

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

Complaint no. : 1681 of 2018  
Date of first hearing : 10.04.2019  
Date of decision : 10.04.2019

Mr. Arun Kumar Yadav,  
R/o 7, first floor, G 9, Vatika India Next,  
Sector 82, Gurugram: 122004.

**Complainant**

Versus

M/s M3M India Ltd.  
(Through its Managing Director)  
Office: - Paras Twin Towers, Tower-B, 6<sup>th</sup>  
floor, Golf Course Road,  
Sector-54, Gurugram,  
Haryana-122002.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Arun Kumar Yadav  
Ms. Shriya Takkar and  
Amarjeet Kumar

Complainant in person  
Advocates of the respondent

**ORDER**

1. A complaint dated 03.12.2018 was filed under section 31 of the Real Estate (Regulation And Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation And Development) Rules, 2017 by the complainant Mr. Arun Kumar Yadav against the promoter M/s M3M India Ltd., on account of



violation of clause 16.1 of the apartment buyer's agreement dated 03.04.2013 for the apartment no. MW TW-B04/1004, 10<sup>th</sup> floor, admeasuring 1,534 sq. ft. in the project "M3M Woodshire" located at sector 107, Dwarka expressway, Gurugram, for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the apartment buyer's agreement dated 03.04.2013 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as an application under section 34(f) of the Act *ibid* for non-compliance of statutory obligations on the part of the respondent.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	M3M Woodshire, Dwarka expressway, sector 107, Gurugram.
2.	Nature of real estate project	Group housing colony
3.	Total area of the project	18.88125 acres
4.	DTCP License no.	33 of 2012 dated 12.04.2012
5.	Allotted apartment/unit no.	MW TW- B04/1004
6.	New allotted unit	TW- B02/A/1004



	(Apartment buyers agreement not executed in respect to the new allotted unit)	
7.	Apartment measuring area	1534 sq. ft.
8.	RERA registered/Unregistered	Not registered
9.	Date of execution of apartment buyer's agreement	03.04.2013
10.	Payment plan	Construction linked plan
11.	Total consideration as per payment plan attached as annexure A of the apartment buyer's agreement	Rs. 84,89,362/-
12.	Total amount paid by the complainant till date as per receipts annexed	Rs. 25,49,357/-
13.	Due date of delivery of possession as per clause 16.1. 36 months + 180 days grace period from date of commencement of construction or execution of agreement, whichever is later	03.10.2016 Note- Due date has been calculated from the date of execution of agreement as no document pertaining to the commencement of construction has been filed.
14.	Date of receipt of occupation certificate	20.04.2017
15.	Cancellation/intimation of termination letter	07.01.2017

3. As per the details provided above, which have been checked as per record of the case file, an apartment buyer's agreement dated 03.04.2013 and intimation of termination letter dated 07.01.2017 is available on record for apartment no. TW-B02/A/1004, measuring 1,536 sq. ft. in the project stated above. The respondent has not refunded the balance amount after forfeiting earnest money even after cancellation of unit vide intimation of termination letter dated 07.01.2017.



Therefore, the promoter has not fulfilled his committed liability till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through its counsel appeared on 10.04.2019. The case came up for hearing on 10.04.2019. The reply filed on behalf of the respondent on has been perused.

**FACTS OF THE CASE:**

5. The complainant stated that the respondent induced the complainant to deposit interest charges on which the delay was beyond the complainants control. The respondent charged the interest unethically. In the demand dated 12.11.2013, due date was 02.12.2013 for Rs. 11,09,934/- out of which the complainant had already paid Rs. 4,50,000/- on due date. The interest charges on car parking and service tax was not accepted by the complainant.
6. The complainant stated that he has not been given any receipt for the interest they had charged for Rs. 17,505/-. The complainant had not opted for any PLC, however despite this fact it was mentioned in the apartment buyer's agreement and



the respondent has charged 24% interest which is unethical and illegal.

7. The complainant submitted that the construction linked payment demands are so abusive and unrealistic. Some of the respondent's demands have been made in a gap of 20-25 days for constructing a structure of two floors which is not possible as per building laws. Some demands were made on the very next day of the due date of previous demand.
8. The respondent also demanded more than 50% of amount while the construction was done up to 2<sup>nd</sup> floor till then for a 14 storey building.
9. Since 29.01.2014 the complainant has made tremendous visits, calls and emails to the respondent but they haven't given any solution. Instead of resolving the issue the respondent threatened the complainant to pay the dues or the deposited amount will be forfeited. The complainant submitted that the respondent also imposed compulsory club membership charges. The complainant submitted that it is quite clear that the respondent is involved in unethical practises and is taking an advantage of their dominant position.



