

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

Date of decision: 27.10.2023

NAME OF THE BUILDER		M3M INDIA LTD.
PROJECT NAME		M3M MARINA
S. No.	Case No.	Case title
1.	CR/4719/2022	REETA LUTHRA V/S M3M INDIA LTD.
2.	CR/4721/2022	REETA LUTHRA V/S M3M INDIA LTD.
3.	CR/4722/2022	SUMIT GERA V/S M3M INDIA LTD.
4.	CR/4723/2022	BANSI LAL ARORA & SURENDRA KUMAR GERA V/S M3M INDIA LTD.

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE WHEN AGRUED:

Mr. Sanjeev Sharma (Advocate)

Ms. Shriya Takkar (Advocate)

Complainants
Respondent

ORDER

1. This order shall dispose of all the 4 complaints titled as above filed before this authority in form CRA/CAO 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 agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "M3M MARINA" (group housing colony) being developed by the same respondent/promoter i.e., M/s M3M India Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and the compensation.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	M3M INDIA LTD "M3M MARINA" Sector-68, Gurugram.
<p>Possession Clause: - 16.1</p> <p><i>"The company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the apartment within a period of forty eight (48) months from the date of commencement of construction which shall mean the date of laying of the first plain cement concrete/mud-mat slab of the tower or the date of the execution of this agreement, whichever is later ("commitment period"). Should the possession of the apartment not be given within the commitment period, the allottee agrees to an extension of one hundred and eighty (180) days ("grace period") after expiry of the commitment period for handing over the possession of the apartment. In case of failure of the allottee to make timely payments of any of the installments as per the payment plan, along with other charges and dues as applicable or otherwise payable in accordance with the payment plan or as per the demands raised by the company from time to time in this respect, despite acceptance of delayed payment alongwith interest or any failure on the part of the allottee to abide by any of the terms and conditions of this agreement, the time periods mentioned in this clause shall not be binding upon the company with respect to the handing over of the possession of the apartment."</i></p> <p style="text-align: right;">(Emphasis supplied)</p>	



Occupation certificate: - 14.09.2020

Note: Grace period is allowed being unqualified & included while computing due date of possession.

Due date of possession	The due date of possession in the present matters have been calculated from the date of start of construction i.e., 11.01.2017 being later. Grace period is allowed being unqualified & included while computing due date of possession. Accordingly, the due date of possession comes out to be 11.07.2021 .			
Complaint No.	CR/4719/2022	CR/4721/2022	CR/4722/2022	CR/4723/2022
Allotment letter	08.05.2015 [pg.38 of reply]	14.05.2015 [pg.38 of reply]	18.05.2015 [pg.46 of reply]	18.05.2015 [pg. 60 of reply]
BBA	30.06.2015 [pg. 25 of complaint]	30.06.2015 [pg. 22 of complaint]	30.06.2015 [pg. 22 of complaint]	30.06.2015 [pg. 23 of complaint]
Unit	MRTW-03/901, Tower 03, 1304 sq. ft. [pg. 29 of complaint]	MRTW-04/604, Tower 04, 1692 sq. ft. [pg. 25 of complaint]	MRTW-04/1504, Tower 04, 1692 sq. ft. [pg. 30 of complaint]	MRTW-04/804, Tower 04, 1692 sq. ft. [pg. 26 of complaint]
Basic Sale Price	₹ 85,41,200/- [pg. 35 of complaint]	₹ 1,10,82,600/- [pg. 32 of complaint]	₹ 1,10,82,600/- [pg. 30 of complaint]	₹ 1,10,82,600/- [pg. 33 of complaint]
Total sale consideration	₹ 1,18,00,228/- [as per SOA annexed with offer letter dated 18.09.2020 at pg. 52 of reply]	₹ 1,52,47,927/- [as per SOA annexed with offer letter dated 18.09.2020 at pg. 51 of reply]	₹ 1,52,00,308/- [as per SOA annexed with offer letter dated 18.09.2020 at pg. 60 of reply]	₹ 1,52,47,392/- [as per SOA annexed with offer letter dated 18.09.2020 at pg. 74 of reply]
Amount paid	₹ 39,64,587/-	₹ 50,64,464/-	₹ 50,47,319/-	₹ 50,63,957/-



