assets.

c. That the main complaint of the complainant is against the respondent no. 1 and 2 i.e. DLF Limited and New Gurgaon Home Developers Pvt Ltd, who has been the promoter of a real estate project titled as 'The Sky Court' being developed over an area of 12.858 acres in The Garden City Sector 86, Gurugram under the Licence No. 31 of 2010 dated 05.04.2010 and 44 of 2012 dated 09.05.2012 issued by the Director Town and Country Planning Haryana.

d. That the complainant booked a residential unit admeasuring a super area of 2295 sq ft bearing Flat No. SG044 at 4th Floor of Tower G of the said project 'The Sky Court', The Garden City Sector-86, Gurugram. However, the builder-buyer-agreement dated 27/9/13 27th September 2013 was executed between the complainant and respondent no. 1 & 2 at New Delhi, in which the answering respondent was not a party. Since respondent no. 3 was not a party either at the time of booking of the unit or at the time of BBA execution, its name has unnecessarily been included in the present complaint.

e. Thus, it is clear that the answering respondent no. 3 i.e. ICICI Bank was neither a party at the time of 'booking of Flat' at 'The Sky Court' nor at the time of 'BBA Execution' at New Delhi. ICICI Bank appeared much later at the scene when the complainant approached respondent no. 3 for financial assistance in this 'Housing Project' and accordingly a 'Housing Loan Agreement' bearing No. LBAGR00001994367 between the complainant and ICICI Bank was executed at Agra.

f. That clause 2.3 of the facility agreement dated 19.04.2013 reads as "the borrower's shall not hold the lender responsible for any delay in the construction/giving possession of/completion of the property by the developer/promoter/ builder/society to the borrower/s, or for quality, condition or fitness of construction of the property even if the lender my have approved/sanctioned any facilities to such developer/promoter/ builder/development Authority or given to borrower's any information about such promoter/builder/ development Authority".

g. Thus, it is obvious that the answering respondent no. 3 has fulfilled all its obligations strictly in accordance with the agreed terms and conditions

of the aforesaid 'facility agreement' dated 19.04.2013 and initiated proceedings under the SARFAESI Act to protect its rights.

h. That it is pertinent to mention here that the respondent no.1 i.e. the builder DLF Ltd had already cancelled the captioned unit bearing No. SCG044 in its project the Sky Court, Sector-86, DLF Garden City, Gurugram, Haryana on 19.10.2020, and in furtherance of the same Respondent No.1 has also refunded an amount of Rs. 33,21,839/- vide RTGS dated 01-02-2021 in favour of 5 complainant -ICICI A/C LBAGR00001994367 against pending dues of ICICI Bank. However, an amount of Rs. 16,57,408/- remained outstanding as on 02.02.2021, which has swelled to Rs 87,01,532/- as on 25th January 2025 including additional interest and late payment penalties due to non-payment of outstanding amount since 2021.

i. That the answering defendant No. 3 had published the cancellation by the Builder of the captioned property bearing No. SCG-044, Tower G, The Sky Court, Sector 86, Gurgaon vide publication of 'Public Notice' on 23rd October 2020 in the newspaper, The Pioneer.

j. That as per the communication from the respondent no. 1 dated 05.02.2021, the lien of the captioned property had been redeemed on cancellation and refund of Rs. 33,21,839/-on the loan account of the complainants.

k. That as per foreclosure statement an amount of Rs. 87,01,532/- as on 25th January 2025 is outstanding against the complainant and he is liable to pay the same as per the terms and conditions of the loan agreement executed between the complainant and the respondent no.3.

l. That the respondent no. 3 has performed/discharged all its obligations truly in accordance with the above- mentioned 'agreement' in disbursing

a housing loan of Rs 44,19,692/-Since the complainant has miserably defaulted in repayment of the balance EMI for a long period of time in spite of repeated reminders, the answering respondent no. 3 had no other option but to initiate proceedings to recover its debts under the provisions of SARFAESI Act, 2002 after legally declaring the loan account of complainant as non-performing assets.

m. That the complainants have admitted that they have stopped paying EMI for repayment of the financial debt of Respondent No.3 Bank. In fact the complainants have paid only 18 installments amounting to Rs 7,35,620/- and further Respondent No.1 had paid an amount of Rs. 33,21,839/- vide RTGS dated 01-02-2021 in favour of Complainant -ICICI A/C LBAGR00001994367 against pending dues of ICICI Bank, However, an amount of Rs. 16,57,408/- remained outstanding as on 02.02.2021, which has swelled to Rs 87,01,532/- as on 25th January 2025 including additional interest and late payment penalties due to non-payment of outstanding amount since 2022 and the complainant is liable to pay the same as per the terms and conditions of the loan agreement executed between the complainant and the respondent no.3

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 complainants.

F. 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.

F.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.

F.II Subject matter jurisdiction

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

> ***Section 11***
> .....
> *(4) The promoter shall-*
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
> ***Section 34-Functions of the Authority:***
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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.

G. Findings on the relief sought by the complainants.

G.I Refund the paid up amount with interest.

G.II Direct the respondent to pay the interest on the total amount paid by the complainants – at the prescribed rate of interest as per RERA, from due date of possession till the actual realization of the unit.

11. The above-mentioned reliefs sought by the complainant are being taken together, as the findings in one relief will necessarily affect the outcome of the others and the same being interconnected.