10. The complainant submitted that the respondent has harassed and threatened the complainant to forfeit his hard earned money. The respondent has collected money from the investors in June 2012 while they had received license for the said project in December 2012.

**ISSUES RAISED BY THE COMPLAINANT:**

11. The relevant issues raised by the complainant are as follows:
- i. Whether the complainant is entitled to get the refund of entire paid amount along with interest?
  - ii. Whether the amount forfeited by the respondent is just and legal?

**RELIEF SOUGHT:**

The complainant is seeking a refund of the entire amount paid along with prescribed interest.

**REPLY BY RESPONDENT:**

12. The respondent submitted that the complainant has approached this hon'ble authority with unclean hands and have tried to mislead this hon'ble authority by making incorrect and false averments and stating untrue and/or incomplete facts



and, as such, is guilty of suppressio very suggestion falsi. The complainant has suppressed and/or mis-stated the facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law. On this short ground alone, the complaint is liable to be dismissed.

13. The respondent submitted that the complainant has neither any cause of action nor any locus standi to maintain the present complaint against the respondent, especially when the complainant has actually defaulted in making payment and now seeking the complete amendment/ modification/ re-writing of the terms and conditions of the agreement/understanding between the parties. This is evident from the averments as well as the prayers sought in the complaint.

14. The respondent submitted that the complaint filed by the complainant is baseless, vexatious and is not tenable in the eyes of law therefore the complaint deserves to be dismissed at the threshold.

15. The respondent submitted that the OC was applied and received for the said project on 24.07.2017 and as per the



Haryana Real Estate (Regulation and Development) Rules, 2017, the current project is beyond the scope of this hon'ble authority.

16. The respondent further submitted that the hon'ble authority lacks its jurisdiction on the ground that the present complaint pertains to compensation and interest for a grievance under sections 12, 14, 18 & 19 of Real Estate (Regulation and Development) Act, 2016 and are required to be filed before the adjudicating officer under rule 29 of Haryana Real Estate (Regulation and Development) Rules, 2017 read with sections 31 and 71 of the said act and as such the complaint is liable to be rejected on this ground alone.
17. The respondent further submitted that vide letters dated 18.11.2013 and 21.11.2013 the complainant requested the respondent for the allotment of an alternate unit/non PLC unit. The complainant vide letter dated 21.11.2013 had alleged that the complainant had not opted for the PLC unit and thus requested to change the same to non PLC unit. It is pertinent to mention here that the said request was made subsequent to the signing of the agreement which clearly and categorically in the



payment plan specifies the PLC charges. Thus, it was wrong on the part of the complainant to state that the complainant has not opted for PLC unit. However, the respondent as a special gesture agreed to change the allotment of the complainant and an agreement for substitution of units was executed between the complainant and respondent on 16.12.2013.

18. The respondent submitted that in terms of the substitution agreement the complainant was under the obligation to make all the payments with respect to the substituted unit which he failed to do and in terms of clause 5 of the substitution agreement the complainant was under the obligation to indemnify the respondent due to any act or omission on the part of the allottee with respect to existing/substitute unit. In the present case despite accepting the request to substitute the unit to a non PLC the complainant failed to make the payments as demanded by the respondent.

19. Thereafter the complainant was allotted unit no. MW TW-B02/1004 measuring 1534 sq. ft. vide allotment letter dated 25.04.2014. The complainant opted for the construction linked payment plan. It is submitted that the cost of the property for



an area measuring 1534 sq.ft was Rs.81,82,562/- plus taxes and other charges.

