

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

Complaint no. : 1249 of 2022
Date of filling of : 07.04.2022
complaint :
Date of decision : 19.04.2023

Kanchan Bhalla

Address:- Jal Vayu Towers, Sector 56
Gurugram-122001

Complainant


Versus

1. Manglam Multiplex Pvt. Ltd.
Address:- Cabin-1, LGF, F-22, Sushant Shopping
Arcade, Sushant Lok Phase - 1, Gurugram Gurgaon
(Haryana) 122002.
2. M3M India Pvt. Ltd.
Address: - Unit No. SB/C/5L/Office/008, M3M
Urbana, Sector-67, Gurugram Manesar Urban
Complex Gurugram Gurgaon (Haryana) 122102.
3. Seedwill Consulting Pvt. Ltd.,
Address: - H.NO-51, 2nd Floor, Sector-18 Gurugram
Gurgaon -122001

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Maneesh Kumar (Advocate)
Ms. Shriya Takkar (Advocate)

Complainant
Respondent

ORDER

1. The present 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 to the allottees as per the agreement for sale executed inter se them.

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:

Sr. No.	Particulars	Details
1.	Name of the project	M3M Skycity, Sector- 65, Gurgaon, Haryana
2.	Land area	14.4125 acres
3.	Nature of the project	Residential
4.	DTCP License no.	15 of 2017 dated 02.05.2017
5.	RERA registration	01 of 2017 dated 14.06.2017
6.	Unit no.	MH TW-03-3102, Floor in Tower 3 [Page 83 of the reply]
7.	Unit area	1310 sq. ft.- super area 703.97 sq. ft.- carpet area [Page 83 of the reply]
8.	Application Form	14.04.2019

9.	Date of allotment	23.04.2019 [Page 83 of the reply]
10.	Date of builder buyer agreement	BBA has not been executed
11.	Possession clause	N/A
12.	Due date of possession	Cannot be ascertain
13.	Total sale consideration	Rs.1,37,25,232/- [Page 88 of the reply]
14.	Amount paid by the complainant	Rs.5,00,000/- [Page 44 of the complaint]
15.	Occupation certificate received on	N/A
16.	Offer of possession	Not offered
17.	Requesting for refund through emails	14.06.2019 [Page 59- 60 of the complaint]
18.	Pre cancellation	10.09.2019 [Page 96 of the reply]
19.	Cancellation	01.10.2019 [Page 97 of the reply]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- The complainant submitted that upon the representations of the respondents through various luring newspaper advertisement



including those in Hindustan times in March/April 2019, website, social media e.g. Facebook, assurances, promises and reiteration thereof by Respondents during discussions etc, the complainant applied for a 2 BHK residential unit in the Respondent's project titled 'M3M Skycity' and deposited Rs. 5,00,000/- with them vide cheque no. 437242 dated 14.04.2019 as advance for booking. That the Respondents assured and promised through the foregoing, the following to the Complainant in return for opting for their project:

- i. Rs. 50,000/- Gold Vouchers
 - ii. International Trip for family
 - iii. One Year Free Maintenance
 - iv. Discount of 3% of Base Selling Price (BSP) Starting price as 1.24 cr., whereas the price of lowest category of flats i.e. 2 BHK communicated to the Complainant was 1.37 Cr.
 - v. The Facebook page states "Book at five lacs and avail benefits upto ten lacs".
- ii. That it is an admitted fact by the respondents that carpet area (and not the super area) of the unit shall be used for the purpose of computing the total 'payable consideration' for the unit. The 'payable consideration' value, excluding GST, is Rs. 1,30,71,648/-, which comes to Rs. 18568.47/- per sq. ft. If the optional car parking, club house membership, preferred location charges are excluded, the per sq. ft. rate comes to Rs. 16355.22. Arguendo, if we exclude mandatory EDC/IDC and electricity installation charges also, the per sq. ft. rate comes to Rs. 15223.81. A perusal of the relevant advertisements of the respondents reveal that the rate advertised is Rs. 8900/- per sq. ft.