	[as per SOA annexed with offer letter dated 18.09.2020 at pg. 52 of reply]	[as per SOA annexed with offer letter dated 18.09.2020 at pg. 51 of reply]	[as per SOA annexed with offer letter dated 18.09.2020 at pg. 60 of reply]	[as per SOA annexed with offer letter dated 18.09.2020 at pg. 74 of reply]
Offer of possession	18.09.2020 [pg.50 of reply]	18.09.2020 [pg.49 of reply]	18.09.2020 [pg.58 of reply]	18.09.2020 [pg. 72 of reply]
Pre cancellation letter	07.11.2020 [pg.56 of reply]	24.10.2020 [pg.55 of reply]	31.10.2020 [pg.64 of reply]	31.10.2020 [pg. 78 of reply]
Cancellation letter	26.12.2020 [pg. 75 of complaint]	26.12.2020 [pg. 72 of complaint]	26.12.2020 [pg. 69 of complaint]	26.12.2020 [pg. 72 of complaint]
Brokerage paid by the respondent	₹ 3,68,352/-	₹ 4,19,809/-	₹ 4,39,624/-	₹ 4,19,809/-
Statutory dues paid as per CA certificate	₹ 6,05,887/-	₹ 7,60,324/-	₹ 2,42,675/-	₹ 2,44,656/-

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of refund the entire amount along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/4719/2022 Reeta Luthra V/s M3M India Limited.** are being taken into consideration for determining the rights of the allottee(s) qua refund of the entire amount along with interest and compensation

A. Project and unit related details

7. 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:

CR/4719/2022 Reeta Luthra V/s M3M India Limited.

S.No.	Heads	Information
1.	Project name and location	M3M Marina, Sector-68, Gurgram
2.	Project area	13.2118 acres
3.	Nature of the project	Group housing project
4.	DTCP license no. and validity status	93 of 2014 dated 13.08.2014 valid upto 12.08.2024
5.	Name of licensee	1. Glory Infracon Pvt. Ltd. 2. Hans Propcon Pvt. Ltd 3. Glory Infracon Pvt. Ltd., 4. Blossom Propbuild Pvt. Ltd. 5. Glory Infracon Pvt. Ltd., 6. Blossom Propbuild Pvt. Ltd
6.	HRERA registered/ not registered	57(A) of 2017 dated 17.08.2017 valid up to 30.11.2022

7.	Occupation certificate granted on	14.09.2020
8.	Provisional allotment letter dated	08.05.2015
9.	Unit no.	MRTW-03/901, T-03
10.	Unit measuring	1304 sq. ft.
11.	Date of execution of buyer's agreement	30.06.2015
12.	Possession clause 16.1	48 months from the date of commencement of construction which shall mean the date of laying of the first cement plain of the tower or date of execution of this agreement whichever is later along with 180 days grace period
13.	PCC Certificate dated	11.01.2017
14.	Due date of possession	11.07.2021
15.	Basic sale price	₹ 85,41,200/- [pg. 35 of complaint]
16.	Total sale consideration	Rs. 1,18,00,228/- As per SOA at 52 of the reply
17.	Total amount paid by the complainants	Rs. 39,64,587/- As per SOA at 52 of the reply
18.	Date of offer of possession	18.09.2020
19.	Pre cancellation dated	07.11.2020

20.	Cancellation letter dated	26.12.2020
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B. Facts of the complaint

8. The complainant has made following submissions in the complaint:

- a. M/s M3M India (Pvt.) Ltd. is the promoter for land admeasuring 13.2118 acres situated in the revenue estate of village Badshapur, sector-68, Distt. Gurugram, Haryana. The director Town & Country Planning, Haryana, Chandigarh has granted License No. 93 of 2014 dated 13.08.2014 for developing a housing project over the said land. Seeing the advertisement of the M3M project and different plans, schemes for booking an apartment, the complainant booked a unit no. 901 in towr-3 of the project admeasuring 1304 sq. ft. under the subvention scheme. The complainant had to pay installments in the ratio of 10% + 25% + 55% + 10% i.e. first 10% + 25% was to be paid within 120 days from the date of booking. Remaining 55% + 10% were supposed to be paid at the time of applying for occupancy certificate and at the time of possession respectively. Believing the statements of the promoter and BBA which was executed on 30.06.2015 the possession was to be handed over within 48 months from the date of execution of agreement i.e. 30th May 2019.
- b. It is pertinent to mention that complainant does not live in India and she is NRI living outside India in Canada. Whenever the complainant visited India, she used to visit the site and office of the promoter but not satisfied by the time taken for stage wise completion of project which was supposed to be handover in May-

2019. The promoter builder kept the pace of development and completion of the project at a very slow speed or do not develop the project after some slabs. Possession of the project is nearing to close but there is very little development on site so the allottee stops paying installments as per the payment plan after noticing the delay attitude of the promoter builder.

