

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

Complaint no. :	3298 of 2021
Date of filing complaint:	20.08.2021
First date of hearing:	30.09.2021
Date of decision :	13.07.2022

1. Mrs. Anjali Suri W/o Sh. Abhishek Suri	<b>Complainants</b>
2. Mr. Abhishek Suri S/o Sh. Ashok Suri Both R/o: H. No. BG-7/38, First Floor, Paschim Vihar, SO West Delhi, Delhi-110063	
Versus	
1. M/s M3M India Private Limited (Through its Managing Director and other Directors) R/o: SB/C/5L/008, M3M Urbana, Sector-67, Gurugram Manesar Urban Complex, Gurugram, Haryana	<b>Respondents</b>
2. Martial Buildcon Private Limited (Through its Managing Director and other Directors) R/o: Paras Twin Towers, Tower B, 6th Floor, Golf Course Road, Sector-54, Gurugram-122002	

**CORAM:**

Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>

**APPEARANCE:**

Sh. Gaurav Rawat (Advocate)	Complainants
Ms. Shriya Takkar (Advocate)	Respondents

### ORDER

1. The present complaint has been filed by the complainants/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 provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

#### A. Unit and project related details

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

S.No.	Heads	Information
1.	Project name and location	M3M Urbana Business Park, sector 67, Gurugram, Haryana
2.	Project area	5.025 acres
3.	Nature of the project	Urban complex
4.	DTCP license no. and validity status	117 of 2011 dated 23.12.2011 valid up to 30.10.2022
5.	RERA Registered/ not registered	Registered 347 of 2017 dated 09.11.2017 valid up to 30.11.2021
	RERA Registration valid up to	30.11.2021

	to	
6.	Unit no.	UBP/ST/O/2L/5E [Page 65 of the complaint]
7.	Unit measuring	Super area- 448.4 sq. ft. Carpet area- 222.17 sq. ft. (Page 65 of complaint)
8.	Date of allotment letter	01.06.2018 (Page 45 of the complaint)
9.	Date of execution of builder buyer agreement	24.12.2019 (Page 61 of the complaint)
10.	Possession clause	<p><b>7. Possession of the unit</b></p> <p>7.1 Schedule for possession of the unit- MIPL agrees and understands that timely delivery of possession of the Unit along with the car parking space (s), if any, to the Allottee and the Common Areas to the Association of Allottees or the Competent Authority, as the case may be, as provided under the Act and Rule 2(1)(F) of the Rules, 2017, is the essence of the Agreement.</p> <p>It is further agreed between the Parties that the Allottee shall not raise any objection, or refuse to take possession of the Unit on any pretext whatsoever, if the possession of the same is being offered duly completed with all Specifications, Amenities, Facilities as mentioned in "Schedule E" hereto, any time prior to the Commitment Period.</p> <p>MIPL assures to offer the handover of possession of the Unit along with the parking (if applicable) if any as per the agreed terms and conditions,</p>

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 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 E hereto , prior to the expiry of the Commitment Period . If, the completion of the Project is delayed due any of to the above conditions , then the Allottee agrees that MIPL shall be entitled to the extension of time for delivery of possession of the Unit , provided the above conditions are not of the nature which makes it impossible for this Agreement to be performed .

The Allottee agrees and confirms that , in the event it becomes impossible for MIPL to implement the Project due to Force Majeure and above mentioned conditions , then this allotment shall stand terminated and MIPL shall refund to the Allottee the entire amount received by MIPL from the allotment within 90 ( ninety ) days . MIPL shall intimate the Allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee, the Allottee agrees that he / she / they shall not have any rights, claims etc. against MIPL and that MIPL shall be released and discharged