iii. That none of the foregoing promises have been fulfilled by the respondents. Additionally, the unit selected before making advance payment was MH TW 03 3312, as mentioned by the respondents, in own handwriting, on the top of application form whereas the unit wrongfully and deliberately allotted by the respondents to the complainant was MH TW 03 3102. That without fulfilling promises already made and without correcting the allotment of the residential unit, the Respondents raised further demand of Rs. 9,00,000/- (approx.) subject to signing builder buyer agreement (BBA). The complainant made tireless efforts in reaching out to the respondents through emails and personal visits etc., but all went in vain. Exasperated and having sustained losses/damages due to unfulfilled promises, besides harassment and mental agony, the complainant withdrew from the project on 14.06.2019. The complainant reiterated withdrawal on 17.06.2019, 14.08.2020 and 23.09.2021 and requested respondents to refund Rs. 5,00,000/- deposited with them. The respondents, instead of refunding the amount of advance, forfeited the same. a copy of the letter forfeiting rs. 5,00,000/-.

"Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building as the case may be, intends to withdraw from the proposed project, he shall be

returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.”

- iv. That the Complainant had no option but to sign the template form in case she desires to own a residential unit. All the terms indicated therein are the respondents' terms and conditions routed through the mouth/pen of the buyer. That the complainant had no meaningful choice but to give assent to the conditions as inherent in buyer's offer to the builder, sign on the dotted line in a template form, accept set of rules/conditions as part of the contract, however unfair, unreasonable and unconscionable clauses in that contract or form or rules were. The bargaining power of the contracting parties (Promisor i.e. the Complainant and Promisee i.e. the Respondents) was not equal. The terms, indicated therein, are ex facie one sided, unfair, and unreasonable.
- v. That the complainant, while submitting the template form thought that she had entered into bonafide transaction. But very soon, she realized that the promises made through the respondents' advertisements and during discussions with their representatives etc. were, in fact, a fraud played upon the Complainant, wherein week position of the contracting party i.e. Complainant and her dream of owning a residential unit has been exploited. The application form which the complainant, was compelled to submit if she wants to buy residential unit includes the following one sided clauses:

- I agree that the provisional allotment of the Apartment shall be at the absolute discretion of the Company and in case of rejection of my application, I undertake not to claim any

compensation or interest from the Company except the refund of my booking amount. *This clause is not only one sided but in contravention of Section 12 of RERA Act 2016.*

- Allotment of the Apartment shall be subject to terms and conditions of this Application Form, allotment letter (a future event), agreement to be executed (again a future event) and other such terms and conditions as in future may be applicable. *The Complainant/buyer had only one option i.e. sign or resign.*
- I understand that in the event of the Company agrees to provisionally allot an Apartment to me, the Company shall send Agreement which shall comprehensively set out the terms of allotment*Again the Complainant/buyer has no option but to sign on dotted line.*
- The allotment and sale of a residential Apartment in M3M Skycity in.....shall be subject to terms and conditions of this Application Form, the allotment letter and the detailed set of terms and conditions as set out in the Agreement for sale (to be executed) and the schedules and the annexures attached thereto. *As already brought out this was a template form drafted by the Respondents containing their terms and conditions presented as terms and conditions of the Complainant because Complainant is a promisor.*
- Pursuant to the allotment in my favour by the Company, I the Applicant undertake to sign and execute the Agreement in the form and manner as provided by the Company.....*Again the Complainant/buyer has no option but to sign on dotted line.*