- c. The promoter did not cancel the allotment there and refund the amount after deducting the earnest money. He dragged the matter and cancelled the allotment after getting the occupancy certificate or nearing the issuance of occupancy certificate. He keeps the amount with himself for good time to earn interest from such amount. Later on the allotment is cancelled and still no refund is made to the allottee inspite of the directions of courts to pay interest on the remaining amount. Meanwhile the promoter builder first issued notice of cancellation on 07.11.2020 and subsequently issued cancellation notice on 26.12.2020 but did not refunded the received amount along with interest inspite of default on his own account.
- d. The promoter/builder has cancelled the unit allotted to the complainant and the allottee/complainant has not challenged the cancellation made by the promoter/builder as per the conditions laid down under section 11(5) of RERA Act inspite of the equal default made by the promoter/builder by not completing the project and handing over possession of the unit to the allottee as per the time promised by the promoter builder.
- e. In case where Refund has been sanctioned by the Hon'ble Authority along with the interest on payments made by the allottee than no

amount on account of earnest money shall be deducted from the amount paid by allottee and interest shall be calculated from the date of payment actually made to the date till amount is refunded back to the allottee.

- f. Secondly where cancellation is made and earnest money is to be deducted. The refund is made along with interest. In such cases, first the interest is to be calculated from the date of payments made till the date of cancellation. Now the principal amount is to be added in the amount of interest accrued and deduction of earnest money is to be made.
- g. The reason is that interest only up to the date of cancellation is to be calculated as occasion of cancellation stops the clock of interest on the whole payment made. Now whatever amount is left after deduction, the interest is to be calculated on the remaining amount till the amount is refunded back to the allottee. The interest shall be awarded till the date of refund is actually paid out to the allottee if the earnest money is to be deducted by the promoter on directions of the authority.
- h. The cases where promoter/builder has unilaterally cancelled the unit but did not refund the amount along with interest, is illegal, unjust, arbitrary, and needs to be penalized heavily. The cause of action arose for cancellation when some obligation on part of the allottee defaulted. Promoter builder should refund the remaining amount after deducting the earnest money along with interest from the period when actual payments/installments were received by him if so desired and directed by the authority.

C. Relief sought by the complainant.

9. The complainant has filed the present compliant for seeking following relief:

- a. Direct the respondent to refund the paid-up amount along with the interest for every month of delay.

D. Reply by the respondent.

10. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

- a. At the outset, the respondent denies each and every statement, submissions and contentions set forth in the complaint to the extent the same are contrary to and/or inconsistent with the true and complete facts of the case and/or the submissions made on behalf of the respondent in the present reply. The respondent further humbly submits that the averments and contentions, as stated in the complaint under reply, may not be taken to be deemed to have been admitted by the respondent, save and except what are expressly and specifically admitted and the rest may be read as travesty of facts.
- b. It is submitted that the complainant is not a resident of India and has neither stated anywhere in the affidavit or complaint that she was present in India at the time of filing the complaint. The affidavit of the complaint ought to have been notarised and apostille from Canada where the complainant resides. However, the affidavit supporting the complaint is defective and not executed in accordance with law. It is settled law that affidavit drawn on a foreign soil must be apostilled for it to be considered as validly notarized in India. Therefore, in the present complaint none of the facts and contentions in the complaint have been verified or sworn

by the complainant, and this complaint ought to be dismissed on the said ground alone.

- c. The complainant herein along with the reply to the dismissal application has filed an affidavit notarised in Florida, however, the said affidavit mentions the address of Canada and nowhere states that the complainant was present in Florida, us at the time of the affidavit being attested. It is further submitted that the there is a mismatch of signatures of the complainant in the affidavit itself. Also, the affidavit fails to mention that the complainant has executed the affidavit in Florida in the presence of the notary public in the state of Florida. It only mention that the statements are true to my knowledge without giving any mention that the signatures have been authenticated by the notary public or has been signed in his presence.
- d. That after making independent enquiries and only after being fully satisfied about the project "m3m marina", a group housing colony situated at sector-68, Gurugram, Haryana being developed in a planned and phased manner, the complainant had submitted an application form dated 10.04.2015 along with an amount of ₹ 5,00,000/- towards booking of a unit in the project 'M3M MARINA' after conducting due diligence.
- e. That thereafter in due consideration of the complainant's commitment to make timely payments, the respondent company provisionally allotted the unit bearing no. MR TW-03/0901 in favour of the complainant vide provisional allotment letter dated 08.05.2015. As per the terms of the allotment letter the buyer's

agreement was to be executed and registered in the furtherance of the allotment letter.

