

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

**Complaint no.:** 5164 of 2021  
**Reserved on:-** 05.04.2023  
**Date of pronouncement:-** 31.05.2023

Madhu Gupta  
**Address:** - B-180, NirmaL Vihar, East Delhi,  
Delhi-110092

**Complainant**

Versus

M Three M India Private Limited  
**Address:** - 6<sup>th</sup> Floor, M3M Tee Point, Sector-65,  
Gurugram Manesar Urban Complex, Gurugram-  
122002, Haryana

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Ms. Daggar Malhotra

Advocate for the complainant

Ms. Himani Vadoriya Proxy

Advocate for the respondent

**ORDER**

1. The present complaint dated 04.01.2022 has been filed by the complainant 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 12 and 13(1) of the Act wherein it is inter alia prescribed that the promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for



sale with such person and register the said agreement for sale, under any law for the time being in force.

**A. Project and unit related details**

2. The particulars of the project, the details of 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.No.	Heads	Information
1	Project name and location	M3M My Den, Sector-67
2	Project area	11.1375 acres
3	Nature of the project	Integrated project land
4	Occupation certificate granted on	24.02.2021
5	Letter of intent executed on	01.04.2019 [page 24 of the complaint]
6	Unit no.	RR SA-15L 06
7	Unit measuring	872.28 sq. ft.
8	Date of execution of buyer's agreement	Not executed
9	Due date of possession	NA

10	Total consideration	Rs. 12,376/-BSP on super area Rs. 1,07,95,337/-
11	Total amount paid by the complainant	Rs. 52,00,000/- As stated by the complainant
12	Date of offer of possession	Not offered

**B. Facts of the complaint**

3. The complainant made the following submissions in the complaint:

1. That the complainant got to know about the respondent's project M3M Urbana My Den at Sector -67 Gurugram. The complainant approached the respondent regarding the purchase of a commercial unit in the said project. The respondent showed and shared a copy of documents representing that if She booked a commercial unit in the said project the said unit would be leased out as a service apartment to IHMS (Innovest Hospitality Management Services Pvt. Ltd). The letter of intent dated 01.04.2019 in respect of the same stating that all the 178 rooms at the said project were to be leased out to IHMS and the lock-in period in place was of 15 years (clause 10) and the minimum lease rental was also fixed and promised as well (clause 12). It was represented to the complainant by the respondent that the said terms had been agreed by both the respondent and IHMS and were legally binding and operative making the purchase of

- commercial unit by the complainant a lucrative choice. The same was also clearly enumerated in the letter of intent in the last para wherein it was stated that the terms of the said LOI have been accepted and agreed by both the respondent and IHMS.
- II. That the respondent that the said project was to be managed by Stay Well and the letter of Intent which was duly accepted by both parties as legally binding, in regard to same as shown and shared by the respondent with the complainant. It was informed to the complainant that stay well is a part of prince hotels and that the said project was going to be managed by such an esteemed institution with 5-star standards as would expected in a 5 -star institution under the brand: Park Regis My Den. The said document clearly mentioned the Key Terms, including the facilities which were to be a part of the said project, those being: 2 restaurants; 2 Banquet Halls; 1 fitness Centre; Spa; 150 car parking space.
- III. That the standard of the project and it's facilitates was to be International Upscale to upper upscale (5 Star). It was represented that the said facilities would be a part of the said project and that the same were going to be constructed on those lines.
- IV. That believing the above representations to be true and relying on the representations of the respondent, the complainant on respondent's instruction that Rs.50 Lakhs have to be paid at the time of booking, the complainant applied for booking of one



commercial unit and gave a post-dated cheque to the respondent of the value of Rs.50 Lakhs. The said cheque was deposited for encashment by the respondent on 29.05.2019. She had in the meanwhile been following up rigorously with the respondent for a booking confirmation letter as well as the builder buyer agreement as the respondent had promised that a booking confirmation and written agreement would be made and share post submission of cheque, but to no avail. Due to the non-responsiveness of the respondent, the complainant was compelled to instruct its Bank to stop payment of the said cheque on 29.05.2019.

- V. That, after the respondent realized that the payment of the said cheque had been stopped, it finally called the complainant and assured her that once the payment is made, the agreement will be shared promptly by the respondent and cannot be shared by it before payment. In furtherance of the same, the respondent asked the complainant to immediately make payment of Rs.50 Lakhs by RTGS to the which complainant complied and Rs.50 Lakhs were paid by her and received by it.
- VI. That after the said payment, the Respondent again fell short of its promises that did not share the agreement/booking confirmation letter on one pretext or the other. Finally, after several follow-ups, vide email dated 04.07.2019, the respondent confirmed the booking of unit no. RR/SA/15L 06 in the name of the complainant in the respondent's project – My Den. The respondent had still not

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shared the builder buyer agreement with the complainant. The complainant kept on following -up with the respondent in regard to the same. After several follow-ups the respondent asked the complainant to make payment of Rs.2 Lakhs so that the agreement could be made. Since, she had received booking confirmation email, the complainant made payment of Rs. 2 Lakhs in order to finally receive a formal builder buyer agreement. The respondent after receiving additional Rs.2 Lakhs from the complainant, shared an undated duly signed confirmation of booking again instead of the formal agreement. Thereafter, she kept following up with the respondent for a BBA but all in vain. The total amount till date received by her till date as pre-handover amount is Rs.8,45,692/-.

- VII. That, in October 2021, she visited the project site and was shocked to see that neither IHMS was a lessee of the commercial units in the project nor was stay well managing the units at the project. Furthermore, she was shocked to see that the representation made by it in respect of 5-star standards and the numerous facilities as conveyed at the time of booking were false as the standard of the project is nowhere like that of a 5-star and the facilities enumerated in the LOIs (annexed above) and otherwise also represented to be constructed by the Respondent were missing and no provision of construction of the same has even been made at the Site. She had booked a Unit only on the basis of the representations made by it which turned out to be

false misrepresentations. The respondent had falsely misrepresented and cheated the complainant that it was going to be a project with 5-star facilities and standards and that there was going to assured lease rentals from IHMS with a lock-in period of 15 years and that the said terms had been accepted by both the respondents and IHMS. At present, there is only 30% construction in which the respondent had made the outer structure which is not only incomplete but also there has been kept no provision for construction of the facilities as enumerated and represented to be constructed by it. The respondent has made the complainant part away with its hard-earned money by making false misrepresentation at the time of taking booking.

- VIII. That, as per section 12 of the 2016, "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.
- IX. The complainant further wishes to point out the illegal conduct of the respondent in taking more than 10% of the total sale consideration before signing of the BBA, refusal to give BBA or payment receipts to her.
- X. That there has not only failure on the part of the respondent to carry out its obligations but most importantly, there have been



false representations, statements and depictions made by it to the complainant at the time of booking of said unit and the complainant, in good faith, relying on and believing those misrepresentations has been made to part away with a considerable amount of money.

**C. The complainant is seeking the following relief:**

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

- (i) Direct the respondent to refund the principal amount of Rs. 52,00,000/- paid by the complainant to the respondent along with interest.

**D. Reply filed by the respondent**

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

- a) That the complainant has approached this authority with unclean hands and have tried to mislead this 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 misstated 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) That the complainant being an investor had expressed her interest to book multiple units in the ready to move in project of the respondent company and paid an amount of Rs.50,00,000/- after duly understanding all the clauses stipulated under the EOI.

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Despite repeated requests of her did not come forward to select the units as a result of which no allotment was made.

- c) That thereafter the complainant requested for booking a unit in the commercial project being developed by the respondent in the name and style of M3M Urbana my den, sector 67 Gurugram, a part of the commercial complex 'M3M Urbana' being developed in a planned and phased manner over a period of time. The Complainant had submitted an application form for allotment of a commercial unit in the project 'M3M Urbana My Den', a part of the commercial complex M3M Urbana being developed in a planned and phased manner over a period of time. Accordingly, she applied for the booking of a unit vide application form and paid an amount of Rs.2,00,000/- towards the booking amount. She had signed the booking application form after duly understanding all the clauses stipulated under the application form after conducting her own due diligence and only after being fully satisfied with the particulars/details of the project.
- d) That the respondent vide application form confirmed the receipt of Rs.2,00,000/- towards booking of unit no. RR/SA/1506 in the said project. The respondent company vide email dated 04.07.2019 also confirmed the booking details of her and also sent an acknowledgement letter to the complainant confirming the receipt of application for unit no. RR SA-15L 06. That in the said letter it was also stated that the complainant would be paid pre-handover amount Rs.49.68/- per sq. ft. per month till the

application of occupation certificate with the intent to provide the complainant the comfort of the respondent company commitment to deliver the unit on time. Thereafter the respondent contacted the complainant to finalise the units in its ready to move in projects and also to make further payments with respect of the unit in the M3M Urbana My Den so that the buyer's agreement could be executed on receipt of 10% of consideration amount, but to no avail. The respondent company in compliance of its obligations completed the construction and development of the project within the agreed time limit and received the occupation certificate from the competent authorities on 24.02.2021, much before the agreed time limit i.e., 31.12.2021.

- e) That as per the terms of the application form executed between the parties the possession was to be offered on or before 31.12.2021 and in compliance of its contractual obligations paid an amount of Rs.8,45,692/- towards the pre-handover amount.
- f) That the complainant is bound by the terms and conditions mentioned in the said booking application. The said application was duly signed by the complainant after properly understanding each and every clause contained therein and all the issues and concerns of her were duly addressed to and satisfied by the respondent before the said booking application was considered and accepted for the allotment of an apartment in the project. She was neither forced nor influenced by it to sign the said application. It was the complainant who after understanding the

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clauses acted further, signed and submitted the said application in his complete senses. The act of the complainants to make the booking application was an independent decision.

- g) That as per the clauses of the booking application which is binding between both the parties and have agreed upon their respective obligations and consequences in case of breach of any of the conditions specified therein. In view of the above, the captioned complaint is not maintainable in law and is liable to be dismissed in limine. It is a well settled proposition of law that the courts cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract; the responsibility of the Court is to interpret appropriately the existing contract and decide the rights and liabilities of the parties within the four corners of the contract.
- h) 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.

6. Copies of all the relevant documents have been filed and placed on the record. There authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the party as well as the written submission of the complainant.

**E. Jurisdiction of the authority**

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

#### **E.I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by 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. Section 11(4)(a) of the Act 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.



10. 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 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.
11. 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 Pvt. Ltd. and other Vs. Union of India and other 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 calls 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.”*

12. 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/allottee.**

F. I Direct the respondent to refund the principal amount of Rs. 52,00,000/- paid by the complainants to the respondent along with interest.

13. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by it in respect of subject unit along with interest at the prescribed rate as per section 12 and 13 of the Act. The counsel for the complainant stated that the respondent made false representations in the initial advertisement/brochure and accepted an amount of more than 10% of the cost of consideration without signing BBA. The last cheque of Rs.90,000/- has not been encashed.

14. The counsel for the respondent stated that there is no violation of section 12 and points out to the details mentioned in LOI dated 01.04.2019 paras 3 and 4 at page No.29 of the complaint. That an amount of Rs. 42,64,308/- was refunded on 03.01.2023 and the same stands encashed by the complainant. Further, an amount of

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Rs.8,45,692/- was refunded as pre-hand over amount to the complainant through various cheques which have been duly encashed. A sum of Rs.90,000/- was refunded by cheque dated 17.02.2023 and the same has been received by the complainant on 24.02.2023. In view of the above, the entire amount of Rs.52 Lakhs has been refunded to the complainant.

15. After perusal of the documents placed on record the authority observes that the complainant has paid an amount of Rs. 52,00,000/- on various dates to the respondent against the basic sale consideration of Rs. 1,07,95,337/-. The Letter of Intent was executed between the parties on 01.04.2019. However, no BBA as mandated by provisions of the Act and the Rules made thereunder has been executed between the Parties. Before entering into an agreement, the respondent received more than 48% of the basic sale consideration from the complainant against the allotted unit. There is express violation of the provisions of the Act on the part of the promoter as it has received more than 10% of the sale consideration as advance without executing agreement for sale. The Authority is well within its powers to deal with the issue when a complaint is filed by an aggrieved allottee, to regulate the real estate sector.

16. In the present case, the promoter has accepted more than 10% of the cost of the apartment as advance payment without first entering into

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written agreement for sale and has hereby violated the provisions laid down under Section 13(1) of the Act. Section 13(1) of the Act is reproduced below for ready reference:-

**Section 13: No deposit or advance to be taken by promoter without first entering into agreement for sale.**

13. (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.
- (2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.

17. In view of the above, the authority hereby directs the promoter to refund the amount received by him i.e., Rs. 52,00,000/- with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the date of actual refund of the amount within the timelines provided in rule 16 of the

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Haryana Rules 2017 *ibid*. However, the amount already paid by the respondent to the complainant shall be adjusted in terms of aforesaid direction. Also, a notice be issued to the respondent under section 61 of the Act for violation of Section 13 of the Act. Separate proceedings in this regard be initiated by the planning branch. A copy of this order be forwarded to the registration branch of the authority for further necessary action in the matter.

#### **H. Directions of the authority**

18. 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 respondent is directed to refund the amount received by him i.e., Rs. 52,00,000/- with interest at the rate of 10.70% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the date of actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*. The amount already paid by the respondent to the complainant shall be adjusted in the refund.
- ii. Also, a notice be issued to the respondent under section 61 of the Act for violation of Section 13 of the Act. Separate proceedings in

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this regard be initiated by the planning branch. A copy of this order be forwarded to the registration branch of the authority for further necessary action in the matter.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

19. Complaint stands disposed of.

20. File be consigned to registry.



  
Ashok Sangwan  
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.05.2023

**HARERA**  
**GURUGRAM**