		<p>from all its obligations and liabilities under this Agreement.</p> <p>Subject to the Applicable Law , if on account of any reasonable and justifiable reason the development of the Project in which the Unit has been booked by the Allottee cannot be proceeded with further , then in such an the event , the Allottee shall be offered with a development of the same strata in any other project of the Promoter or its associates/affiliates or any third party so as to place the Allottee in a same justifiable position as under this Agreement.</p> <p>*Note: Possession clause is given but time period for handing over of possession is not mentioned.</p>
11.	Due date of delivery of possession	Cannot be ascertained
12.	Total sale consideration	Rs. 37,65,657/- [As per payment plan at page no. 103 of the complaint] Rs. 34,51,740/- (As per statement of account as on 06.08.2021 at page 134 of reply)
13.	Total amount paid by the complainants	Rs. 19,61,562/- (As per statement of account as on 06.08.2021 at page 134 of reply)
14.	Payment plan	Time linked payment plan [Page 119 of the reply]
15.	Notice of offer of possession	05.08.2020 (Annexure R7 at page 126 of the reply)
16.	Pre-cancellation notice	08.09.2020 (Annexure R8 at page 131 of reply)
17.	Last and final opportunity	25.09.2020

	notice issued on	(Annexure R9 at page 132 of reply)
18.	Cancellation of provisional allotment	06.08.2021 (Annexure R10 at page 133 of reply)
19.	Occupation Certificate	Not placed on record

**B. Facts of the complaint:**

3. The complainants relying on various representations and assurances given by the respondent and on belief of such assurances, booked a unit in the project by paying an amount of Rs. 5,00,000/- vide cheque no. 075482 dated 15.11.2017 towards the said unit bearing no. UBP/ST/O/2L/5E, 2<sup>nd</sup> Floor, Building no./ Tower-South, in Sector 67, having super area measuring 448.40sq. ft. and carpet area measuring 222.17Sq. ft. for a total sale consideration of Rs. Rs.37,65,657/- to the respondents dated 15.11.2017 and the booking was acknowledged by the respondent.
4. That respondent sent a welcome letter dated 01.06.2018 confirming the booking and an allotment letter dated 04.08.2018 to complainants the said unit and also mentioning the moonshine reputation of the company and the location of project.
5. That as per the payment plan and demand of the respondents, complainants made payment of Rs.13,83,280/- vide cheque no. 075488 dated 23.06.2018 to the respondents and the confirmation of same was provided by the respondent vide payment receipt dated 03.08.2018.

6. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. That an agreement for sale was executed between the parties on 24.12.2019. It is pertinent to mention here that the same was executed by respondents after repeated reminders from the complainants and even after delay of more than one year from the date of booking. The respondents before entering into agreement for sale collected a sum of Rs. 18,83,280/- from the complainants in violation and against the spirit of RERA Act,2016.
7. The complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter as to when would they deliver the project and why construction was going on at such a slow pace. But to no avail. Some or the other reason was being given in terms of shortage of labour etc. etc. That the complainants after many request and emails; received the notice offer of possession on 05.08.2020.
8. That while offering possession by the respondents on payment of charges which the buyer was not contractually bound to pay, cannot be considered to be a valid offer of possession. It would be noticed from the details that those charges were never payable by the complainants as per the agreement, by the complainants. Furthermore, respondents without obtaining the OC sent the aforesaid offer of possession letter which clearly establish malafide intention on their part to cheat the innocent buyers.

9. That the respondents instead of completing the construction of the project, obtaining the OC and without handing over the possession of the unit send demand notice on account of maintenance amounting to Rs. 34,397/- along with aforesaid offer of possession letter.
10. That complainants after receiving the aforesaid offer of possession sent an email dated 30.08.2020 to respondents raising/challenging the aforesaid offer of possession letter on account of adjustments of amount due from them to the complainants, various illegal demand's that was never agreed between the parties, GST issue, requesting them to supply the copy of OC and inspection of the unit as per the agreement.
11. That respondents instead of responding to aforesaid queries of the complainants and resolving the issues, acting arbitrary sent pre-cancellation letter dated 08.09.2020 to them stating that they are at default in making the payments to the respondents and non-compliance of other formalities of offer of possession pertaining to provisionally allotted unit and furthermore, levying interest of Rs. 3,617/-.
12. That respondents sent a last and final opportunity letter dated 25.09.2020, stating that the complainants are at default in making the payments to them and non-compliance of other formalities of offer of possession pertaining to provisionally allotted unit and furthermore, levying interest of Rs. 18,992.00.