- f. That thereafter the respondent company sent copies of the buyer's agreement to the complainant for execution at her end vide letter dated 29.05.2015. It is submitted that in accordance with clause 16.1 of the buyers agreement dated 30.06.2015, the possession of the said apartment was to be handed over within 48(forty eight) months from the date of commencement of construction which shall mean the date of laying the first plain concrete/mud mat slab of the tower or the date of execution of the agreement whichever is later, plus 6 (six) months grace period.
- g. That the respondent company after completing the construction of tower in which the apartment of the complainant was located applied for the grant of the occupation certificate on 13.11.2019. It is submitted that the respondent raised demands in accordance with the payment plan opted by the complainant on the achievement of the relevant milestone. That vide demand letter dated 24.07.2020, the respondent raised the demand due on filing of the application of grant of occupation certificate for an amount of ₹ 62,91,838/- which was to be paid on or before 24.08.2020.
- h. That the respondent company offered possession to the complainant vide letter of offer of possession dated 18.09.2020 and requested the complainant to clear her outstanding dues and take possession of the apartment which is ready and complete. It is submitted that the cost of the apartment for an area admeasuring 1304 sq. ft. was ₹ 1,10,08,160/- plus other charges, however due to increase in area of the apartment the total price of the apartment is

₹ 1,17,44,718/- inclusive of development charges for an area of 1330 sq. ft. The increase in value is due to increase in area of the apartment as per clause 13.6 of the buyer's agreement. It is submitted that the respondent company completed the construction of the apartment much before the due date of possession i.e., 11.07.2021 by investing its own funds. It is submitted that all the demands were raised as per the payment plan opted by the complainant and as per the terms and conditions of the buyer's agreement. It is further submitted that under section 19(10) of the RERA Act, 2016, it is the responsibility of the allottee to take physical possession of the apartment, plot or building as the case may be within a period of two months of the occupation certificate.

- i. That despite the possession having been offered to the complainant on 18.09.2020, the complainant did not come forward to clear the dues and take possession, constrained by which the respondent issued a pre-cancellation letter dated 07.11.2020. That on account of the wilful breach of the terms of the allotment and the buyers agreement by failing to clear outstanding dues despite repeated requests, the respondent company was constrained to terminate the allotment of the apartment vide cancellation notice dated 26.12.2020.
- j. That the respondent was constrained to cancel the unit on account of non-payment of the demands as raised by the respondent company. It is submitted that the respondent has incurred various losses/damages on account of the breach of the terms of the allotment and buyers agreement by the complainant, which the

complainant is liable to pay as per the terms of the buyer's agreement. The complainant has paid an amount of ₹ 39,64,587/- against the total dues of ₹ 1,17,44,718/- inclusive of development charges and interest. It is submitted that an interest of ₹ 2,39,799/- has accrued against the outstanding payment with respect to the subject unit.

- k. Thus, the total loss calculated comes to ₹ 64,71,120/- approx. which includes earnest money deduction @15% to the tune of ₹ 15,70,883/-, taxes (GST and service tax) to the tune of ₹ 4,80,316/-, amount paid towards brokerage ₹ 4,19,921/-, opportunity loss to the tune of ₹ 40,00,000/- and further a sum of ₹ 2,39,799/- was the interest payable by the complainant for the delayed payments.
- l. It is submitted that in accordance with clause 16.1 of the apartment buyer's agreement dated 30.06.2015, the possession of the said apartment was to be handed over within 48 (forty eight) months from the date of commencement of construction which shall mean the date of laying the first plain concrete/ mud mat slab of the tower or date of execution of the agreement whichever is later, plus 6 (six) months grace period.
- m. The mud mat slab was laid on 11.01.2017 and the apartment buyer's agreement was executed between the parties on 30.06.2015. That thus the possession timeline comes out to be 11.07.2021. It is submitted that the after completion of the tower in which the apartment of the complainant was located, the respondent company applied for the grant of occupation certificate on 13.11.2019. It is submitted that the occupation certificate was

granted by the competent authorities on after due verification and inspection on 14.09.2020 and the respondent herein vide letter dated 18.09.2020 offered possession to the complainant herein.

n. That as per clause 8.1 of the agreement entered into between the parties, time was the essence of the agreement and the complainant was bound to make timely payments of the instalment due as per the payment plan opted by the complainant. It is settled law that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect.

