

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

**Complaint no. :** 1732 of 2022  
**Complaint filed on:** 25.04.2022  
**Date of decision :** 25.04.2023

Mrs. Asha Singh  
R/o: - House No. 553, Sector- 15, Sonapat, Haryana

**Complainant**

Versus

1. Roshni Builders Private Limited.  
**Regd. office:** - LGF, F-22, Shushant Shopping Arcade  
Sushant Lok Phase- I, Gurugram- 122002, Haryana
2. Highrise Propbuild Private Limited
3. M3M India Private Limited

**Both having Regd. Office at:** - Unit no.  
SB/C/5L/Office/008, M3M Urban, Sector- 67,  
Gurugram

**Respondents**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Sanjeev Kumar Arora

Member  
Member

**APPEARANCE:**

Sh. Rahul Bhardwaj (Advocate)  
Ms. Shriya Takkar (Advocate)

Complainant  
Respondents

**ORDER**

1. This complaint has been filed by the complainant/allottee 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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S. N.	Particulars	Details
1.	Name of the project	"M3M Broadway, Sector- 71, Gurugram.
2.	Project area	7.84875 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	71 of 2018 dated 25.02.2018 valid till 24.10.2023
5.	Name of licensee	Roshni Builders Pvt. Ltd., Highrise Propbuild Pvt. Ltd
6.	RERA Registered/ not registered	Registered vide no. 31 of 2018 dated 14.12.2018 valid upto 31.10.2023
7.	Unit no.	R5-LGK-25A, lower ground floor, block-5  (Page no. 44 of the complaint)
8.	Area admeasuring	170.97 sq. ft.

		(Carpet area mentioned in the buyer's agreement at page no. 44 of the complaint)
9.	Allotment letter	01.08.2021 16.09.2004 (Page no. 28 of the complaint)
10.	Date of execution of agreement for sale	12.10.2021 (Page no. 36 of the complaint)
11.	Possession clause	<b>7. POSSESSION OF THE UNIT</b> <b>7.1 Schedule for possession of the said Unit:</b> - <i>The Developer 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 Allottee or the competent Authority, as the case may be, as provided under the Act and Rules 2(1)(f) of the Rules, 2017, is the essence of the Agreement.</i>
12.	Assured return clause	4. You, the Allottee have been well informed and apprised by the Company and you acknowledge that the Project is currently in its development stage. In terms of the Payment Plan the Company has received an Priva Company shall pay to you the Allottee, a monthly amount which shall be based on the calculation set out amount of 13,95,805/- (Rupees Thirteen Lakh Ninety-Five Thousand Eight Hundred Five Only) including



		<p>applicable taxes, ("Contribution") till date of execution of this Letter, applicable to the Unit towards the part consideration for the Unit. As part of the sales arrangement and understanding and as per the Payment Plan opted by you, you are eligible for a pre-handover on the Contribution wherein, the in Schedule 1 ("Amount I"). You, <b><i>the Allottee, hereby understands, agrees, and acknowledges that the Company shall pay pre-handover Amount @ 145.79/- per sq. ft. per month on super area to be given on completion of 12,46,254/- plus GST to till the Date of filing of application for grant of occupancy certificate of the Unit</i></b> (Commitment Period- I). The agreed amount will be paid to you, the Allottee, Subject to tax deduction of applicable taxes....."</p>
13.	Assured return received	September 2021
14.	Due date of possession	31.10.2023 [as per mentioned in the RERA registration]
15.	Total sale consideration	Rs.32,11,228/- (As per statement of account at page no. 69 of the complaint)
16.	Amount paid by the complainant	Rs.13,95,805/- (As per statement of account at page no. 69 of the complaint) Rs.26,42,060/-

		(As alleged by the complainant at page no. 22 of the complaint)
17.	Date of filing of grant of application of OC	31.08.2021 (Page no. 67 of the reply)
18.	Occupation certificate /Completion certificate	13.12.2021 (Page no. 137 of the reply)
19.	Offer of possession	16.12.2021 (Page no. 139 of the reply)
20.	Pre cancellation notice	31.01.2022 (Page no. 145 of the reply)
21.	Cancellation letter	21.02.2022 (Page no. 146 of the reply)

### **B. Facts of the complaint**

3. The complainant has made the following submissions: -

1. That the developer i.e., RBPL along with the promoter i.e., HPPL started a commercial project namely, "M3M Broadway" on the land situated at the revenue estate of village Fazilpur Jharsa, sector-71, Gurugram Manesar urban complex, Tehsil and District Gurugram, jointly owned by them both. The DGTCP has granted licence no. 71 of 2018 dated 25.10.2018 under appropriate acts and laws for setting up the said project. The registration of the said project has been granted in the name of promoter i.e., RBPL and HPPL vide

registration number RC/REP/HARERA/GGM/2018/31 of 2018 dated 14.12.2018.