13. That complainants sent an email dated 12.09.2020 to respondent's company stating that on 10th September they received the copy of the pre-cancellation letter dated 08.09.2020. Further stating that complainants have been proactively, timely, and with bonafide intent contacting and informing the respondents about their incorrect demand and other factors. To above said act of the respondents, the complainants raised objection that it was their fault and that the complainants received notice of offer of possession on 05.08.2020 and as per the said letter due date of payment was 04.11.2020 but till date respondents have failed to rectify the above said act. Further, complainants also asked the respondents to provide the justification of increase in the total sale consideration of the allotted unit.
14. That complainants sent an email dated 20.04.2021 to the respondents stating that they want to close everything on their own. Further, the respondents used the money of the complainants and not bothered to reply and close the open points despite of 21 reminders from the complainants. Also the very basic document on which the demand notice was raised OC has neither been shared even after repeated requests.
15. That the respondents acting arbitrarily sent cancellation letter dated 06.08.2021 to the complainants stating that their allotted unit now stands cancelled as the complainants has failed to make the payment. It is pertinent to mention here that respondents have cancelled the allotted unit, but it was their default by not

providing the property papers as the agreement and company failed to adhere to the terms and conditions of the allotment.

16. That the complainants sent an email dated 09.08.2021 to respondents mentioning that seems like there are challenges in understanding the emails and verbal discussions and they have been requesting since long for the reply of same. Further, the complainants never requested for the cancellation till now.

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

17. The complainants have sought following relief(s):
- i. Direct the respondents to refund the entire amount of Rs. 18,83,280.00/- paid by the complainants to the respondents.
  - ii. Direct the respondents to pay interest on the entire amount paid by the complainants @ 24%.
  - iii. Direct the respondents to pay delay compensation to recompense for the loss or injury as there has been deficiency in service which has resulted in loss or injury of Rs. 5,00,000/-
  - iv. Direct the respondents to pay compensate for harassment / injury both mental on account of mental agony, hardship and trauma and physical to the tune of Rs. 5,00,000/- holding the respondent guilty of indulging into unfair practices and providing deficient services to the complainants and to kindly award a compensation
  - v. Direct the respondents to pay the litigation fees incurred by the complainants on account of this case of Rs. 1,00,000/-

- vi. Direct the respondents pay for the loss from the date on which the breach took place.

**D. Reply by respondents:**

18. That in due consideration of the complainant's commitment to make timely payments, unit bearing no. UBP/ST/O/2L/5E in M3M Urbana Business Park for a total sale consideration of Rs.37,65,657/- plus taxes and other charges was provisionally allotted to them vide allotment letter dated 01.06.2018.
19. It is submitted that in terms of the booking made by the complainants, the respondents vide letter dated 04.08.2018 sent 36 cheques towards the pre-handover amount payable for the period June 2020 to July 2020, duly fulfilling their contractual obligation.
20. That in furtherance of the allotment, the respondents had sent copy of buyer's agreement to the complainants vide letter dated 14.10.2019 for due execution at their end. The buyer's agreement was executed between the parties on 24.12.2019.
21. That the unit was ready, and the respondents have offered the possession on 05.08.2020 and requested the complainants to remit the outstanding amount towards the remaining basic sale price, service tax, cess, stamp duty charges etc. Thus, the construction of the project was completed much before the prescribed commitment period i.e., 30.11.2021 and there is no delay in offering possession of the unit to the complainants.