20. It is pertinent to mention here that the complainant has raised a loan of approx. Rs.28 lacs through Axis Bank by mortgaging the property in dispute. The apartment buyer's agreement for unit no. MW TW-B02/1004 was sent to the complainant vide letter dated 17.09.2014 for execution at his end. The complainant despite repeated follow-ups failed to execute the apartment buyer's agreement for unit no. MW TW-B02/1004. The respondent also submitted that it sent reminder letters dated 10.04.2015 and 06.05.2015 for execution of the apartment buyer's agreement at his end. However, despite repeated follow ups the complainant failed to execute the apartment buyer's agreement for unit no. MW TW-B02/1004.
21. The respondent submitted that the complainant as on date of cancellation had made a payment of Rs 25,49,357 approx. to the respondent against the total dues of Rs. 83,32,106 /- which includes the interest on delayed payments.
22. The respondent further submitted that all the demands raised vide reminder letters dated 03.08.2014, 08.12.2014,



28.01.2015 24.02.2015, 10.03.2015, 21.04.2015, 15.06.2015, 08.07.2015 were as per the payment plan opted by the complainant. However, the complainant failed to make timely payments and was a chronic defaulter.

23. Since the complainant failed to make payments even after receiving various payment reminders and on account of non-execution of the agreement, the respondent issued termination/cancellation letter dated 07.01.2017 to the complainant, cancelling the allotment of the complainant.

**DETERMINATION OF ISSUES:**

After considering the facts and submissions made by both the parties and perusal of records the issue wise determination given by the authority are as follows:

24. With respect to the issues raised by the complainant, as per clause 8 of the agreement, time was the essence to pay all the instalments/demands raised by the respondent but the complainant failed to pay the same in spite of sending of various reminder letters dated 03.08.2014, 08.12.2014, 28.01.2015 24.02.2015, 10.03.2015, 21.04.2015, 15.06.2015, 08.07.2015 which were as per the payment plan opted by the



complainant. Thus, the complainant did not adhere to the terms of the apartment buyer's agreement and as a result of which the respondent issued intimation of termination letter dated 07.01.2017. Further the respondent charged approx. 31% as the earnest money from the complainant which is contrary to the judgment titled as "DLF Ltd. v. Bhagwati Narula" revision petition no. 3860 of 2014 in which forfeiting of more than 10% of earnest money is invalid.

It is a well settled principle that any clause in derogation to the said law shall not be valid in law. Thus, it has to be noted that the respondent cannot forfeit more than 10% of the earnest money. Keeping in view ~~dismal state of project and~~ the inclination of the complainant to wriggle out from the project by forgoing 10% of the basic sale price of the unit, the authority is of the considered view that the complainant is well within his right to get refund of the deposited amount by forgoing 10% of the basic sale price.

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order  
dated  
05/07/19.

**FINDINGS OF THE AUTHORITY:**

25. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as



held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. 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.

26. As the respondent has forfeited more than 10% of the earnest money so the respondent is directed to refund the balance amount to the complainant as per the case titled as "*DLF Ltd. v. Bhagwati Narula*" revision petition no. 3860 of 2014 in which the National Consumer Dispute Redressal Commission, New Delhi that agreement for forfeiting more than 10% of sale price would be invalid.

27. As per clause 16.1 of the builder buyer agreement dated 03.04.2013 for unit no. TW-B04/1004, in project "M3M



Woodshire" in Sector 107, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of commencement of construction or execution of builder buyer agreement whichever is later plus grace period of 6 months. Thus, the due date comes out to be 03.10.2016. However, the respondent has not delivered the unit in time. The complainant has already paid Rs. 25,49,357/- to the respondent against a total sale consideration of Rs. 84,89,362/-

28. Keeping in view ~~dismal state of project and~~ the inclination of the complainant to wriggle out from the project by forgoing 10% of the basic sale price of the unit, the authority is of the considered view that the complainant is well within his right to get refund of the deposited amount by forgoing 10% of the basic sale price.

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Vide  
order  
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05/07/19.*


**DECISION AND DIRECTIONS OF THE AUTHORITY:**

29. Keeping in view all the facts on record, the authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues following direction in the interest of justice:



- i. The respondent is directed to refund the deposited amount after deducting 10% of the basic sale price without interest within a period of 90 days from the date of issuance of this order.
27. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent. A copy of this order be endorsed to registration branch for further action in the matter
28. Order is pronounced.
29. Case file be consigned to the registry.

  
**Samir Kumar**  
Member

  
**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 10.04.2019

**Corrected Judgement uploaded on 08.07.2019**

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**RELIEF SOUGHT:**

The complainant is seeking a refund of the entire amount paid along with prescribed interest.