- II. That the HPPL granted irrevocable development rights to the RBPL with respect to the part of the land owned by it. Further, the RBPL has been vested with complete authority all the appropriate and requisite rights and powers by HPPL for undertaking and carrying out the exclusive construction and development rights over its land under the development rights agreement dated 18.05.2018 executed between the RBPL and HPPL. The RBPL was also authorised to undertake the marketing, sale, and administration of the units in the project including the conveyance of the said units and accordingly, was entitled to invite and accept applications and make allotments in its name.
- III. That the respondents through their authorised representatives along with one Mr. Prince Dogra approached the complainant on 29.07.2021 in order to dupe her fraudulently of her hard-earned money in the name of development by the respondent no. 1 by making several false promises under the pretence of providing assured returns on monthly basis.
- IV. That the respondents launched the real estate project known as "M3M Broadway" in Sector 71, Gurugram. The promoter/developer advertised the aforesaid real-estate project as a one-of-kind commercial project with impeccable facilities. Induced by the



attractive advertisements, assurances, representations and promises made by respondents and thus, believing the same to be true the complainant vide an application form dated 01.08.2021 applied to book a unit in the project.

- V. That vide an allotment letter dated 01.08.2021, the promoter /developer allotted a unit to the complainant. However, respondent no. 1 informed the complainant that due to some mishandling of paperwork by the respondent no. 1 they mistakenly had assigned the unit allotted to the complainant to another allottee and they would allot a new unit to the complainant with 10 sq. ft. more area in the unit. However, the first shop allotted to the complainant was near to the water fountain which was especially chosen by her, and the respondents assured the complainant that she will be allotted the same unit. However, due to incompetency and mishandling on part of the respondents the complainant lost her unit. Thereafter the respondent/promoter allotted a unit bearing No. R5 LG K 25A, lower ground floor, block no. 5, in "M3M Broadway" having carpet area of 84.35 sq. ft. and a corresponding super area of 170.97 sq. ft. to her. The super area of the unit cannot be twice in size of the carpet area.
- VI. That on 16.09.2021 the respondent/promoter had served the complainant with a notice. As per the clause 4 of the aforesaid notice, the RBPL promised the complainant that it will pay the complainant a pre-handover amount (i.e., Assured Return) at a rate of Rs. 145.79/-

per sq. ft. per month (Rs.24,926/-) till the date of filing of the application for grant of Occupancy Certificate of the unit which shall be known as "Amount I". The RBPL had assured the complainant that respondent No. 1 will apply for the occupancy certificate of her unit after a period of 24 months and further assured her that she will receive her return for that entire period.

- VII. That relying upon respondent/promoter representations and being assured that promoter/developer would abide by its commitments, the complainant paid each and every instalment raised by the respondents against the unit allotted to her along with several other charges. The respondents requested to her to pay her initial instalments at once before 31.07.2021 to receive complete amount of assured return for the month of August.
- VIII. That as per assured by the respondents, the complainant was to receive her first payment of the assured return for the month of August in the first week of September 2021, however, she did not receive a single penny from respondent no. 1 even after 3 weeks. Feeling aggrieved by the inactions of promoter the complainant contacted the authorised representatives of promoter who did not respond to the grievance of the complainant properly and after dilly-dallying the matter they only provided evasive answers.
- IX. That she received her first assured return payment on 24.09.2021 and to her utter shock and dismay she found out that out of the entire



amount of Rs.24,926/- she has only received an amount of Rs. 18,000/- despite paying the entire amount as demanded by promoter within the prescribed time period. Being helpless, the complainant raised an inquiry about the amount received by her. Promoter informed her that due to the fact that they had allotted the unit which was originally allotted to the complainant to another allottee, they had to redo the entire process of paperwork again and, due to their own fault, they delayed the process, which ultimately resulted in a loss to her. She received the entire amount of assured return for the month of September on 01.10.2021. Nevertheless, it is well-established that due to the incompetency of it she has suffered a lot. It is further clear from the actions of promoter that they fraudulently duped the complainant by taking away her hard-earned money and making her false promises which they never intended to fulfil.