22. That the complainants in violation of their agreed obligations failed to remit any amount towards the dues communicated vide the offer of possession. Therefore, the respondents were constrained to issue a pre-cancellation letter dated 08.09.2020, but to no avail.
23. That the complainants even after the issuance of the pre-cancellation letter failed to clear the outstanding dues and take the possession. So, consequent to that, the respondents were forced to issue a last and final opportunity letter dated 25.09.2020, vide which it was requested to the complainants to clear the outstanding dues and take possession.
24. That in spite of various communications and reminders issued to the complainants, they did not come forward to clear their dues and take possession of the unit. Therefore, the respondents were constrained to issue a termination letter dated 06.08.2021 forfeiting the amount as per the agreed terms and cancelling the allotment of the complainants. It is submitted that the complainants have till date made a payment of Rs. 19,61,562/- against the total dues of Rs. 38,66,623/-, as mentioned in the notice of offer of possession, and Rs. 40,27,658.38 in accordance with the statement of accounts dated 06.08.2021.
25. 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:**

26. The plea of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. 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**

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**

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)(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.

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

**F. Findings regarding relief sought by the complainants:**

**F.1 Direct the respondents to refund the entire amount of Rs.18,83,280/- along with interest on entire amount paid by the complainants @24%**

27. On consideration of the documents available on record and submission by both the parties, the authority is of the view that the allottees have failed to abide by the terms of agreement by not making the payments in timely manner as per the payment plan opted by them. The complainants as per the statement of account paid an amount of Rs. 19,61,562/- out of the total amount of Rs. 34,51,740/-. They failed to pay the remaining amount as per the schedule of payment and the complainants did not come forward to clear their dues and take possession. Thus, due to which the respondents were left with no option but to issue pre-cancellation letter dated 08.09.2020 to the complainants to remit the overdue payments and further last and final opportunity to pay the outstanding amount was sent to them on 25.09.2020 and

ultimately it led to issuance of cancellation letter by the respondents on 06.06.2021.

**Now, the question before the authority is whether this cancellation is valid?**

28. As per clause 5 of the agreement, the allottee was liable to pay the instalment as per payment plan opted by the complainants. Clause 5 of the agreement is reproduced under for ready reference:

*Clause 5.1 The parties agree that time shall be of essence for this transaction. The allottee shall pay the amounts due within the due dates as per the payment plan in 'Schedule C- Part III' hereto. MIPL shall abide by the time schedule for completing the project as disclosed at the time of registration of the project with the authority and towards handing over the unit alongwith the car parking space(s) (if any) to the allottee and the common areas to the association of allottees or the competent authority, as the case may be as provided under Rule 2(1) (f) of the Rules.*

29. As per clause 7.5 of BBA dated 24.12.2019 at page 80 of the complaint the company would be entitled to forfeit the earnest money (being the 10% of the total sale consideration ) and interest component on the delayed payment and any fee, brokerage , commission, margin, any rebates availed earlier. The respondents cancelled the unit of the complainants with adequate notices, but they have not paid the outstanding amount despite the respondents giving several opportunities. Thus, the cancellation of unit is valid.

30. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

***"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."*

Keeping in view the aforesaid legal provisions, the respondents are directed to refund the amount after deducting 10% of the sale consideration of the unit as per Regulation 11 of 2018 framed by Haryana Real Estate Regulatory Authority Gurugram within 90 days from the date of this order alongwith interest @ 9.70% p.a. on the refundable amount from the date of cancellation i.e. 06.08.2021 till the date of its payment.

**F.2 Compensation/Legal expenses:**

The complainants are claiming compensation in the present relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of



the Act, the complainants may file a separate complaint before adjudicating officer under section 31 read with section 71 of the Act and rule 29 of the rules.

**G. Directions of the authority:**

31. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act of 2016 to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

- i. The respondents are directed to refund the amount after deducting 10% of the sale consideration of the unit as per Regulation 11 of 2018 framed by Haryana Real Estate Regulatory Authority Gurugram within 90 days from the date of this order.
- ii. The respondents are also directed to pay interest @ 9.70% p.a. on the refundable amount from the date of cancellation i.e. 06.08.2021 till the date of its payment.

32. Complaint stands disposed of.

33. File be consigned to registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 13.07.2022**

  
(Dr. KK Khandelwal)  
Chairman