- This Application does not constitute an agreement to sell and does not entitle me to the provisional allotment of a residential Apartment, notwithstanding..... *Although this is not stated to be an agreement to sell, as per Respondents' words, nevertheless this is also an agreement enforceable by law and hence contract.*
 - I confirm and undertake that upon issuance of the Allotment Letter by the Company provisionally allotting a residential Apartment to me, I shall be legally bound to purchase the same and to execute the Agreement and.....*There is no scope left for any suggestion/modification of unfavourable one-sided clauses.*
 - I hereby confirm and agree that it is only after I have executed the Agreement andas may be called upon by the Company, that the provisional allotment of the residential Apartment shall become effective. *Again this one-sided clause demonstrate how the Complainant has been rendered helpless by the Respondents.*
- vi. That the illustrative clauses indicated above abundantly demonstrate a one-sided agreement drafted in the shape of application from to be submitted by the buyer. Ironically, this was an offer from the complainant to the respondents. Allotment, by whatever name called of a residential unit, consequent upon this application/offer amounts to acceptance of the offer. The Complainant was allotted a residential unit in the Respondents' project named "M3M Skycity". The Respondents issued the allotment letter dated 03.05.2019 for a residential unit no. MH TW-03-3102 measuring 703.97 sq. ft. in Tower 3 of M3M Skycity.

vii. Consequent upon failure of the acceptor i.e. respondents herein to fulfill the conditions precedent to acceptance of the offer i.e.

- 50,000/- Gold Vouchers
- International Trip
- One Year Free Maintenance
- 3% of BSP (Discount)
- And other promises as indicated in para 2 to 4 the proposal/offer stands revoked as per section 6(3) of the Indian Contract Act 1872. It is axiomatic that offer lapses if it is accepted without fulfilling the conditions precedent thereto. Consequent thereupon, the agreement ceases to exist. As there is no agreement existing, there is no question of forfeiture of any amount given by the proposer to the proposee as consideration. Thus, the booking amount of Rs. 5,00,000/- given by the promisor to the promisee, along with the offer required immediate refund with interest at market rate to the promisor. But the promisee willfully, deceitfully and with malafide intention is holding on the same and has not refunded the same to the Complainant so far.

viii. There is no case of the Respondents to require the complainant to enter into another agreement called builder buyer agreement, (hereinafter referred as BBA), when the first agreement i.e. the so called application form, which forms basis of BBA ceases to exist. The BBA dated 22.05.2019 was made available to the complainant by Shri Priyansh Shukla, the representative of the respondents. This agreement also like the previous one, contained various one sided, unreasonable and arbitrary clauses. The Complainant



was being intimidated to sign and get bound by one sided template BBA. The Complainant reserves right to bring out all one-sided clauses in the BBA, if so, required by the Authority for disposal of this complaint. The same is not being brought out here for the sake of brevity. The complainant is left with no option but to approach the authority for justice.

C. Relief sought by the complainant:

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

I. Direct the respondent to refund Rs.5,00,000/- along with interest.

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

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds: -

a) That the complainant has approached this authority with unclean hands and have tried to mislead the 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.



- b) It is 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.
- c) The booking application form dated 14.04.2019 was received by the respondent company for a residential unit in 'M3M Sky City', being a part of the residential component of Tower No. 2 and Tower No. 3 of the project 'M3M Heights', a residential component of the Mixed Land Use Development project of the Respondent No.1 Company. The Complainant through her broker M/s. Seed Will Consulting Pvt. Ltd. had submitted Application form along with booking amount of Rs. 5,00,000/- vide cheque no. 437244 towards booking of a unit in the project 'M3M Sky City' after conducting her own due diligence,
- d) That thereafter in due consideration of the booking amount paid by the Complainant and her commitments to comply with the terms and conditions of the booking/allotment and make timely payments of demands, the Complainant was allotted an Apartment bearing no. MH TW/03/3102 situated in Tower-3 vide Allotment Letter dated 23.04.2019. It is submitted that the cost of the Apartment as stated in the Allotment letter is Rs. 1,37,25,232/- plus other charges. The relevant clauses of Application Form are reproduced herein below for ready reference of this authority:

30. 10% (Ten Percent) of the Total Sale Consideration shall constitute the 'Earnest Money'
31. The Applicant hereby agrees that due performance of all the obligations under this Application including the timely payment of the Total Consideration and other applicable dues / charges / payments and adherence to the opted Payment Plan shall be the essence of this Application. The Applicant shall also be liable to make timely payment of the amount(s) due and payable by the Applicant by the respective due dates for such payments failing which the



Company shall be entitled to cancel the allotment and terminate the Agreement, if executed, at its sole discretion and forfeit an amount equivalent to the Earnest Money and recover such other amounts due and payable to the Company including any interest accrued on delayed instalments and any fee/brokerage/commission/margin/any rebates availed earlier that may have been paid by the Company to an Indian Property Associate/ Channel Partner (in case the Application is made through an Indian Property Associate / Channel Partner) and thereafter, refund the balance amount, if any, without any interest or any other compensation of any nature whatsoever. without interest or compensation within 90 (ninety) days of such cancellation. Upon such cancellation, the Applicant shall be left with no right, lien or interest whatsoever over and in the Apartment and the parking spaces in any manner whatsoever. However, in its sole discretion, the Company may condone any delay or default in making payment of the instalments, and the Company shall charge interest at the rate of State Bank of India highest marginal cost of lending rate plus two percent per annum from the due date or as may otherwise be prescribed under the provisions of Act and Rules.

51. *Timely payment and execution of the required documents by the Applicant shall be of essence of the allotment/ agreement for sale. The Applicant shall pay the amounts due within the due dates as per the Payment Plan. The Company shall abide by the time schedule for completing 'M3M Skycity' in particular and the residential component of the Said Project/the Said Project in general, as the case may be and as the circumstances so warrant and to the extent relevant and applicable and towards handing over the Apartment along with car parking space(s), if any, to the Applicant 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. Possession of the Apartment along with the car parking space(s), if any, shall be offered to the Applicant 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 as per the agreed timelines.*
64. *The Applicant shall have the right to cancel/ withdraw his allotment as provided in the Act. Where the Allottee proposes to cancel/ withdraw without any fault of the Company, the Company herein is entitled to forfeit the Earnest Money (being 10% of the Total Consideration) and interest component on delayed payment (payable by the Applicant for breach and non-payment of any due payable to the Company) and brokerage and any rebates availed earlier/margin/incentive paid to an Indian Property Associate / Channel Partner in case the booking is made through an Indian Property Associate / Channel Partner. The balance amount of money*

paid by the Applicant shall be returned by the Company to the Applicant, without interest or compensation within 90 (ninety) days of such cancellation.

- e) It is submitted that the Complainant being an allottee, on her own free will and due understanding of the legal import and effect had opted for the specific payment plan where under the Complainant agreed to have a part of the sale consideration for the said Apartment 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. It was the obligation of the Complainants to make further payment for the consideration towards the said Apartment as per the demands raised from time to time. It is pertinent to mention that the Respondent Company as per the payment plan opted by her raised demand for an amount of Rs. 8,72,522/- via demand notice dated 24.04.2019 which was to be paid on or before 22.05.2019 however, the Complainant failed to come forward to clear her dues. That in furtherance of the allotment, the Respondent Company sent copies of Buyer's Agreement/Agreement for sale to the Complainant for due execution at her end along with covering letter dated 22.05.2019. It is pertinent to mention that the Complainant for the reasons best known to her did not perform her contractual obligations and failed to come forward to execute the Buyers Agreement and the Respondent was constrained to issue a reminder letter dated 19.06.2019.
- f) It is submitted that despite repeated follow ups and communications by the Respondent Company to the Complainant, the Complainant never came forward and complied further with the obligations and



complete the process of execution and registration of the Apartment Buyers Agreement/ Agreement for sale for the said apartment. Even the Complainant failed to act further as per the terms of agreed payment plan. It is further submitted that the Respondent Company vide letter dated 12.07.2019 requested the Complainant to return the executed copy of Agreement for Sale and come forward for registration of the same.

