

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

Complaint no. :	439 of 2020
Date of filing complaint:	23.01.2020
First date of hearing:	24.02.2020
Date of decision :	14.09.2022

1. Jimmy Eappen 2. Mrs. Tincy Kuriankkose Both R/O: J-113, First Floor, Mayfield Garden, Sector -51 , Gurugram	Complainants
Versus	
Hans Propcon Pvt. Ltd Regd. office: Paras twin towers, tower b, 6th floor, Golf course road, Sector-54, Gurugram-122002	Respondent

CORAM:	
Shri KK Khandelwal	Chairman
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
None	Complainants
Ms. Shriya Takkar (Advocate)	Respondent

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 29 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.n	Particulars	Details
1.	Name of the project	M3M The Marina situated at Sector-68, Gurgaon, Haryana
2.	Nature of project	Group Housing colony
3.	DTCP License no. & validity status	93 of 2014 dated 13.08.2014 valid up to 12.08.2024
4.	Name of licensee	Glory Infracon Pvt. Ltd. and 3 others
5.	RERA registered / not registered	Registered vide no. 57(a) of 2017 dated 17.08.2017
6.	Rera Registration valid upto	30.11.2022
7.	Unit no.	MS-S5 -0802, 8 th Floor, Tower -S8
8.	Unit Area	1487 sq. ft.
9.	Date of allotment	20.06.2018 (Page 63 of the compliant)
10.	Date of builder buyer agreement	01.10.2018 (Page 77 of complaint)



11.	Date of execution of tripartite agreement	21.09.2018 (Page 92-98 of the reply)
12.	Possession clause	12.Committed Period Shall mean 30.11.2022 as notified by the promoter to the authority at the time of registration of the project under the Act for completion of the project as may be further revised / approved by the authorities.
11.	Due date of possession	30.11.2022
12.	Total sale consideration	Rs. 1, 26,64,542.13 (As per payment plan page 118 of the complaint)
13.	Amount paid by the complainants	Rs. 6,36,000/- (As per promoter information page 2)
14.	Offer of possession	Not Offered
15.	Pre cancellation notice	21.11.2018 (Page 149 and 150 of the reply)
16.	Last and final opportunity	15.02.2019 (Page 151 of the of reply)
17.	Intimation of termination	23.04.2019 (Page 152 of reply)

B. Facts of the complaint:



3. That on 25.01.2018 the complainants booked a flat bearing no. MS-S5/0802 in the project known as M3M Sierra situated in Sector 68 , Gurugram by paying 5% towards the booking amount as Rs. 6,36,000.00.
4. That the payment plan was a subvention plan where the complainants were required to pay only 5% at the time of booking, as projected by the marketing team of the respondent company and the remaining amount of 75% was to be paid after giving them a loan approval for the 75% and the remaining 20% is to be paid by them at the time of possession. It was informed to the complainants at the time of booking that the total cost of the flat would be less than one Crore. However, later on, it came to notice of the complainants that the total cost of the unit was Rs. 1.25 crore which was beyond their budget.
5. That it was further projected to the complainants by the marketing team of the respondent that they would get 18% assured return on their booking amount, till the time of possession of the property and Rs. 25,000 per month for three years after possession.
6. That the complainants got approved a loan on 17.02.2018 through India Bulls for making the payment of 75% and for the said purpose, India Bulls required the agreement of sale and only after the execution of the said agreement of sale, the loan amount could have been disbursed in the account of the respondent.
7. That in this regard, the complainants had requested the officials of the respondent several times after visiting its office , on mobile phones, through e-mails as well as through whatsapp messages to execute the agreement for sale, so that after submitting the said document before the



India Bulls, the amount of sanctioned loan could be disbursed in its account but with no positive results..

8. That it is worthwhile to mention here that even the provisional allotment letter & tax invoice were issued to the complainants on 20.06.2018, after a gap of about two months from the receipt of initial booking amount of Rs 6,36,000.00 on 25.02.2018. It was noticed only from the tax invoice, that the total sale-consideration was infact Rs.1,26,64,542.13 @ Rs.15,196.78 per square feet of the allotted unit .

9. That a buyer's agreement was executed between the parties on 01.10.2018. However, in the meantime, the loan approved by the India Bulls dated 17.02.2018 lapsed and it refused to release the funds, without issuance of the buyer's agreement. But the officials of the respondent had not done anything due to the reasons best known to them to execute the agreement for sale in favour of the complainants and had lingered on the matter on one pretext or the other, as their intention was remained to purchase the unit. But the same could not be done, due to such conduct of the officials of the respondent.

