

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

Reserved on: 08.02.2023
Date of 05.04.2023
pronouncement:-

Name of the Builder		M3M India Pvt. Ltd	
Project Name		M3M International Financial Centre, Sector-66, Gurugram	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/4273/2021	i) Amit Garg HUF ii) Mrs. Santosh Gupta iii) Mrs. Shilpa Gupta iv) Mr. Bishwambhar Dayal Gupta VS. 1. M3M India Pvt. Ltd 2. Gentle Realtors Pvt. Ltd.	Shri Suveer Gaur Ms. Shriya Takkar
2.	CR/438/2022	i) Amit Garg HUF ii) Mrs. Santosh Gupta iii) Mrs. Shilpa Gupta iv) Mr. Bishwambhar Dayal Gupta VS. 1. M3M India Pvt. Ltd 2. Gentle Realtors Pvt. Ltd.	Shri Suveer Gaur Ms. Shriya Takkar

CORAM:

Shri Ashok Sangwan

Member

ORDER

- This order shall dispose of both the complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development)



Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the comfort letter executed inter se between parties.

2. There are two complaints filled by the complainants against the allotted units wherein besides seeking to set aside the cancellation of the allotted units, other reliefs like handover of possession, not to create any third-party rights, payment of monthly rebate and execution of builder buyers' agreement of the unit have been sought. Since both the complaints are related to the same units and are between the same parties, the same are ordered to be consolidated. The complaint bearing no. 4273 of 2021 titled as **Amit Garg and others Vs. M3M India Private Limited** is treated as a lead case.

A. Project and unit related details

3. The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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 International Financial Centre, Sector-66, Gurugram
2.	Unit nos.	3002A and 3002B, 30 th floor, Tower-1



3.	Tentative carpet area	1211.81 sq. ft. (As per provisional letter on page 28 of the complaint) 1250.45 sq. ft. (As per provisional letter on page 29 of the complaint)
	Tentative super area	2261.89 sq. ft. (As per provisional letter on page 28 of the complaint) 2213.65 sq. ft. (As per provisional letter on page 29 of the complaint)
4.	Total sale consideration	Rs. 1,40,23,718/- (As per provisional letter on page 28 of the complaint) Rs. 1,37,24,630/- (As per provisional letter on page 29 of the complaint)
5.	Amount paid by the complainants	Rs. 70,00,000/- (As stated by the complainants on page 4 of the complaint)
6.	Cancelation letter issued by the respondent on	29.11.2021 (Page 39 of the reply)

B. Facts of the complaint

4. The complainants made the following submissions in the complaint:



- i. That the complainants are the prospective co-owners of commercial office space nos. 3002A and 3002B in the project M3M international finance centre situated at sector 66, Gurugram (hereinafter referred to as the "Subject Property" admeasuring 2213.65 Sq. Ft and 2261.89 Sq. Ft. respectively.
- ii. That the subject properties were booked in the joint name of Mrs. Santosh Gupta, Mrs. Shilpa Gupta, Bishwambhar Dayal Gupta, Amit Garg HUF and Khushal Singh.
- iii. That the total consideration for the subject properties (Unit No. 3002 A and Unit No. 3002 B) was decided as Rs. 1,37,24,630/- and Rs. 1,40,23,718/- respectively out of which Rs. 35,00,000 against each unit was payable on or before 16.11.2020 whereas the remaining consideration of Rs. 1,05,23,718 and Rs. 1,02,24,630 respectively was payable on the issuance of the notice of offer for possession.
- iv. That accordingly the complainants paid the consideration to the respondent in the following manner:

Date	Name	Amount	UTR No.
12.08.2020	Santosh Gupta	Rs 1,00,000/-	SBIN120225 608134
12.08.2020	Bishwambhar Dayal Gupta	Rs 1,00,000/-	BARBB20225 13005 5
20.08.2020	Shilpa Gupta	Rs 1,00,000/-	Ref 0233150524 16



14.09.2020	Bishwambhar Dayal Gupta	Rs 7,75,000/-	BARBB20258 80076 4
14.09.2020	Santosh Gupta	Rs 7,75,000/-	SBIN320258 772305
15.09.2020	Amit Garg (HUFA/C)	Rs 34,00,000/-	SBIN420259 563527

- v. That the receipt of the payments made by the complainants were duly acknowledged by the respondent vide an e-mail dated 11.11.2020 wherein, the respondents confirmed that the complainants had booked 2 units in the said project and that unit nos. 3002A and 3002B on 30th Floor in Tower 1 were being provisionally allotted to the complainants.
- vi. That subsequently, the respondents issued two undated comfort letters regarding the subject property having a tentative Carpet Area of 1250.45 Sq. Ft (116.17 Sq. Mtrs.) and tentative Super Area of 2213.65 Sq. Ft. (205 Sq. Mtrs.) at Total Consideration value of Rs. 1,37,24,630.00 plus applicable Taxes.
- vii. That as a part of the commercial understanding between the complainants and respondents, the aforesaid comfort letters provided that after the payment of INR 35,00,000 against each unit, the complainants were entitled to receive a monthly rebate of INR 52,498 and INR 52,508 respectively till the issuance of the notice of offer of possession. That as per the agreed terms and acknowledgment in provisional booking letter the respondent



started transferring the entitled monthly rebate amount of Rs. 52,508/- into the accounts of the complainants. The details of the rebate received by the complainants from 17.11.2020 to 07.06.2021 are as follows:

AMIT GARG HUF

Date	Amount	UTR No.
05.01.2021	17,501	CHEQUE ICI 400229022-950633 110002555
05.01.2021	17,498/-	CHEQUE ICI 400229022-950636 110002555
11.05.2021	17,501/-	CHEQUE ICI 400229022-950634 121002103
11.05.2021	17,498/-	CHEQUE ICI 400229022-950637 121002103
07.06.2021	17,498/-	CHEQUE ICI 400229022-950638 302002076
07.06.2021	17,501/-	CHEQUE ICI 400229022-950635 302002076
Total	1,04,997	

SHILPA GUPTA

Date	Amount	UTR No.
17.11.2020	26,830/-	CLG/682431/161120/ICICI BANK
17.11.2020	27,413/-	CLG/682427/161120/ICICI BANK
16.12.2020	17,498/-	CLG/717088/151220/ICICI BANK

16.12.2020	17,498/-	CLG/717096/151220/ICICI BANK
01.02.2021	17,498/-	CLG/717089/010121/ICICI BANK
01.02.2021	17,498/-	CLG/717097/010121/ICICI BANK
08.02.2021	17,498/-	CLG/767451/060221/ICICI BANK
03.03.2021	17,498/-	CLG/767452/020321/ICICI BANK
15.03.2021	35,002/-	CLG/604147/120321/ICICI BANK
Total	Rs. 1,94,233/-	

SANTOSH GUPTA

Date	Amount	UTR No.
17.11.2020	13,418/-	BB/CHQ DEP/682430/M3M INDIA PVT LTD/I.C.I.C.I.BANKING
17.11.2020	13,710/-	BB/CHQ DEP/682426/M3M INDIA PVT LTD/I.C.I.C.I.BANKING
16.12.2020	8,751/-	BB/CHQ DEP/717094/M3M INDIA PVT LTD/I.C.I.C.I.BANK
16.12.2020	8,751/-	BB/CHQ DEP/717086/M3M INDIA PVT LTD/I.C.I.C.I.BANK
01.01.2021	8,751/-	BB/CHQ DEP/717087/M3M INDIA PVT LTD/I.C.I.C.I.BANK
01.01.2021	8,751/-	BB/CHQ DEP/717095/M3M INDIA PVT LTD/I.C.I.C.I.BANK

05.02.2021	8,751/-	BB/CHQ DEP/767449/M3M INDIAN PVT LTD/I.C.I.C.I.BANKING COR
01.03.2021	8,751/-	BB/CHQ DEP/767450/M3M/I.C.I.C.I.B ANKING CORPORATIO
12.03.2021	17,506/-	BB/CHQ DEP/684146/M3M INDIA P L/I.C.I.C.I.BANKING
03.04.2021	8,751/-	BB/CHQ DEP/768658/M3M INDIA P L/I.C.I.C.I.BANKING
03.04.2021	8,753/-	BB/CHQ DEP/768682/M3M INDIA PRIVATE/I.C.I.C.I.BAN
03.05.2021	8,753/-	BB/CHQ DEP/768683/M3M INDIA PRIVATE/I.C.I.C.I.BAN
03.05.2021	8,751/-	BB/CHQ DEP/768659/M3M INDIA PRIVATE/I.C.I.C.I.BAN
01.06.2021	8,753/-	BB/CHQ DEP/768684/M3M INDIA PRIVATE/I.C.I.C.I.BAN
01.06.2021	8,751/-	BB/CHQ DEP/768660/M3M INDIA P LTD/I.C.I.C.I.BANKING
Total	Rs.1,49,652/-	

BISHWAMBHAR DAYAL GUPTA

Date	Amount	UTR No.
17.11.2020	13,418/-	BB/CHQ DEP/682432/M3M INDIA PVT/I.C.I.C.I.BANKING

17.11.2020	13,710/-	BB/CHQ DEP/682428/M3M INDIA PVT/I.C.I.C.I.BANKING
16.12.2020	8,751/-	BB/CHQ DEP/717098/M3M INDIA PVT LTD/I.C.I.C.I.BANK
16.12.2020	8,751/-	BB/CHQ DEP/717090/M3M INDIA PVT LTD/I.C.I.C.I.BANK
01.01.2021	8,751/-	BB/CHQ DEP/717091/M3M INDIA PVT LTD/I.C.I.C.I.BANK
01.01.2021	8,751/-	BB/CHQ DEP/717099/M3M INDIA PVT LTD/I.C.I.C.I.BANK
05.02.2021	8,751/-	BB/CHQ DEP/767453/M3M INDIA PVT LTD/I.C.I.C.I.BANKING COR
01.03.2021	8,751/-	BB/CHQ DEP/767454/M3M/I. C.I.C.I.BANKING CORPORATIO
12.03.2021	17,506/-	BB/CHQ DEP/684148/M3M INDIA P L/I.C.I.C.I.BANKING
03.04.2021	8,751/-	BB/CHQ DEP/768688/M3M INDIA PRIVATE/I.C.I.C.I.BAN
03.04.2021	8,753/-	BB/CHQ DEP/768664/M3M INDIA PRIVATE/I.C.I.C.I.BAN
03.05.2021	8,753/-	BB/CHQ DEP/768665/M3M INDIA PVT LTD/I.C.I.C.I.B
03.05.2021	8,751/-	BB/CHQ DEP/768689/M3M INDIA PVT LTD/I.C.I.C.I.B
01.06.2021	8,753/-	BB/CHQ DEP/768690/M3M INDIA P LTD/I.C.I.C.I.BANKING
01.06.2021	8,751/-	BB/CHQ DEP/768666/M3M INDIA P LTD/I.C.I.C.I.BANKING
Total	Rs.1,49,652/-	

- viii. That the respondents kept paying the monthly rebate to the complainants till the month of June 2021. However, thereafter, for reasons best known to the respondents, the respondents stopped paying the monthly rebate to the complainants. The same was despite the fact that the complainants have already paid the provisional amount of Rs. 35,00,000/- each for 3002A and 3002B which made them eligible to receive the monthly rebate amount of Rs. 52,508/- and Rs. 52,498/-.
- ix. That aggrieved with the conduct of the respondents, the complainants sent multiple reminders to the respondent through emails between the month of July 2021 and October, 2021 but the respondent failed to respond to the same and continued to disregard the complainants' request of paying the monthly rebate amount as promised in the comfort letter/provisional booking letter.
- x. That the above constrained the complainants to send legal notices dated 05.08.2021 and 08.08.2021, asking the respondent to re-initiate the payment of monthly rebate amounts and compensate for the defaults committed by them and to comply with the terms and conditions of the comfort letters issued by the respondent to the complainants. That when the respondent failed to reply to the above-mentioned legal notices sent by the complainants, the complainants sent reminder notice dated 19.09.2021.

- xi. That subsequently, vide their letter dated 13.10.2021, the respondent sent a short reply to the legal notices sent by the complainants in which the respondent justified the non-payment of monthly rebate on the basis of an ongoing investigation by the EOW against one of the joint purchasers, i.e., Kushal Singh. The respondents further informed the complainants that the EOW has allegedly directed the respondents not to deal with the subject property.
- xii. It is humbly stated that the complainants have no knowledge about the current whereabouts of one of the joint purchasers, i.e., Kushal Singh or the various sources of his income. Furthermore, the instant complainants have paid their shares of the consideration individually separately from Kushal Singh. Accordingly, the respondents ought not to have stopped the monthly rebates due to the complainants herein owing merely to the pendency of an investigation against one of the joint purchasers, wherein Kushal Singh has not even been pronounced guilty by any court of law. Moreover, the instant complainants are even willing to re-tender to the respondents herein, all/any consideration already paid by Kushal Singh to the respondents herein to receive a clear and undisputed title to the subject properties.
- xiii. Thus, owing to the above, the complainants have a legitimate expectation to receive the agreed monthly rebates and receive the possession of the subject property. Therefore, in view of the above said facts it is evident that the respondent has grabbed the

hard-earned money of the complainant causing wrongful loss to the complainant and the same act of the respondent is not sustainable in the eyes of law and the complainant deserves to get compensation claimed in the instant complaint on the wrong and illegal action of the respondent, Therefore, in view of the above said facts and circumstances of the case, the present complaint deserves to succeed.

C. The complainants are seeking the following relief:

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

- a) Direct the respondent to handover the possession of the unit nos. 3002A and 3002B to the complainants on completion in project M3M International Finance Centre situated at Sector 66 Gurugram; and
- b) Direct the respondent to not create any third-party interest in the unit allotted to the complainants (subject property); and
- c) Direct the respondent to execute builder buyer agreement in terms of section 13 of the act, and
- d) Direct the respondent to immediately re-initiate the payment of monthly rebate amounts and compensate for the defaults committed by respondent; and
- e) Direct the respondent to pay the arrears of monthly rebate amount from July, 2021 pendente lite along with interest @ 24%; and
- f) Hold the respondents guilty of indulging into unfair practices and providing deficient services to the complainants and award a compensation of Rs.70,00,000 with interest @ 24%.

D. Reply filed by the respondent

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

- i. That the present complaint is liable to be dismissed solely on the ground of non-joinder of necessary party. It is humbly submitted that the present complaint has been filed in the name of the complainants who have deliberately chosen not to make the one of the co-allottee, namely Khushal Singh a party to the present complaint. Thus, the complaint is clearly defective in nature and is liable to be dismissed on the ground of non-joinder of necessary party. That as per the definition of allottee under the Act, Mr. Khushal Singh falls under the definition of an allottee and thus his name should be included in the array of parties. That the Hon'ble Apex Court in **CHIEF CONSERVATOR OF FORESTS GOVT. OF A.P vs Collectors and ORS (2003 (3) SCC 472** has categorically held as under:

In giving description of a party it will be useful to remember the distinction between misdescription or misnomer of a party and misjoinder or non-joinder of a party suing or being sued. In the case of misdescription of a party, the court may at any stage of the suit/proceedings permit correction of the cause title so that the party before the court is correctly described; however a misdescription of a party will not be fatal to the maintainability of the suit/proceedings. Though Rule 9 of Order I of C.P.C. mandates that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to non-joinder of a necessary party. Therefore, care must be taken to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise, the suit or the proceedings will have to fail.

- ii. It is submitted that the complaints herein have deliberately not made Mr. Khushal Singh a party to the present complainant with the malafide intention to not bring in light the offences committed by Mr. Khushal Singh, due to which there is an ongoing investigation against the said individual, as a result of which the amounts received against the booking under question in the present complaint have been deposited with the investigation authorities and/or the complainants.
- iii. That the complainant no. 2, 3 and 4 along with one Mr. Khushal Singh approached respondent expressing their interest in booking commercial office space 3002A and 3002B in the project developing premium 'A' grade office spaces in "M3M International Finance Centre, being developed in planned and phased manner in Sector 66, Manesar Urban Complex, Gurugram, Haryana
- iv. That thereafter the respondent no.2 issued letters in the name of the complainants acknowledging the expression interest of the complainants in booking of the properties in the project. In due consideration the complainants were allotted unit Nos. 3002 A and 3002 B in M3M International Financial Centre, Sector 66 and the same was confirmed vide email dated 11.11.2020. It is submitted that the total sale consideration for the Unit 3002A was Rs. 1,37,24,630/- plus taxes and other charges and for the unit 3002B was Rs. 1,40,23,718/- plus taxes and other charges. The complainants being the allottees, on their own free will and understanding of the legal import and effect had opted for a specific payment plan. It is submitted that the complainants along

with one Mr. Khushal Singh had paid an aggregate amount of Rs. 70,00,000/- against both the units.

- v. That thereafter the complainants No. 2, 3, 4 and Mr. Khushal Singh vide letter dated 23.03.2021 requested that the name of complainant No. 1 be added as a fifth applicant/co-allottee. The respondent no. 1 being a customer-oriented company acceded to their request and added the name of complainant no. 1 as the fifth applicant/co-allottee. That the respondents have complied with all the terms and conditions which have been committed to the complainants. It is submitted that the respondents paid the pre-handover amounts to the tune of Rs. 4,49,817/- for unit 300A and Rs. 4,49,737/- for unit 300B till the month of June 2021 to the complainants and Mr. Khushal Singh in accordance with the letter issued by the respondents to the complainants.
- vi. However, it subsequently came to light that one of the co-allottee namely Mr. Khushal Singh along with others had been charged with offences under Sections 409,465,467,468,471, 120B of the Indian Penal Code 1860 and an FIR EOW C.R. No. 58/2021 had been registered by the Economic Offences Wing, Mumbai against Mr. Khushal Singh and others in connection with an offence of public fraud allegedly committed by him and siphoning off public funds, out of which the properties were allegedly purchased. The Respondents were issued notices from the office of EOW, Mumbai with reference to CR No. 58 of 2021 investigating/enquiring about all the bookings and payments made by one of the co-allottee Khushal Singh to provide information in connection with the same.

- vii. The respondents have been duly cooperating with the authorities and have been providing all information sought by the authorities including the details of payments received from Khushal Singh and others. The complainants are very well aware of the registration of the abovementioned FIR and ongoing investigation against Mr. Khushal Singh and others. It is stated that the property in question is a subject matter of investigation in the said FIR.
- viii. That during the said investigation, the respondents have also been asked by the investigating authorities to deposit the entire amounts received by them from the accused persons into accounts operated by the offices of the Economic Offences Wing, Mumbai. In compliance of the same an amount of Rs. 17,50,000/-, which was remitted by Khushal Singh, has been deposited with EOW, Mumbai. That despite the fact that the complainants were apprised by the respondents regarding the said facts, the complainants malafidely sent a legal notice to the respondents to put the respondents under pressure to act contrary to the Law. That the respondents duly replied to the legal notice sent by the complainants.
- ix. That consequently vide letter dated 29.11.2021 the respondents cancelled the expression of interests and applications made by the complainants towards unit no. C1 3002B and C1 3002A in its project and refunded the amount deposited by the complainants vide RTGS/IMPS/NEFT (details of the same have been stated in the cancellation letter dated 29.11.2021) from the Complainants, without any deductions whatsoever. It is submitted that now the

complainants have no right, title or interest in the properties in question and neither are allottees of the same. It is submitted that the complainants have no cause of action against the respondents, especially when prima facie the properties were purchased complainants along with Khushal Singh, the latter having used money which allegedly is proceeds of crime.

- x. That in the peculiar facts and circumstances of the present case, as detailed above a part of the money i.e., share deposited by Sh. Khushal Singh being proceeds of crime and same having been deposited by the respondents with the Economic Offences Wing, Mumbai and the balance amounts of Rs. 52,50,000 have been refunded to the Complainants. The complainants have no right whatsoever to force the respondents for allotment of units. In the present case, the complainants have suppressed many material facts, which are extremely relevant in order for a proper adjudication of the present dispute. For the reason the complainants have with malafide intent, suppressed material facts from this authority, which tantamount to playing fraud upon this authority, that the complainants do not deserve any relief and the present complaint merits dismissal on this count itself.

E. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below: -

E.1 Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana 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

9. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent

10. A project by the name of M3M International Finance Centre situated in Sector 66, Gurugram was being developed by the respondent. The complainant nos. 2 to 4 along with Khushal Singh, coming to know of the same, allegedly showed expression of interest and sought booking of commercial office spaces bearing no. 3002A and 3002B and sought their allotment.
11. A "comfort letter" acknowledging expression of interest was allegedly issued by the respondent and the total sale consideration for unit no.

3002A was Rs. 1,3724,630/- and for unit no. 3002B was Rs. 1,40,23,718/- plus taxes and other charges. No such document has been placed on record, only an undated "revised" comfort letter which appears to have been issued after induction of the fifth co-allotee, is enclosed with the complaint and the reply.

12. Admittedly, a sum of Rs. 70,00,000/- was paid against both the units by the complainant nos. 2 to 4 along with Khushal Singh to the respondents. That accordingly the complainants paid the consideration to the respondents in the following manner which is annexed-C/1 at page 26-27 of the complaint: -

Shilpa Gupta (HUF A/C)		
Date	Amount	UTR No.
20.08.2020	Rs. 1,00,000/-	Ref 023315052416
15.09.2020	Rs. 34,00,000/-	SBIN420259563527
Bishwambhar Dayal Gupta and Santosh Gupta		
12.08.2020	Rs. 1,00,000/-	SBIN120225608134
14.09.2020	Rs. 7,75,000/-	BARBB20258000764
12.08.2020	Rs. 1,00,000/-	BARBB20225130055
14.09.2020	Rs. 7,75,000/-	SBIN320258772305
Kushal Singh		

12.08.2020	Rs. 10,00,000/-	SBIN320256385085
13.08.2020	Rs. 7,50,000/-	SBIN320257422847

13. Later, on the request made by them, the name of Amit Garg HUF i.e., the complainant no. 1 was also added. As per the 'comfort letter', the respondent would pay monthly rebate of Rs. 52,498/- subject to deduction of applicable TDS on completion of booking formalities and payment of Rs. 35,00,000/- plus applicable allied charges and applicable taxes. Payment of rebate amount was made to the complainants and Kushal Singh, but a dispute arose after June 2021 and then the same was stopped, leading to filing of complaint bearing no. 4273 of 2021 for execution the builder buyer's agreement and continuance of rebate payments. Meanwhile, the respondent issued a letter of cancellation on 29.11.2021 in respect of both the properties, thereby leading to second complaint no. 438 of 2022. Both complaints are dealt with by this common order.

14. It is an admitted fact that one of the co-allottee namely Mr. Khushal Singh along with others has been charged with offences under Sections 409, 465, 467, 468, 471, 120B of the Indian Penal Code, 1860 and an FIR EOW C.R. No. 58/2021 was registered by the Economic Offences Wing, Mumbai against Mr. Khushal Singh and others. The respondent also had received notices from the office of EOW, Mumbai with reference to CR No. 58 of 2021 investigating/enquiring about the bookings and payments made by one of the co-allottee Khushal Singh in connection

with an offence of public fraud allegedly committed by him and siphoning off public funds, out of which the properties in question were allegedly purchased. The respondent has duly joined the ongoing investigation and have also given the details of payments received from Khushal Singh and others. The complainants are very well aware of the registration of the abovementioned FIR and ongoing investigation against Khushal Singh and others and during the said investigation, the respondent has also been asked by the investigating authorities to deposit the entire amounts received by them from the accused persons into accounts operated by the offices of the Economic Offences Wing, Mumbai.

15. In compliance of the same, an amount of Rs. 17,50,000/- has been deposited with EOW, Mumbai. Consequently, vide letter dated 29.11.2021, the respondents cancelled the Expression of Interests made by the complainants towards unit nos. 3002B and 3002A in its project and refunded the amount deposited by the complainants without any deductions. The counsel for the respondent submitted that the complainants have no right, title or interest in the properties in question and neither are allottees of the same and have no cause of action against the respondent.
16. It will not be out of place to mention that the transactions between the parties appear to be far from transparent. A perusal of documents filed by both the parties, shows that the copy of 'expression of interest' (or any application) initially given by the complainants is not on record. Further, no such 'comfort letter' as allegedly issued by the respondents after the initial payments of Rs. 70,00,000 made against the units, has

been placed on record by either of the party. However, a 'revised' undated comfort letter has been placed on record in the name of five allottees namely i.e., Mrs. Santosh Gupta, Mrs. Shilpa Gupta, Mr. Bishwambhar Dayal, Kushal Singh including Amit Garg HUF. Interestingly, a single residential address namely G-2, Rukmani Garden, Shiv Marg, Banipark, Jaipur, Rajasthan-302006, India. This comfort letter seems to have been issued on the basis of a request dated 20.03.2021 (Annexure R2 of the Reply) under the signature of all four initial parties in the matter. There is no formal allotment letter or builder buyer agreement or agreement to sell between the parties even after a payment of a substantial amount of Rs. 70,00,000.

17. The respondent has raised a specific objection regarding non-joinder of necessary party and suppression of facts, which is borne out by the fact that the complainants have chosen to omit the name of Kushal Singh who was the initial applicant/provisional allottee in both the properties along with the rest of the three complainants. In fact, as per record placed on file by the respondents, Amit Garg HUF entered into the picture only after 20.03.2021 on the basis of the application jointly submitted by the four initial applicant/complainants. Further, in the details of payment made against the two units, the complainants have again omitted the payment made by the Khushal Singh which amounts to Rs. 17,50,00/-. As per the reply submitted, this amount has been deposited by the respondents with the EOW Mumbai. It is also not understood as to how the complainants who have given a joint residential address and have jointly applied for the subject units, are unaware of the whereabouts or proceeding against their co-allottee.

18. No doubt, the issuance of comfort letter with regard to the units in question and receipt of a sum of Rs. 70,00,000/- against the units has been admitted. However, while filling the complaint, Khushal Singh who is one of the beneficiaries of the comfort letter and a necessary party, has not been added as a party in either of the complainants which is in violation of the mandatory provision of proviso to order 1 Rule 9 of the Civil Procedure Code, 1908 being reproduced as herein below:

9. Misjoinder and nonjoinder

No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

Provided that nothing in this rule shall apply to non-joinder of a necessary party.

19. Also, Hon'ble Apex Court in case titled as **Chief Conservator of Forest, Govt. of A.P. Vs. Collector and Ors. (2003) 3 SCC 472** has held that care must be taken to ensure that necessary party is before the court, be it plaintiff or a defendant, otherwise the suit or proceedings will have to fail and the relevant para of order is reproduced below for ready reference:

"12. It needs to be noted here that a legal entity - a natural person or an artificial person - can sue or be sued in his/its own name in a court of law or a Tribunal. It is not merely a procedural formality but is essentially a matter of substance and considerable significance. That is why there are special provisions in the Constitution and the Code of Civil Procedure as to how the Central Government or the Government of a State may sue or be sued. So also there are special provisions in regard to other juristic persons specifying as to how they can sue or be sued. In giving description of a party it will be useful to remember the distinction between misdescription or misnomer of a party and misjoinder or non-joinder of a party suing or being sued. In the case of misdescription of a party, the



court may at any stage of the suit/proceedings permit correction of the cause title so that the party before the court is correctly described; however, a misdescription of a party will not be fatal to the maintainability of the suit/proceedings. Though Rule 9 of Order I of C.P.C. mandates that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to non-joinder of a necessary party. Therefore, care must be taken to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise, the suit or the proceedings will have to fail. Rule 10 of Order I C.P.C. provides remedy when a suit is filed in the name of wrong plaintiff and empowers the court to strike out any party improperly joined or to implead a necessary party at any stage of the proceedings."

20. In the present complaints Khushal Singh, the initial co-allottee, has not been made a party to the complaints despite being necessary party and the cause of the present complaints will be defeated for non-joinder of necessary party. Thus, taking into consideration, the factual as well as legal position detailed above, the present complaints are not maintainable and stand dismissed.
21. True certified copy of this order shall be placed in the case file of each matter.
22. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.04.2023