

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.890 of 2023
Date of Decision: 11.01.2024

M/s M3M India Private Limited Regd. Office at SB/C/5L/008,
M3M Urbana, Sector-67, Gurugram, Manesar Urban Complex,
Gurugram, Haryana.

Appellant-promoter

Versus

Jyoti Baswal, resident of D-83, Sai Kunj, New Palam Vihar,
Phase-3, Gurgaon Haryana

Respondent-allottee

CORAM:

**Justice Rajan Gupta
Anil Kumar Gupta**

**Chairman
Member (Technical)**

Present:

Mr. Kunal Dawar, Advocate, along with
Ms. Tanika Goyal, Advocate,
for the appellant.

Mr. Siddhant Sharma, Advocate along with
Mr. Satish Mishra, Advocate
for the respondent.

ORDER:

Rajan Gupta, Chairman (Oral):

Complainant (respondent-allottee herein) preferred a complaint dated 21.01.2021 before the Haryana Real Estate Regulatory Authority, Gurugram (for short, the Authority below) seeking refund of the amount of Rs.33,04,463/- along with interest. He had booked a flat with the promoter (appellant herein) in its project known as 'M3M WoodShire' situated in Sector 107, Gurugram. His grievance is that the promoter never agreed to accept his request for execution of the Builder Buyer's Agreement (for short, BBA). Complainant was, thus, left with no other option but to seek refund of the amount paid by the complainant. The matter was contested by the appellant-

promoter. After considering all the pleas and documents on record, the matter was disposed of by the Authority below vide its order dated 05.05.2022. The relevant direction is reproduced below for ready reference:-

“ i. Keeping in view the aforesaid legal provisions, the respondents are directed to refund the balance amount of the subject unit by deducting the earnest money which shall not exceed the 10 % of the consideration of the amount of the unit as per statement of account and shall return the balance amount to the complainant within a period of 90 days from the date of this order. The refund should have been made on the date of termination i.e. 23.03.2018, accordingly interest at the prescribed rate i.e. 9.40 % is allowed on the balance amount from the date of termination to date of actual refund. It has been confirmed by the counsel of the respondents that the property has been sold and transferred to the third party.”

2. Mr. Dawar has addressed at some length. On a query being put to him as to why BBA was not executed despite repeated request made by the respondent-allottee, he submits that there was no intention on part of the appellant-promoter not to enter into an agreement, but the delay was inadvertent. According to him, respondent-allottee acted post-haste and asked for refund. His request has erroneously been accepted by the Authority below.

3. Learned counsel for the respondent-allottee on the other hand has reiterated the stand taken by him in his complaint before the Authority below. As per him, a perusal of the letters written by the respondent-allottee would show that he was serious in taking possession of the unit in question by making payment in time. For this reason, he sent repeated reminders asking the promoter to enter into the BBA. However, promoter's response was not received. Due to this reason, he was

constrained to file the complaint in question before the Authority below.

4. We have heard learned counsel for the parties and have given careful thought to the facts of the case.

5. The Authority below on perusal of documents came to the conclusion that Occupation Certificate (OC) was granted to the appellant-promoter vide letter dated 20.04.2017 and notice of offer of possession issued on 25.08.2017. Thereafter, appellant-promoter cancelled the unit putting the blame on allottee for failure to pay instalments as scheduled. It has placed reliance on Regulation 11(5) framed in Regulations, 2018 by Haryana Real Estate Regulatory Authority Gurugram (forfeiture of earnest money by the builder) pertaining to 'earnest money'. It directed the appellant-promoter to refund the amount after deducting 10% of the total consideration of the unit, as per statement of account available on record.

6. At this stage, learned counsel for the respondent-allottee has pointed out that immediately, after cancellation of the unit, same was allotted to the third party. This contention remains uncontroverted.

7. On due consideration of the matter, we are of the firm view that there is no legal infirmity with the order passed by the Authority below. We thus, uphold the order. The appeal is, accordingly, dismissed.

8. The amount of Rs.32.14,547/- deposited by the appellant-promoter with this Tribunal as pre-deposit to comply with the proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 along with interest accrued thereon, be sent to the Authority below for disbursement of the

same to the respondent-allottee, subject to tax liability, if any, accordance to law.

8. At this stage, learned counsel for the respondent-allottee submits that in view of the aforesaid order, he shall withdraw the execution preferred by the respondent-allottee before the Executing Court at Gurugram on the next date of hearing.

9. Copy of this order be forwarded to the parties/counsel for the parties and Authority below.

10. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

11.01.2024
Manoj Rana