10. The respondent has been putting undue pressure upon the complainants to make the payment by sending the demand notices, issued on 30.07.2018, 04.09.2018, 07.09.2018 . But these could not be even issued before the execution of the agreement of sale which was executed on 01.10.2018, as per the payment plan part-III. which states that 10% of TCV would be paid within 60 days of booking, but the same was subject to signing & registration of buyer's agreement & the complainants was not liable to make any payment till the execution of the buyer's agreement and the demands were raised against the terms & conditions of that document.



11. That further the complainants were not able to make the payment due to the reason that the loan was not disbursed, on account of the failure to execute the buyer's agreement by the respondent, despite receipt of the booking amount on 20.02.2018 and despite the numerous requests made by them in this regard and the said agreement for sale was to be executed within 60 days from the date of booking. However, it was executed after 8 months, which shows the total unprofessional conduct of the officials of the respondent as well as their intent to forfeit the money of the complainants by adopting such type of practices.

12. That thereafter, when the complainants sanctioned/ approved loan elapsed due to the above act & conduct of the respondent as well as on account of non- execution of the buyer's agreement in their favour within time, the complainants had lost their interest to purchase the above-said unit and secondly, on account of not disclosing the exact sale price to the complainants, they were left with no other option except to make request for the refund of the booking amount, but was met with no response . Again the complainants were harassed mentally and physically and ultimately, vide letter dated 23.04.2019, they have been intimated about the forfeiture of their booking amount for the non-payment of the remaining amount in totally illegal, unlawful and arbitrary manner, for which the respondent has no right to do so.

13. That during the complainant's final meeting with Mr Ashish and Vaibhav Kapoor along with channel partner Mr Merwah, both of them assured them that they would try to solve the issue and refund the booking amount within a week. In this regard, the complainants possess the communications made between the officials of the respondent through whatsapp messages as well as through e-mails, but despite all this, the booking amount has been forfeited.



14. That thereafter through legal notice, it was requested to the respondent- along with its other directors to refund the above-said booking amount of Rs.6,36,600/- which has been illegally, unlawfully and arbitrarily forfeited by it along with interest @ 24% per annum from the date of payment till realization. Further the complainants made a request for the compensation to the tune of Rs.5 Lacs for the harassment, humiliation (mentally & physically) suffered by them for the unprofessional and deficient services of the respondent.

C. Relief sought by the complainants:

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

- i. Direct the respondent to refund the booking amount of Rs. 6,36,000/-
- ii. Direct the respondent to pay compensation of Rs. 5,00,000/- for harassment, humiliation suffered by the complainants.
- iii. Direct the respondent to pay Rs. 1,50,000/- as cost of litigation

D. Reply by respondent:

The respondent by way of written reply made following submissions

16. That booking form was received for booking of a unit having super area of 1478 sq. ft. in the project 'M3M Sierra 68', a group housing colony at Sector 68 , Gurugram . In due consideration, the complainants were allotted a unit bearing No. MS S5/0802 in the Project 'vide an allotment letter dated 20.06.2018.

17. It is submitted that the complainants being the allottees, on their own will and after due understanding of the legal import and effect had opted for a specific payment plan where under they agreed to a part of the sale consideration for the said unit funded through a loan facility



from the amongst the various loan facility proposals, as floated by the banks / financial institution / NBFCs as per their own specifications, eligibility and requirements. That as per Clause 2.6 of the buyer's agreement , it was the obligation of the complainants to make further payment for the consideration towards the unit as per the demands raised from time to time.

18. It was the obligation of the complainants to make further payment for the consideration towards the said unit as per the demands raised from time to time. It is submitted that for the complainants to avail any loan facility for the said unit, the critical and essential pre-requisite was their eligibility which was solely dependent on their credentials, and it was for the complainants' themselves to satisfy and meet the eligibility criteria and factors for the due sanction and disbursement of the loan facility. It is submitted that some of the other allottees in the same project of the respondent also availed lending facilities from various banks / financial institution / NBFCs as per their own specifications, eligibility and requirements and having done so, the disbursements so request by the said allottees have from time to time been remitted to the order of the said allottees to the respondent against their respective allotment of the residential apartments in the said project.

19. It is submitted that in furtherance of the allotment, the respondent had sent the buyer's agreement for sale to the complainants for due execution at their end along with covering letter on 07.08.2018. It is relevant to mention that the complainants did not execute the buyer's agreement even after repeated follow ups for reasons best known to them.



20. It is stated that the complainants were granted a loan from Indiabulls Housing Finance Limited for an amount of Rs. 94,70,000 vide a loan sanction letter dated 14.09.2018. That in view of the loan which had been sanctioned to the complainants, the respondent had issued a permission to mortgage in favour of Indiabulls Housing Finance Limited with respect to the apartment. Thereafter, a tripartite agreement dated 21.09.2018 was executed between the complainants, the respondent company and Indiabulls Housing Finance Limited. The sanction letter clearly mentions that the buyer's agreement would be signed and executed within 90 days from the date of the sanction letter.

21. The buyer's agreement was executed between the parties on 01.10.2018 which was well within the time period as prescribed in the sanction letter dated 14.09.2018. It is submitted that vide the said buyer's agreement, the complainants had agreed to abide by all the terms and conditions mentioned therein and perform their obligation.

22. That the respondent raised the demands as per the payment plan opted by the complainants. It is submitted that they did not make the due payments.

23. That no disbursement of the loan sanctioned in favour of the complainants was received by the respondent. It is submitted that the eligibility of the complainants to avail any loan facility was to depend on their financial credentials and not on the respondent herein who had already got the project duly registered with the Hon'ble Authority. It is submitted that the complainants had also received a loan sanction letter dated 22.06.2019 from Piramal Capital & Housing Finance Limited (PCHFL), however, no disbursement has been received by the

respondent and the complainants did not come forward to clear their dues.

24. That the respondent raised the demands as per the payment plan opted by the complainants. The respondent sent a reminder letter dated 05.10.2018, and also a pre-cancellation notice dated 21.11.2018 but the complainants failed to act further. The complainants still chose not to come forward and therefore the respondent issued a last and final opportunity letter dated 15.02.2019. Thereafter, the respondent was constrained to issue an intimation of termination dated 23.04.2019.

25. That further clause 10.3 of the buyer's agreement clearly states that on default of the complainants in making timely payments, the respondent would cancel the allotment and forfeit the booking amount paid by the allottee.

26. That the complainants are defaulters in making payment on time contrary to the agreed terms. It is submitted that various reminders were issued to and follow ups were made with them for complying with their obligations under the buyer's agreement to make further payments. Even after repeated demands, the complainants were not ready to come forward and comply with their obligations make payments. Hence, complainants are not entitled to get any reliefs from the authority.

27. 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 submissions made by the parties.

E. Jurisdiction of the authority:



28. The plea of the respondent 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

29. 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

30. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

31. 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 on relief sought by the complainants:

F.I Direct the respondent to refund the booking amount of Rs. 6,36,000/-.

32. Vide allotment letter dated 20.06.2018, a unit bearing no. MS-S5 - 0802 -0202, on 8th floor in tower S8 admeasuring 1478 sq. ft. was allotted to the complainants for a total consideration of Rs. 1,26,64,542.13/-. They paid an amount of Rs. 6,36,000/- constituting 5.02% of total consideration.

33. On the other hand, it is submitted that the respondent-builder obtained the occupation certificate for concerned unit on 14.09.2020 and after that cancelled the allotted unit of the complainants vide cancellation dated 23.04.2019 after issuance of pre-termination letter dated 21.11.2018. The respondent issued various demand letters dated 05.10.2018, and the same is evident from page no. 149 of reply. The complainants filed the complaint for refund on the ground of non-execution of the buyer's agreement in their favour within time and losing interest to purchase the above-said unit and secondly, on account of not disclosing the exact sale price to them.

34. The authority is of considered view that sufficient opportunities have been granted by the respondent to the complainants to make payments against the allotted unit . Moreover, the said unit was cancelled on 23.04.2019 as per terms and conditions of allotment dated 20.06.2018 Therefore, the said cancellation is held to be valid.



35. As per clause (xxii) of application form entered into between the parties on 02.01.2019, promoter was required to refund the amount after deduction of 10% earnest money. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, provides 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"

36. In view of aforesaid circumstances, the respondent is directed to refund the amount paid by the complainants after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 within 90 days from the date of this order along with an interest @ 10% p.a. on the refundable amount, from the date of cancellation till the date of realization of payment as the cancellation of the allotted unit was made on 23.04.2019. However, the complainants have paid only an amount of Rs. 6,36,000/- against the total consideration of Rs. 1,26,64,542.13/- constituting 5.02% of total consideration, which is less than 10% of total consideration. Hence, no directions for refund of the paid up amount to the respondent can be issued.

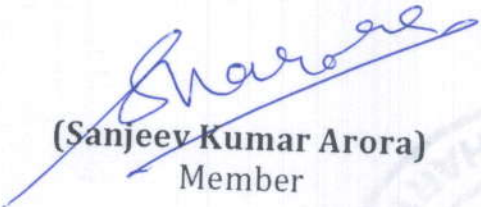
G. Directions of the authority




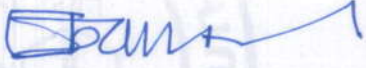
i) In view of findings of the authority contained in para 31, 32 and 33 of the order, no case for refund of the paid up amount is made out. So no directions in this regard can be issued to the respondent-builder.

37. Complaint stands disposed of.

38. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2022