

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

Complaint no. : 2207 of 2023
Date of complaint : 09.05.2023
Date of decision : 10.01.2024

M/s Viva Biotech Private Limited,
Through Its Director Arun Gauba,
Regd. Office At: - 4th Floor, Venturex,
Landmark Cyber Park, Sector-67, Gurugram.

Complainant

Versus

M3M India Private Limited
Regd. Office At: M3M Tee Point, 6th Floor,
Golf Course Extension Road, Sector-65,
Gurugram, Haryana-122002.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Prashar Prasann (Advocate)
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 under the provisions of the Act or the



Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	M3M Urbana Premium, Sector-67, Gurugram
2.	Project area	11.13 acres
3.	DTCP license no. and validity status	89 of 2010 dated 28.10.2010 Valid upto 27.10.2022
4.	RERA Registered/ not registered	348 of 2017 dated 09.11.2017 valid upto 28.02.2024
5.	Unit no.	Cabin 19 (page 20 of complaint)
6.	Unit area	134 sq. ft.
7.	Date of builder buyer agreement	Not executed
8.	Possession clause	Not provided
9.	Due date of possession	28.04.2024 (As per commitment period mentioned in RC dated 09.11.2017)
10.	Total sale consideration	Rs.13,40,000/- (page 22 of the complaint)
11.	Amount paid by the complainant	Rs. 2,00,000/- (as per Annexure-1 at page 18 of complaint)
12.	Occupation certificate	24.02.2021 (Page 48 of the reply)
13.	Reminder emails	19.08.2022, 05.10.2022, 04.11.2022, 08.12.2022, 17.12.2022, 06.01.2023
14.	Amount refunded to the complainant vide RTGS dated 07.11.2023	Rs.2,00,000/-



B. Facts of the complaint

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

- I. That the complainant company, through its director namely Mr. Arun S. Oberoi, booked a commercial/residential unit having tentative carpet area of 54 sq.ft. and tentative super area of 134 sq.ft. in the project of respondent named 'M3M Urbana Premium' at Sector-67, Gurugram for a total sale consideration of Rs.13,40,000/- plus applicable allied charges and applicable taxes.
- II. That Mr. Nitin Kharbanda, IBIS Realty on behalf of respondent, assured and represented that if the complainant made the booking amount in the month of January 2022, then the complainant would get possession of his unit.
- III. That initially the complainant on 17.1.2022, as per the directions of Mr. Nitin Kharbanda made a payment of Rs. 1,00,000/- through cheque for the issuance of the booking documents with all the details and payment schedule. While making such payment, it was assured that the occupancy certificate will be received within 2 months i.e. by March 2022. Further, as per the directions of the respondent, the complainant made another payment of Rs.1,00,000/- through NEFT on 10.2.2022 for such booking and the respondent provided a provisional acknowledgement regarding the same to the complainant.
- IV. Thereafter, in the month of April 2022, Mr. Nitin Kharbanda informed the complainant that the respondent was unable to receive the amount in cheques and the complainant has to make the next payment in cash. Accordingly, the complainant paid an amount of Rs.2,07,000/- in cash to Mr. Nitin Kharbanda on behalf of the respondent, for the booking of the aforementioned unit, which



totals up to an amount of Rs.4,07,000/- which was paid by the complainant to the respondent for the booking of such unit.

- V. That the representatives of the respondent further sent a confirmation for booking unit no. 19 (Business Centre) on 11th floor in the said project with an express understanding on behalf of respondent, that OC will be received by April 2022 and after fit outs, furnished unit will be handed over to the complainant by June/July 2022.
- VI. That in August 2022, Mr. Nitin Kharbanda, on behalf of the respondent, again asked for a payment of Rs. 1,00,000/- from the complainant, upon which he would provide the allotment letter to the complainant.
- VII. That looking at the unreliable behaviour of you the respondent, the complainant requested to present the allotment letter before he makes such payment. However, the respondent failed to present the allotment letter. Thereafter, the complainant sent an email to the respondent, wherein he requested to execute an MOU, that if he pays the last bit of the amount to be paid for booking, the respondent will have to ensure that either OC and possession is given to the complainant within the specified time, or the respondent shall find another buyer to sell the unit so that the complainant can get his money back.
- VIII. That the complainant on various occasions contacted the respondent to make a refund of the amount paid by him, but the respondent has still not made any refund or even given the possession/OC of such unit.
- IX. That the complainant did not have any option, therefore, he through his legal counsel sent a legal notice dated 02.12.2022, calling it to



either provide with the OC and possession of such unit, as the complainant is ready to pay the last amount for the said unit, or refund the amount paid by him alongwith an interest at 18% per annum from January 2022 till the date of actual realization. However, neither the possession has been handed over nor refund has been made to the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - I. Direct the respondent to refund the paid-up amount alongwith interest @18% from January 2022 till the date of actual realization.
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 has contested the complaint vide its reply dated 06.10.2023 on the following grounds: -
 - i. That the complainant approached the respondent company through its broker named 'Sanya Estates' for booking of a ready to move-in residential apartment/commercial unit/commercial plots/office space in one of the projects of the respondent company wherein, the construction has been completed and occupation certificate has already been granted by the competent authority(ies).
 - ii. That the complainant along with the expression of interest (EOI) also tendered a sum of Rs.2,00,000/- towards the confirmation of his EOI which was duly acknowledged by the respondent vide a payment acknowledgement.



- iii. That in consideration of the booking amount paid by the complainant and his commitment to comply with the terms of the booking/EOI and complete the booking formalities, the respondent vide email dated 06.07.2022 acknowledged complainant's interest towards unit bearing no. 'CABIN 19' in M3M Urbana Premium. The respondent further informed the complainant that the closure date for issuance of provisional allotment is 20.07.2022. Further, the complainant was requested to come forward to complete the booking formalities. However, for reasons best known to him, the complainant failed to come forward to do so.
- iv. That the respondent vide a letter acknowledged the complainant's EOI for the booking of a commercial/residential unit having tentative carpet area of 54 sq.ft. for a total consideration of Rs.13,40,000/- plus applicable allied charges and applicable taxes, in one of the projects of the respondent company wherein construction has been completed and occupation certificate has already been granted by the competent authorities.
- v. That in consideration of the confirmation of the booking and the EOI, the respondent company vide emails dated 19.08.2022, 05.10.2022, 04.11.2022, 08.12.2022, 17.12.2022 and 06.01.2023 issued reminders mentioning that an amount of Rs.4,70,000/- which was payable on 31.07.2022 is due and requested him to complete the booking formalities immediately failing which, the respondent will be constrained to terminate the booking.
- vi. That despite repeated requests by the respondent, the complainant failed to come forward to complete the booking formalities and thus, the respondent was constrained to terminate the booking of the complainant and forfeit the amounts paid by the complainant.



- vii. That the respondent has completed the construction of the project and has received the OC from the competent authorities on 24.02.2021 after due verification and inspection.
- viii. That in view of aforementioned facts and submissions, it is submitted that the captioned complaint is frivolous, vague and vexatious in nature and the same is liable to be dismissed in limine.
5. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

6. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

7. 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

8. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to



the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

9. 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.
10. 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(C), 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*** and 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

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officer under Section 71 and that would be against the mandate of the Act 2016."

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case 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 the paid-up amount alongwith interest @18% from January 2022 till the date of actual realization.

12. The complainant submitted that he booked a commercial/residential unit having tentative carpet area of 54 sq.ft. and tentative super area of 134 sq.ft. in the project of respondent named 'M3M Urbana Premium' at Sector-67, Gurugram for a total sale consideration of Rs.13,40,000/- plus applicable allied charges and applicable taxes against which an amount of Rs.2,00,000/- was made through cheque and RTGS and an amount of Rs.2,07,000/- was received in cash by Mr. Nitin Kharbanda of IBIS Realty on behalf of the respondent. However, the respondent stated that it has only received an amount of Rs.2,00,000/- from the complainant and acknowledgement regarding the said payment was duly issued by it to the complainant. The respondent further stated that it has no association with IBIS Realty and there is no privity of contract between the respondent and Mr. Nitin Kharbanda of IBIS Realty with respect to the booking of the complainant. Further, in consideration of the confirmation of the booking and the EOI, the respondent company vide emails dated 19.08.2022, 05.10.2022, 04.11.2022, 08.12.2022, 17.12.2022 and 06.01.2023 issued reminders mentioning that an amount of Rs.4,70,000/- which was payable on 31.07.2022 is due and requested him to complete the booking formalities immediately, failing which, the respondent will be constrained to terminate the booking.



Despite repeated requests made by the respondent, the complainant failed to come forward to complete the booking formalities and thus, the respondent was constrained to terminate the booking of the complainant and has already refunded the full amount received by it regarding the said booking vide RTGS on 07.11.2023 to the complainant.

13. After, considering the documents available on record as well as submissions made by the parties, the Authority is satisfied that the complainant is at default and the respondent has rightly terminated the booking on failure of the complainant to come forward to complete the booking formalities and finalize the allotment and has also refunded the full amount received by it i.e., Rs.2,00,000/- to the complainant. However, the complainant is unable to show any proof of payment other than Rs.2,00,000/- which has been made to the respondent. Therefore, after considering the above said facts, no case for refund is made out. Thus, the present complaint stands dismissed being devoid of merits. File be consigned to the registry.

HARERA
GURUGRAM

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.01.2024