- X. That being, aggrieved by the actions and delayed payments of the promoter she again contacted respondent no. 1 for clarification on the delayed payment of her monthly assured return. The promoter persuaded and convinced the complainant to execute an agreement to sell between the parties and further assured her that after the execution of the agreement the complainant shall not face a single problem that she was facing at that time. That believing all the false promises made by promoter and feeling helpless she agreed to enter into an agreement to sell dated 12.10.2021 with promoter

/developer. The promoter was well aware of the fact that she would face the problem of not receiving her assured return on time and further will not receive the complete amount. However, respondent no. 1 did not offer to execute the agreement before, rather respondent no. 1 chose to harass the complainant by different means. Furthermore, as per the clause 7.6 of the agreement, the respondent was to handover the possession from the date of receipt of occupancy certificate; however, no timeline was added as to when the respondent will be applying for the OC, but it was assured to the complainant that the application for the grant of OC will be submitted after 24 months. The conduct of promoter clearly establishes mala fide intentions and unfair trade practices opted by promoter /developer.

- XI. That in November 2021, when the complainant did not receive the monthly assured return for the month of October, she contacted promoter regarding the same. However, to her utter shock, she was informed by the promoter that it has already applied for the occupancy certificate for the project and her unit and soon they will offer the possession of her unit vide a notice of possession as a result which she is automatically not entitled to receive the assured return as per the clause 4 as they have received the occupancy certificate for her unit and they have offered the possession to the complainant. Furthermore, promoter informed the complainant that she will



receive the assured return as per clause 5 of the allotment letter at a rate of Rs.165/- per sq. ft. from the date of notice of offer of possession till the date of execution/signing of first lease/licence agreement or completion of 3 years from the date of notice of offer whichever is earlier subject to the complainant making the payment of entire sale consideration.

- XII. Despite the fact that promoter had assured the complainant that she will receive the monthly assured return for a period of 24 months. The respondent deliberately chose not to add the same in the agreement to sell. The agreement executed between the parties was heavily one-sided towards promoter; however, left with no choice and having been paid the substantial amount of the total sale consideration the complainant agreed to enter into the same. Despite the fact that the respondents have already applied for the OC and having the knowledge of the same, the respondents played fraud on the innocent woman to part her from her lifetime's income. That the actions of the respondent no. 1 have defeated the entire purpose of the complainant to buy a commercial unit which was to receive a substantial amount monthly as assured return in lieu of the amount paid to the promoter as an investment in the commercial unit. As per the above-stated facts it is clear that respondent no. 1 never had the intention to fulfil their obligation towards the complainant and had fraudulent intentions from the inception.



XIII. That the respondent no. 1 already having been applied for the OC convinced the complainant to buy a commercial unit in their project and assured her that she will receive monthly assured return played fraud on her. Furthermore, promoter issued the notice of possession dated 16.12.2021 which was to be offered after 24 months after the execution of the agreement to sell. Vide the same notice of possession, she was asked to pay her entire remaining sale consideration till 14 days which is highly unjust and unfair. However, prior to sending the notice of possession to the complainant the respondents had sent a pre-cancellation notice 01.12.2021 wherein the respondents had raised a demand to her to remit the entire remaining sale consideration within 15 days. That after receiving the Pre-cancellation notice, the complainant in order to arrange the remaining consideration sold her property. From the above-mentioned conduct of the respondents, it would be not out of place to say it is a well thought out plan of the respondents to dupe the complainant from the beginning from her hard-earned money which can further be substantiated by the illegal demands and notices issued by respondents.

XIV. That while the complainant was still confused by the conduct of the respondents, the respondents unilaterally again served to her with another a pre-cancellation notice dated 31.01.2021 reflecting the

remaining amount to be paid by her and further demanded the complainant to remit the entire amount within 15 days.

- XV. That being helpless by the actions of the promoter and unfair practices opted by them the complainant again contacted the authorised representatives of the promoter to request them to give some extra time to arrange the remaining amount of consideration as it is impossible for her to arrange such a big amount within few weeks. The promoter/developer rather than listening to the bona fide pleas of the complainant served her with a cancellation notice dated 21.02.2022 and cancelled the unit allotted to her without taking hardships of her into the consideration.
- XVI. That the complainant continued to follow up with respondent no.1 through various correspondences, emails, meetings, and telephonic conversations with their authorised representative, expressing her grievances with respect to her unit but all in vain. However, the complainant only received false promises and now feels cheated by the respondents. She has been running from pillar to post, seeking accountability for her money and her unit. The complainant has suffered huge financial loss, mental pressure harassment and agony at the hands of respondents and seeks compensation with interest, penalties and damages. It is respectfully submitted that the innocent allottee cannot be left at the behest of an unscrupulous organization like the respondents.

XVII. That the complainant is seeking as per the provisions of the Act, 2016, the possession of her commercial unit along with her monthly assured return, as per the terms and conditions of the agreement executed by the promoter and even otherwise is entitled to the same. Moreover, the complainant reserves its right(s) to add/supplement/amend /change/alter any submission made in the complaint and further, reserves the right to produce additional document(s) or submissions, as and when necessary or directed by this authority.

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

4. The complainant has sought following relief(s):

- I. Direct the respondent to handover the possession of the said unit along with monthly assured return.
  - II. Direct the respondent to handover the possession of the said unit and waive off the total sum of assured return for 24 months from the total consideration of the unit.
  - III. Direct the respondent to pay a sum of Rs.1,50,000/- to the complainant towards litigation cost.
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 respondents.**



6. The respondent has filed an application dated 17.08.2022, for rejection of complaint on the ground of that third party rights has been created against the allotted unit on 18.06.2022. The same has been dealt with in the later part of the order.
7. The respondents have contested the complaint on the following grounds.
  - I. That after making independent enquiries and only after being fully satisfied about the project "M3M Broadway", a commercial project developed in a planned and phased manner consisting of modern office spaces, entertainment, food and beverage outlets, modern office spaces, upscale efficient lofts situated in Sector 71, Gurugram, (Haryana) the complainant through her broker M/s. Investors Clinic Infratech Pvt. Ltd. had submitted an application form with an amount of Rs.50,000/- towards booking of a unit in the project 'M3M Broadway'. She requested for allotment of commercial unit no. R6 LG K22E in her favour. Accordingly, the respondent/promoter along with welcome letter provisionally allotted the unit bearing no. R6 LG K22E on LGF in Tower-5 in favour of complainant vide provisional allotment letter dated 01.08.2021.
  - II. Thereafter, the complainant, at her own behest, requested for allotment of unit bearing no. R5 LG K25A on LGF in Tower-5. The respondents being a customer-oriented company acceded to the said request of her. An email dated 08.08.2021 was sent to the complainant mentioning the revised unit number and seeking

consent for the same. She approved the same and never raised any objection to the allotment of the unit in her favour. Thereafter on 18.08.2021, the allotment letter was printed mentioning the unit no. R5 LG K 25A. That in furtherance of the allotment letter, the respondents sent copies of buyer's agreement to the complainant for due execution at her end along with covering letter dated 23.08.2021.

- III. That the construction of the commercial units at M3M Broadway was undergoing and it is further humbly submitted that the respondent/promoter completed the construction and development of the retail component of the complex well within time. Further, the respondent applied for the grant of occupation certificate on 31.08.2021 to the competent authority, after complying with all the requisite formalities.
- IV. That the demands were raised by the respondent/promoter as per the payment plan opted by her. That as per the clause 4 of the acknowledgement letter dated 16.09.2021 sent to the complainant, it was stated that the project was in the development stage and in terms of the payment plan opted by her, she was eligible for a monthly pre-handover amount @Rs.145.79 sq. ft. per month on super area which shall start from the date of completion of Rs.12,46,254/- plus GST till the date of filing of application for grant of occupation certificate of the unit (commitment period-I).
- V. That she made the payment of Rs.9,80,386 /- on 04.08.2021. Thus, the amount paid by her till 04.08.2021 comes out to be 13,95,805/- Thus, in accordance with the terms of the commitment letter the



complainant was entitled to pre-handover from 04.08.2021 till the date the respondent/promoter applied for the grant of OC. Accordingly, the respondent as per its obligations in the acknowledgment letter paid an amount of Rs.45,027/- towards pre-handover amount from 07.08.2021 to 30.09.2021 to provide the complainant the comfort of the respondents commitment to deliver the unit on time.

- VI. That the buyer's agreement was executed on 12.10.2021 and was further presented for registration before the office of sub-registrar and was registered on 27.10.2021. The cost of the unit as per the buyer's agreement was Rs.31,73,694/-plus other charges. The buyer's agreement duly covers all the rights and liabilities for both the parties.
- VII. That the respondent/promoter vide demand letter dated 11.11.2021 raised demand due on application of occupation certificate and requested to pay an amount of Rs.14,60,519/- on or before 30.11.2021, but the complainant failed to clear outstanding dues. The respondent/promoter had duly informed the complainant that they had already applied for OC and soon offer of possession will be given to the complainant. She was well aware of the status of the construction at the time of booking and was aware that the project was nearing completion.
- VIII. Despite repeated requests, she failed to clear her pending dues, as a result of which the respondent/promoter issued pre-cancellation notice dated 01.12.2021, calling upon the complainant to clear outstanding dues amounting to Rs.14,60,935/- being total due till



01.12.2021. Thereafter due inspection and verification of each and every aspect, occupation certificate was granted by the competent authority on 13.12.2021

- IX. That the respondent/promoter offered possession to her vide letter for offer of possession dated 16.12.2021 and requested the complainant to take possession of the unit, which was duly ready and complete. The respondent/promoter completed the construction of the unit much before the agreed time limit i.e., 31.10.2023 by investing its own funds. She was also requested by the maintenance agency to pay other charges. All demands were raised as per the payment plan opted by her and are as per the terms and conditions of the buyer's agreement.
- X. That the respondent/promoter as a goodwill gesture offered the complainant, a last and final opportunity to correct the breach of the terms of buyer's agreement, vide pre-cancellation notice dated 31.01.2022. She had paid an amount of Rs.13,95,805/- against the total dues of Rs.31,73,694/-plus other charges. However, the complainant failed to adhere to this opportunity and continued to breach the terms of buyer's agreement.
- XI. That on account of wilful breach of the terms of the allotment and the buyer's agreement by failing to clear outstanding dues despite repeated requests, the respondent/promoter was constrained to terminate the allotment of the unit vide cancellation notice dated 21.02.2022. That the default of the complainant in making timely payments and complying with other obligations is duly covered under the buyer's agreement, and the cancellation and forfeiture of

the Earnest money along with other refundable amounts has been in accordance with clause 9.3 of the buyer's agreement.

- XII. That the respondent/promoter was constrained to cancel the unit on account of non-payment of demands as raised by the Respondent. The respondent has incurred various losses/damages on account of the breach of the terms of agreement by her, which the complainant is liable to pay as per the terms of agreement.
- XIII. That the cancellation of the unit and forfeiture of the amount has been done in accordance with the terms of buyer's agreement. The complainant herself has violated the agreed terms and hence is not entitled to get any reliefs from the authority. That it is further submitted that the said unit has been re-allotted to one Ms. Kanchan Thapar vide allotment letter dated 05.07.2022 and hence the present complaint is liable to be dismissed. In view of the fact that third party right has already been created, the relief prayed for in the present complaint cannot be granted and the present complaint is liable to be dismissed.
8. 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 submissions made by the parties.

**E. Jurisdiction of the authority**

The application 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**

9. 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**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.*

11. 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 complainant at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the relief sought by the complainant**

- F. I Direct the respondent to handover the possession of the said unit along with monthly assured return.**
- F. II Direct the respondent to handover the possession of the said unit and waive off the total sum of assured return for 24 months from the total consideration of the unit.**
14. The complainant was allotted a unit bearing no. R5 LG K25A on LGF in Tower-5, in the project "M3M Broadway" Sector- 71, Gurugram developed by the respondent/builder for a total consideration of Rs.32,11,228/-. A buyer's agreement was executed on 12.10.2021. The possession of the allotted unit under the Act and Rules 2(1)(F) of the rules 2017, is the essence of the agreement. Therefore, the due date of possession comes out to be 31.10.2023. On 16.09.2021, the respondent /promoter served the complainant with a notice and as per clause 4 of aforesaid notice, the respondent-promoter promised the complainant that it will pay the complainant a pre-handover amount (i.e., Assured Return) at a rate of Rs. 145.79/- per sq. ft. per month (Rs.24,926/-) till the date of filing of the application for grant of occupancy certificate of the unit which shall be known as "Amount I". She further submitted that the respondent has paid monthly assured return only for 2 months.