11. 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.

E. Jurisdiction of the authority

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

E. I. Territorial jurisdiction

13. 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

14. 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.

15. 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.

F. Findings on the reliefs sought by the complainant.

F.1 Direct the respondent to refund the entire amount paid by the complainant along with interest at such rate as may be prescribed.

16. The complainant was allotted a unit bearing no. MR TW-03/901 on level 09 in Tower-3, in the project "M3M The Marina" Sector- 68, Gurugram developed by the respondent/builder for a total consideration of ₹ 1,18,00,228/-. A buyer's agreement was executed on 30.06.2015. The possession of the allotted unit under the Act and Rules 2(1)(F) of the rules 2017, is the essence of the agreement.

17. Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession, the allottee wishes to withdraw from the project and demand return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.
18. The due date of possession as per space buyer's agreement as mentioned in the table above is 11.07.2021. The respondent submitted that the promoter has applied for grant of occupation certificate on 14.11.2019 and obtained the occupation certificate for the said project on 14.09.2020 and offered the possession of the unit on 18.09.2020. The complainant thereafter the present complaint was filed dated 06.07.2022 for refund of amount paid along with interest before the authority.
19. Accordingly, the complainant failed to abide by the terms of the agreement executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule. The reluctant behavior of complainant led to issuance of notice of cancellation by the respondent on 26.12.2020. Now, the question before the authority is as to whether the cancellation is valid or not?
20. As per clause 8.2 of the buyer's agreement, the respondent/promoter has a right to cancel the unit and forfeit the earnest money and other amounts including interest on delayed payments and then refund the balance amount if any after serving the notice to the complainant to

rectify the breach within time mentioned in such notice which shall not be less than 15 days. In case the allottee does not rectify within time period or continues such breach then the agreement is liable for cancellation by respondent.

21. The respondent in the present matter issued a pre-cancellation letter dated 07.11.2020 and thereafter, issued a cancellation letter dated 26.12.2020 to the complainant. The occupation certificate for the project of the allotted unit was granted on 14.09.2020. Thereafter the respondent offered the said unit on 18.09.2020 with a demand of ₹ 83,64,641/- payable by the complainant. It is when the complainant did not pay the outstanding dues the respondent cancelled the unit of the complainant with adequate notices. Thus, the authority opines that the said cancellation of unit dated 26.12.2020 is valid in eyes of law.
22. However, the fact that the respondents have not refunded any amount after certain deduction to the complainant even after cancellation of subject unit; the complainant's rights to file a suit challenging cancellation remains intact.
23. Now, the second issue for consideration arises as to whether after cancellation the balance amount after deduction of earnest money of the basic sale consideration of the unit has been sent to the claimants or not. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of *Maula Bux VS. Union of India, (1970) 1 SCR 928* and *Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136*, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove

actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 **Ramesh Malhotra VS. Emaar MGF Land Limited** (decided on 29.06.2020) and **Mr. Saurav Sanyal VS. M/s IREO Private Limited** (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as **Jayant Singhal and Anr. VS. M3M India Limited** decided on 26.07.2022, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money".

24. Keeping in view the regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, as farmed:

"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."

25. Keeping in view the aforesaid facts and legal position, the request of the complainant for refund against the said allotted unit is allowed by the authority after forfeiture of the 10% of the earnest money of basic sale price cannot be said to be wrong or illegal in any manner.
26. The respondent is directed to refund the paid-up amount of ₹ 39,64,587/- after deducting the earnest money which shall not exceed

the 10% of the basic sale consideration of ₹ 85,41,200/- along with non-refundable statutory charges as per settled law of the land and actual brokerage paid which shall not exceed .50% of sales consideration. The refund should have been made on the date of cancellation i.e., 26.12.2020. Accordingly, the interest at the prescribed rate i.e., 10.75% is allowed on the balance amount from the date of cancellation till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017.

G. Directions of the authority

27. 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):

- a. The respondent is directed to refund the paid-up amount of ₹ 39,64,587/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration of ₹ 85,41,200/- along with non-refundable statutory charges as per settled law of the land and actual brokerage paid which shall not exceed .50% of sales consideration. The refund should have been made on the date of cancellation i.e., 26.12.2020. Accordingly, the interest at the prescribed rate i.e., 10.75% is allowed on the balance amount from the date of cancellation till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017.

- b. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
28. This decision shall mutatis mutandis apply to all the cases mentioned in para 3 of this order.
29. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
30. Files be consigned to registry.




(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.10.2023

HARERA
GURUGRAM