12. In the present matter, the complainants were allotted apartment no. SCG-044, 4th floor, Block G, in the project of the respondent titled "The Skycourt", Sector 86, Gurugram. A buyer's agreement in respect of the said unit was executed between the parties on 27.09.2013. The total sale consideration of the unit was Rs.1,50,21,572/- and, as per the statement of account placed on record, the complainants have paid an amount of Rs.59,61,095/- against the same. The respondent issued an offer of possession on 16.03.2018 calling upon the complainants to clear the outstanding dues. Thereafter, reminders were issued to the complainants, including a final notice dated 06.08.2020, and the respondent ultimately cancelled the allotment vide cancellation letter dated 19.10.2020.

13. The complainants have further submitted that they availed a housing loan of Rs.44,19,692/- from ICICI Bank Ltd. for making payment towards the unit and that they stopped paying the EMIs as the respondent had stopped the construction of the unit. The complainants have alleged that the respondent has failed to deliver possession of the unit within the stipulated time and have, therefore, sought refund of the amount paid by them along with interest.

14. Admissibility of refund at prescribed rate of interest: Proviso to Section 18 of the Act provides that where an allottee(s) intends to withdraw from the project, the promoter shall be liable to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf and it has been prescribed under Rule 15 of the Rules, ibid. Rule 15 is reproduced as under:

> **"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19**
> For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:
> Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

15. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

16. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 14.08.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

17. On consideration of the documents available on record and the submissions made by both the parties, the Authority observes that the complainants were obligated to make payments in accordance with the payment plan agreed between the parties vide buyer's agreement dated 27.09.2013. Section 19(6) of the Real Estate (Regulation and Development) Act, 2016 casts an obligation upon the allottee to make necessary payments in the manner and within the time specified in the agreement for sale. The complainants have paid a sum of Rs.59,61,095/- out of the total sale consideration of Rs.1,50,21,572/-, as per the statement of account placed on record. The record shows that the respondent raised demands in accordance with the payment plan and issued repeated reminders for payment of the outstanding dues on various dates between

the years 2014 and 2016 and again between the years 2018 and 2019. The occupation certificate for the project was obtained on 17.07.2017 and vide offer of possession letter dated 16.03.2018, the respondent called upon the complainants to clear the outstanding dues and take possession of the unit. The complainants, however, did not come forward to discharge their obligation. The respondent thereafter issued a reminder dated 27.01.2020 and a final notice dated 06.08.2020, giving the complainants a further opportunity to make payment, but the dues remained unpaid.

18. Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in the manner and within the time specified in the agreement for sale. Considering the repeated demands and reminders, the final notice dated 06.08.2020 and the continued non-payment by the complainants, as well as the terms and conditions of the buyer's agreement dated 27.09.2013 and the payment plan annexed with it, the cancellation of the unit vide letter dated 19.10.2020 is held to be valid. Section 19(6) of the Act is reproduced hereunder: -

> **19(6)**
> Every allottee, who has entered into an agreement or sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

19. However, while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting only the amount of earnest money. **The Hon'ble Apex Court in the cases of Maula Bux v. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs v. Sarah C. Urs, (2015) 4 SCC 136**, has 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 the provisions of section 74 of the Contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder and as such there is hardly any actual damage. The National Consumer Disputes Redressal Commission in CC/435/2019 Ramesh Malhotra v. Emaar MGF Land Limited (decided on 29.06.2020), Mr. Saurav Sanyal v. M/s IREO Private Limited (decided on 12.04.2022) and, following them, in CC/2766/2017 Jayant Singhal and Anr. v. M3M India Limited (decided on 26.07.2022), held that 10% of the basic sale price is a reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the aforesaid 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."

20. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, it is observed that the respondent was liable to refund the deposited amount after deducting 10% of the sale consideration being earnest money, along with interest at the prescribed rate as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, within the timelines provided in Rule 16 of the Rules, 2017. It is

further observed that where a housing finance facility had been availed by the allottee from a financial institution, the respondent/promoter was required to first discharge the outstanding liability of the financial institution and thereafter refund the remaining balance to the allottee from the refundable amount.

21. In pursuance of these precedents and in accordance with Regulation 11(5) of the Haryana Real Estate Regulatory Authority (Forfeiture of Earnest Money by the Builder) Regulations, 2018, the Authority reiterates that the forfeiture amount towards earnest money shall not exceed 10% of the basic sale consideration of the unit. Any clause in the buyer's agreement that provides for forfeiture beyond this prescribed limit shall be void and not binding on the allottee(s).

22. Thus, in the present case, while the respondent-promoter has validly exercised its right to cancel the allotment due to continued non-payment, however it is equally bound to refund the balance amount to the complainant after deduction of only 10% of the basic sale consideration as earnest money.

H. Directions of the authority

23. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

    i. The respondent-promoter is directed to refund the paid-up amount after deducting 10% of the sale consideration as earnest money, along with interest at the rate of 10.80% per annum (SBI MCLR + 2%), as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of filing

of the present complaint i.e., 25.10.2024 till the actual realization of the amount.

ii. A period of 90 days is granted to the respondent to comply with the above directions, failing which statutory consequences under the Act shall ensue.

24. The complaints stand disposed of.

25. Files be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 14.08.2026