**REPLY BY RESPONDENT:**

12. The respondent submitted that the complainant has approached this hon'ble authority with unclean hands and have tried to mislead this hon'ble authority by making incorrect and false averments and stating untrue and/or incomplete facts

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Haryana Real Estate (Regulation and Development) Rules, 2017, the current project is beyond the scope of this hon'ble authority.

16. The respondent further submitted that the hon'ble authority lacks its jurisdiction on the ground that the present complaint pertains to compensation and interest for a grievance under sections 12, 14, 18 & 19 of Real Estate (Regulation and Development) Act, 2016 and are required to be filed before the adjudicating officer under rule 29 of Haryana Real Estate (Regulation and Development) Rules, 2017 read with sections 31 and 71 of the said act and as such the complaint is liable to be rejected on this ground alone.
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18. The respondent submitted that in terms of the substitution agreement the complainant was under the obligation to make all the payments with respect to the substituted unit which he failed to do and in terms of clause 5 of the substitution agreement the complainant was under the obligation to indemnify the respondent due to any act or omission on the part of the allottee with respect to existing/substitute unit. In the present case despite accepting the request to substitute the unit to a non PLC the complainant failed to make the payments as demanded by the respondent.

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an area measuring 1534 sq.ft was Rs.81,82,562/- plus taxes and other charges.

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**DETERMINATION OF ISSUES:**

After considering the facts and submissions made by both the parties and perusal of records the issue wise determination given by the authority are as follows:

24. With respect to the issues raised by the complainant, as per clause 8 of the agreement, time was the essence to pay all the instalments/demands raised by the respondent but the complainant failed to pay the same in spite of sending of various reminder letters dated 03.08.2014, 08.12.2014, 28.01.2015 24.02.2015, 10.03.2015, 21.04.2015, 15.06.2015, 08.07.2015 which were as per the payment plan opted by the



complainant. Thus, the complainant did not adhere to the terms of the apartment buyer's agreement and as a result of which the respondent issued intimation of termination letter dated 07.01.2017. Further the respondent charged approx. 31% as the earnest money from the complainant which is contrary to the judgment titled as "*DLF Ltd. v. Bhagwati Narula*" revision petition no. 3860 of 2014 in which forfeiting of more than 10% of earnest money is invalid.

It is a well settled principle that any clause in derogation to the said law shall not be valid in law. Thus, it has to be noted that the respondent cannot forfeit more than 10% of the earnest money. Keeping in view dismal state of project and the inclination of the complainant to wriggle out from the project by forgoing 10% of the basic sale price of the unit, the authority is of the considered view that the complainant is well within his right to get refund of the deposited amount by forgoing 10% of the basic sale price.

#### **FINDINGS OF THE AUTHORITY:**

25. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as

held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. 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.

26. As the respondent has forfeited more than 10% of the earnest money so the respondent is directed to refund the balance amount to the complainant as per the case titled as "***DLF Ltd. v. Bhagwati Narula***" revision petition no. 3860 of 2014 in which the National Consumer Dispute Redressal Commission, New Delhi that agreement for forfeiting more than 10% of sale price would be invalid.

27. As per clause 16.1 of the builder buyer agreement dated 03.04.2013 for unit no. TW-B04/1004, in project "M3M

Woodshire” in Sector 107, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of commencement of construction or execution of builder buyer agreement whichever is later plus grace period of 6 months. Thus, the due date comes out to be 03.10.2016.

However, the respondent has not delivered the unit in time. The complainant has already paid Rs. 25,49,357/- to the respondent against a total sale consideration of Rs. 84,89,362/-

28. Keeping in view dismal state of project and the inclination of the complainant to wriggle out from the project by forgoing 10% of the basic sale price of the unit, the authority is of the considered view that the complainant is well within his right to get refund of the deposited amount by forgoing 10% of the basic sale price.

**DECISION AND DIRECTIONS OF THE AUTHORITY:**

29. Keeping in view all the facts on record, the authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues following direction in the interest of justice:



- i. The respondent is directed to refund the deposited amount after deducting 10% of the basic sale price without interest within a period of 90 days from the date of issuance of this order.
27. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent. A copy of this order be endorsed to registration branch for further action in the matter
28. Order is pronounced.
29. Case file be consigned to the registry.

**Samir Kumar**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 10.04.2019

Judgement uploaded on 18.04.2019