- g) That the relevant clause of the allotment letter is reproduced herein below for ready reference of this Authority:

Please note that this Allotment is further subject to the Allottee paying the requisite stamp duty and registration charges and registering the Agreement for sale within the prescribed timelines as per the applicable law, failing which the company at its sole discretion reserves its right to cancel the Allotment, this Allotment letter and/or application form and forfeit the amounts as per the terms mentioned in the Application form.

- h) It is submitted that the Complainant is a chronic defaulter as she failed to make payments as per the demands raised by the Respondent Company in accordance with the payment plan despite being well aware that timely payment is the essence of the Agreement. That since the Complainant was not clearing her outstanding dues nor was coming forward to execute the Buyers Agreement, the Respondent Company issued pre-cancellation notice dated 10.09.2019. However, the Complainant failed to adhere to this opportunity and continued the breach of the terms of Allotment/Application form.
- i) That the Complainant was well aware of her obligation to come forward to complete all the formalities and execute all the requisite documents. That despite constant follow ups, the Complainant



failed to clear her outstanding dues and failed to come forward to execute all the necessary documents and therefore the Respondent No.1 was constrained to cancel the provisional allotment of the Complainant vide termination letter dated 01.10.2019 and forfeit the amount paid by the Complainant in accordance with Clause 31 of the Application Form. Clause 31 of the Application Form is reproduced herein below for ready reference:

31. *The Applicant hereby agrees that due performance of all the obligations under this Application including the timely payment of the Total Consideration and other applicable dues / charges / payments and adherence to the opted Payment Plan shall be the essence of this Application. The Applicant shall also be liable to make timely payment of the amount(s) due and payable by the Applicant by the respective due dates for such payments failing which the Company shall be entitled to cancel the allotment and terminate the Agreement, if executed, at its sole discretion and forfeit an amount equivalent to the Earnest Money and recover such other amounts due and payable to the Company including any interest accrued on delayed installments and any fee/brokerage/commission/ margin/any rebates availed earlier that may have been paid by the Company to an Indian Property Associate/ Channel Partner (in case the Application is made through an Indian Property Associate / Channel Partner) and thereafter, refund the balance amount, if any, without any interest or any other compensation of any nature whatsoever, without interest or compensation within 90 (ninety) days of such cancellation. Upon such cancellation, the Applicant shall be left with no right, lien or interest whatsoever over and in the Apartment and the parking spaces in any manner whatsoever. However, in its sole discretion, the Company may condone any delay or default in making payment of the instalments, and the Company shall charge interest at the rate of State Bank of India highest marginal cost of lending rate plus two percent per annum from the due date or as may otherwise be prescribed under the provisions of Act and Rules.*

j) That the Respondent was constrained to cancel the unit on account of non-payment of demands as raised by the Respondent. It is submitted that the Respondent has incurred

various losses/damages on account of breach of the terms of the application form by the complainant.

k) That the Provisional Allotment letter was issued to the Complainant on 23.04.2019 and as such, the parties are bound by the terms and conditions mentioned in the said allotment. That as per Clause 31 of the Application form the Allottee was bound to perform all her obligations including timely payment of the amounts due. In view of the aforementioned facts and submissions made, it is submitted that the captioned Complaint is frivolous, vague and vexatious in nature. The captioned Complaint has been made to injure and damage the interest and reputation of the Respondent and that of the Project. Therefore, the instant Complaint is liable to be dismissed in limine.

7. 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 as well as the written submission of the respondent.

E. Jurisdiction of the authority

8. The authority has complete territorial and 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire



Gurugram district for all purposes. 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 allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....
(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

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. 2021-2022**

(1) RCR (Civil), 357 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 refund Rs. 5,00,000/- along with interest.