15. The respondent submitted that the promoter has applied for grant of occupation certificate on 31.08.2021, and as per assured return clause the respondent/promoter will pay *the Allottee, hereby understands, agrees, and acknowledges that the Company shall pay pre-handover Amount @ 145.79/- per sq. ft. per month on super area to be given on completion of 12,46,254/- plus GST to till the Date of filing of application for grant of occupancy certificate of the Unit.* As per said clause the respondent/promoter will pay the agreed amount to her. The complainant failed to abide by the terms of agreement for sale by not making the payments in timely manner as per the payment plan opted by her. She paid an amount of Rs.13,95,805/- towards the total sale consideration of the unit as per the statement of account annexed with offer of possession dated 16.12.2021. Accordingly, the complainant failed to abide by the terms of the agreement executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule. The reluctant behavior of complainant led to issuance of notice of cancellation by the respondent on 21.02.2022. Now, the question before the authority is as to whether the cancellation is valid or not?
16. As per clause 9.3 of the agreement to sell, the respondent/promoter has a right to cancel the unit in case the allottee has breached the agreement to sell executed between both the parties. Clause 9.3 of the agreement to sell is reproduced as under for a ready reference:

**Clause 9.3 The Allottee shall be considered under a condition of Default, on the occurrence of the following events:**

- (i). *In case the Allottee fails to make payments for two consecutive demands made by RBPL despite having been issued notice in that regard the Allottee shall be liable to pay interest to RBPL on unpaid amount at the rate prescribed in the Rules.*
- (ii). ***In case of default by the Allottee continues for a period of 90 (ninety) days after notice from RBPL in this regard, RBPL may cancel the allotment of the Unit along with the parking (if applicable) if any, in favour of the Allottee and refund the money paid by the Allottee after forfeiting the Earnest Money (being 10% (ten percent) of the Total Consideration) and interest component on delayed payment (payable by the Allottee for breach and non-payment of any due payable to RBPL in terms of Clause 1.16 herein before) and brokerage/ any rebates availed earlier/ margin/ incentive paid to a "Indian Property Associate" ("IPA")/"Channel Partner") in case booking is made through a "Indian Property Associate" ("IPA")/"Channel Partner"). The balance amount of money paid by the Allottee shall be returned by RBPL to the Allottee, without interest or compensation within 90 (ninety) days of such cancellation. On such default, the Agreement and any liability of RBPL arising out of the same shall thereupon, stand terminated. Provided that, RBPL shall intimate the Allottee about such termination at least 30 (thirty) days prior to such termination."***

17. The respondents issued a pre-cancellation letter and thereafter, issued a cancellation letter to the complainant. The occupation certificate for the project of the allotted unit was granted on 13.12.2021. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation of unit is valid.
18. The respondent filed an application dated 17.08.2022 w.r.t maintainability of complaint as third-party rights has already been created against the subject unit. In view of aforesaid finding, it is



concluded that the said cancellation was valid and thus, third-party rights created by the respondents is not to be questioned. However, the fact that the respondents have not refunded any amount after certain deduction to the complainant even after cancellation of subject unit; the complainant's rights to file a suit challenging cancellation remains intact.

19. Now, the second issue for consideration arises as to whether after cancellation the balance amount after deduction of earnest money of the basic sale consideration of the unit has been sent to the claimants or not. Though vide letter dated 21.02.2022, the details of amount to be returned after deductions have been given but it is pleaded by the allottee that she has not received any amount after cancellation of the unit. Even otherwise a perusal of letter dated 21.02.2022 shows that besides the entire amount paid by you stands forfeited on account of your default. The provisional allotment of the unit in your favor hereby stands cancelled, which is nothing but in the nature of penalty as per section 74 of the Contract Act, 1872. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was 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 provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting

*must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 **Ramesh Malhotra VS. Emaar MGF Land Limited** (decided on 29.06.2020) and **Mr. Saurav Sanyal VS. M/s IREO Private Limited** (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as **Jayant Singhal and Anr. VS. M3M India Limited** decided on 26.07.2022, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two 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. Keeping in view the aforesaid facts and legal position, the cancellation of the allotted unit is held to be valid and forfeiture of the 10% of the earnest money of basic sale price cannot be said to be wrong or illegal in any manner. However, after forfeiting that amount to the extent of

10% of the basic sale consideration, after the amount paid on account of assured return may be adjusted from the refundable amount.

**F. III Direct the respondent to pay a sum of Rs.1,50,000/- to the complainant towards litigation cost.**

21. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaint in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

**H. Directions of the authority**

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



- i. The respondents are directed to refund the paid-up amount of Rs.13,95,805/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration of Rs.31,73,694/-. The amount paid on account of assured return may be adjusted from the refundable amount and shall return the balance amount to the complainant. The refund should have been made on the date of cancellation i.e., 21.02.2022. Accordingly, the interest at the prescribed rate i.e., 10.70% is allowed on the balance amount from the date of cancellation till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017.
- ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
23. Complaint stands disposed of.
24. File be consigned to registry.

  
**(Sanjeev Kumar Arora)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.04.2023