14. The complainant was allotted unit no. MH TW-03-3102 on 3rd floor, in tower/block- 3, in the project "M3M Skycity" by the respondent/builder for a total consideration of Rs. 1,37,25,232/- and she has paid an amount of Rs.5,00,000/- in the year 2019. Further, the complainant wrote an email to the respondent on 14.06.2019, and requested

withdrawal/surrender of the allotment of the said unit as per page no.

59-60 of the complaint reproduced as under for ready reference: -

"I have been asked to pay many expenses which were not specified to me before taking first payment from me. This amounts to misrepresentation of facts. In the scenario I can not continue relationship with M3M and request you to return my payment as promised while taking the same.

15. The terms and the relevant clauses of the application form are reproduced under for a ready reference:

31. *The Applicant hereby agrees that due performance of all the obligations under this Application including the timely payment of the Total Consideration and other applicable dues / charges / payments and adherence to the opted Payment Plan shall be the essence of this Application. The Applicant shall also be liable to make timely payment of the amount(s) due and payable by the Applicant by the respective due dates for such payments failing which the Company shall be entitled to cancel the allotment and terminate the Agreement, if executed, at its sole discretion and forfeit an amount equivalent to the Earnest Money and recover such other amounts due and payable to the Company including any interest accrued on delayed installments and any fee/brokerage/commission/ margin/any rebates availed earlier that may have been paid by the Company to an Indian Property Associate/ Channel Partner (in case the Application is made through an Indian Property Associate / Channel Partner) and thereafter, refund the balance amount, if any, without any interest or any other compensation of any nature whatsoever. without interest or compensation within 90 (ninety) days of such cancellation. Upon such cancellation, the Applicant shall be left with no right, lien or interest whatsoever over and in the Apartment and the parking spaces in any manner whatsoever. However, in its sole discretion, the Company may condone any delay or default in making payment of the instalments, and the Company shall charge interest at the rate of State Bank of India highest marginal cost of lending rate plus two percent per annum from the due date or as may otherwise be prescribed under the provisions of Act and Rules.*

16. It is evident from the above-mentioned facts that the complainant has paid a sum of Rs. 5,00,000/- against basic sale consideration of Rs. 1,37,25,232/- of the unit which is 3.64% of the cost of consideration. In



the present complaint, the complainant wrote an email to the respondent on 14.06.2019 and requested for withdrawal/surrender of the allotment of the said unit and requested for the refund of the paid-up amount. Thereafter, the respondent cancelled the unit of the complainant on 01.10.2019 after pre-cancellation notice dated 10.09.2019.

17. The promoter was required to refund the balance amount if any remains as per applicable cancellation clause of the application form which reads as " 10% (Ten Percent) of the Total Sale Consideration shall constitute the 'Earnest Money'.
18. The Hon'ble Apex Court of land 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, (2016) 4 SCC 136*, 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 provision of the section 74 of the Contract Act, 1872 are attracted and the party so forfeiting must prove actual damage.
19. Even keeping in view, the principle laid down by the Hon'ble Apex Court of the land, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, framed regulation 11 provided as under-.

"5. AMOUNT OF EARNEST MONEY

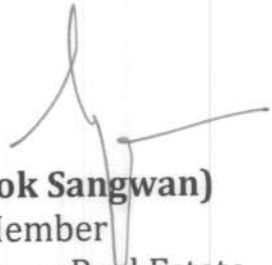
Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission 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 above-mentioned facts, the promoter was required to return the paid-up amount after retaining 10% of the basic sale consideration and that amount should have been paid on the date of cancellation itself. However, in the present matter the complainant has paid only Rs.5,00,000/- against the total sale consideration of Rs. 1,37,25,232/- which constitutes about only 3.64% of consideration money and hence, no case for refund of any amount is made out.
21. Complaint stands disposed of.
22. File be consigned to registry.

Dated: 19.04.2023

HARERA
GURUGRAM



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram