

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

Complaint no.: 3882 of 2023
Date of decision : 09.02.2024

1. M/s Lavish Buildmart Pvt. Ltd.
2. M/s M Worth Facility Services Pvt. Ltd.

Both OfficeR/o: - Cabin 1, Unit no.
SB/C/5L/Office/008, M3M Urbana, Sector 67, **Complainants**
Gurugram-122002

Versus

Natasha Puri.

R/o: D-3, Vikas Puri, West Delhi-110018

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Shri. Shriya Takkar(Advovate)
Shri. Baldev Krishan(Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 to the allottees as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

2. 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 PRIVE-73 Sector 73 Gurugram
2.	Project area	2..75 acres
3.	Nature of project	Commercial colony
4.	RERA registered/ valid up to	27 of 2019 dated 24.05.2019 valid till 29.02.2024
5	DTPC License no.	183 of 2008 dated 25.10.2008 valid upto 24.10.2023
6	Name of license	Lavish Buildmart Pvt. Ltd
7.	Unit no.	109, 1 st Floor, Block -1 (Page no. 45 of the complaint)
8.	Unit measuring	704.36 sq. ft (Page no. 08 of the complaint)
9.	Date of Allotment Letter	01.10.2019 (Page no 45 of complaint)
10.	Builder buyer agreement	03.01.2020 (Page no. 57 of the complaint)
11.	Rectification/Supplementary agreement for sale	03.02.2020 (Page no 127 of complaint)
12.	Demand letter for payment	02.05.2020



		(Page no 132 of complaint)
13.	Reminder 1	28.05.2020 (Page no 133 of complaint)
14.	Pre-cancellation notice - 1 Pre-cancellation notice-2	16.06.2020 (Page no 134 of complaint) 05.10.2021 (Page no 159 of complaint)
15.	Receipt of payment issued by complainant no. 1 and Complainant developer	29.06.2020,10.03.2021 (Page no 137-138 of complaint)
16.	Mail to respondent requesting for taking possession and executing conveyance deed	31.08.2022 till 21.06.2023
17.	Possession clause as given in BBA	Clause 7.1 read with definition of "commitment period". "Commitment period" shall mean 29.02.2024 by the promoter to the authority, at the time of registration of the project under the act, for completion of the construction of the project 'M3M PRIVE73' and provide possession of the unit on or before 29.02.2024 or as may be further revised/approved by the authorities. 7.1 Schedule for possession of the said unit- The promoter agrees and understands that timely delivery of possession of the unit along with the car parking space. If any, to the allottee and the common areas to the authority, as the case may be, as provided under the act and rule 2(1)(1) of the



		rules,2017 is the essence of the agreement (Page no 62 and 72 of BBA/complaint)
18.	Due date of possession	29.02.2024 As per possession clause read with definition of commitment period.
19.	Total sale consideration	Rs. 1,01,23,900/- (As per Payment plan, Page no. 129 of complaint)
20.	Total amount paid by the complainant	Rs. 1,04,46,850/- (Alleged by complainant on Page no 09 of the complaint)
21.	Occupation certificate	31.08.2021 (Page no 139 of complaint)
22.	Offer of possession	04.09.2021 (Page no 144 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- a. That the complainant developer M/s. Lavish Buildmart Private Limited is in the process of developing a commercial colony in a planned and phased manner over a period of time on land situated in Sector 73 Gurugram Manesar Urban Complex, Gurugram. 'M3M Prive 73' an integral part of the commercial colony being developed on part of part of licensed land being 1.625 acres in Sector 73, Gurugram. The present phase of development comprises of retail space(s) and the development has been carried out accordance with the licenses and the building plans as approved by DGTCP from time to time. In



accordance with the sanctioned building plans, the complainant has already developed the project with suitable infrastructural facilities. The said project is a RERA registered project (HARERA-Registration no. 27 of 2019 dated 24.05.2019). That 'M3M' is the mark being used by complainant no.1 under a brand licensing arrangement between the complainant no.1 and M3M India Pvt. Ltd., whereby M3M India Pvt. Ltd. has granted the complainant no.1 a limited license to use the brand name, logos, image and other such signage, solely for the purpose of activities related to promotion for the commercial project. That in addition to the arrangement between complainant no.1 and M/s. M3M India Pvt. Ltd. herein for the grant of branding rights in favour of the complainant no.1, it has also been agreed between the companies that, at the request of the complainant no.1, M3M India Private Limited has agreed to provide customer related support and assistance to complainant no.1, which is limited to handling customer related verbal or written communication including queries, feedback, comments etc. on behalf of complainant no.1 with respect to the project. However, the assistance provided by M3M India Pvt. Ltd. herein is merely a support function and complainant no.1 is solely responsible for any claim, demands, notice, complaints, which may be raised by an allottee in respect to project.

- b. Complainant no.2 is the maintenance agency having its registered office at shop no. 163, Upper Ground Floor, C-Block, Sushant Vyapar Kendra, Sushant Lok Phase - I, Gurugram,

Haryana and is responsible for maintenance and upkeep of the project 'M3M Prive 73'. The respondent after conducting her own due diligence and after being satisfied with the project had approached the complainant developer with an intention to make a booking in the commercial project 'M3M Prive 73' an integral part of the commercial colony. It is submitted that the complainant paid an amount of ₹1,00,000/- and ₹5,00,000/- vide cheques dated 01.10.2019 and 05.10.2019 towards booking amount of the commercial unit. The respondent had also duly signed and understood the indicative terms and conditions of the allotment along with the application form. All the terms and conditions including the cost of the unit, size/super area of the unit, timeline for possession etc. were clearly mentioned in the said application form along with the indicative terms and conditions.

- c. The complainant developer had in due consideration of the respondent's commitment to make timely payments, issued allotment letter dated 01.10.2019 allotted unit bearing no. 109 ('unit'). It is submitted that the respondent had opted for the specific payment plan. It is submitted that the cost of the unit for carpet area admeasuring 345.63 sq. ft. was ₹1,01,23,900/- plus other charges.
- d. That the complainant no.1 vide letters dated 07.12.2019 and 12.12.2019 sent copies of other related documents and three copies of buyer's agreement respectively to the respondent for execution at her end. The buyer's agreement was executed



between the parties on 03.01.2020 and the same was duly registered in the office of joint sub registrar, Kadipur, Gurugram. It is pertinent to mention that the agreement to sell duly covers all the liabilities and rights of both the parties.

- e. That in view of the booking and commitment to make timely payments, the complainant developer vide letter dated 07.12.2019 offered the respondent a monthly pre-handover amount to provide the respondent the comfort of the developer company's commitment to deliver the unit on time. It is submitted that as per the letter, the respondent shall pay the pre-handover amount of ₹28,999/- per till completion of payment of ₹50,91,650/-. After the payment of ₹50,91,650/- the developer company shall pay pre-handover amount of ₹41,417/- per month till the date of filing of application for grant of occupation certificate. The pre-handover amounts were payable subject to the condition that the allottee should not be in default of any of her obligations as stated in the buyer's agreement. The complainant developer in compliance of the said letter duly paid the pre-handover amounts to the respondent to the tune of ₹11,61,357/- through cheques/RTGS.
- f. That thereafter it transpired that erroneously the percentage mentioned in Schedule D, Part III given in agreement for sale was wrong. The said issue was brought to the knowledge of the respondent and it was decided that a supplementary agreement for sale be executed to avoid future consequences. Supplementary agreement for sale was executed between the



parties on 03.02.2020 and the same was duly registered. Accordingly, the payment plan was rectified to : 0.99% OF TCV (on booking) : 34.01% of TCV (within 10 days of booking) : 15% of TCV (within 8 months of booking) : 50% of TCV (Within 30 days of notice of possession). Further, the respondent was liable to pay other charges within 30 days of notice of possession.

- g. That the complainant no. 1 vide the demand letter raised the demand due within 8 months of booking for an amount of ₹15,18,586/-. The same was payable on or before 27.05.2020. That since the allottee failed to make the payment the complainant developer issued reminder-I dated 28.05.2020 requesting the allottee to clear her outstanding dues. Despite issuance of reminder letter dated 28.05.2020 the respondent failed to make the payments as per the demand letter, the complainant developer issued a pre-cancellation notice dated 16.06.2020.
- h. That the payment of ₹15,18,586/- was made by the Respondent allottee. Further, the complainant developer vide email dated 28.06.2020 agreed to waive of the delayed interest as a goodwill gesture. That the respondent allottee on her own free will made advance payment of ₹50,23,592/- and the same was adjusted towards the amount payable at the time of offer of possession and accordingly, receipt was issued by the complainant developer. Since the Respondent made advance payment therefore the Complainant gave additional rebates/discounts

and also paid additional sums over and above the agreed amount towards pre-handover to the allottee.

- i. That the complainant developer completed the construction of the project and upon completion of the unit in terms of the agreement to sell and applied for grant of occupation certificate on 16.03.2021 before the office of Director General, Town and Country Planning Haryana, Sector 17, Chandigarh. The occupation certificate was granted by the competent authority on 31.08.2021 after due verification and inspection.
- j. The complainant no. 1 company vide letter dated 04.09.2021 sent the notice of possession to the respondent allottee and also advised her to clear all dues on or before 04.10.2021 and to take the possession of the unit in question. It is submitted that the due to increase in carpet area to 350.58 sq.ft. the cost of the unit was increased to ₹1,05,67,331/- plus stamp duty and registration charges. The increase in area (being 1.4%) is as per clause 1.9 of the buyer's agreement. Further, complainant no.2 also raised the invoice for payment of maintenance charges on or before 14.09.2021. It is submitted that as per the clause 7.1 read with definition of commitment period in the buyers agreement the possession of the unit was to be handed over as per rule 2 (1) (f) of the Rules, 2017 i.e., the possession was to be handed over by 29.02.2024. It is submitted that the possession was offered to the respondent on 04.09.2021, which is much before the agreed timeline. Thus, in the present case there is no delay in offering the possession of the unit to the Respondent-Allottee.

- k. The respondent deposited amounts of ₹ 61,458/-, ₹ 2,99,850/- and ₹2,19,871/-vide cheques bearing nos. 491269, 491268 and 491270 respectively towards her outstanding dues. Accordingly, receipts were issued by the complainant developer. Since, the respondent failed to make the complete payment within the timeline stated in the notice of possession, the complainant issued pre-cancellation notice dated 05.10.2021.
- l. The complainant developer as a goodwill gesture gave rebate of ₹8,970/- to the respondent allottee and accordingly receipt for the same was issued. Thereafter, the complainant developer sent necessary indemnities, undertakings and other documentation prescribed by the complainant to take over the possession of the unit. The respondent allottee after reading and understanding the same returned the duly executed documents including full and final settlement of accounts to the complainant on 11.01.2022 .Thus, the respondent has cleared all her dues towards the unit in question except stamp duty and registration charges, however for reasons best known to her, the complainant is evading the payment of stamp duty and registration of the conveyance deed for her unit.
- m. That the complainant developer made multiple requests to the respondent to come forward and take possession of the unit and complete, execute the maintenance agreement and also requested her to get the conveyance deed registered. However, the respondent allottee refused to take possession of the unit due to paucity of time. That emails dated 31.08.2022,



02.09.2022, 16.09.2022, 22.09.2022, 26.09.2022 were sent to the respondent to come forward for joint inspection, take the physical handover of possession, execute maintenance agreement and also get the conveyance deed registered. The complainant was also duly informed about the amount payable towards stamp duty charges and registration fees.

- n. That the day when the inspection was fixed certain snags were pointed out by the respondent which were duly fixed/rectified. Post which the respondent was again requested to take possession of the unit, but to no avail. Thereafter various emails dated 21.11.2022, 23.11.2022, 24.11.2022, 25.11.2022 were sent to the respondent to come forward for joint inspection and take possession of the unit and get the conveyance deed registered.
- o. The complainant vide email dated 24.11.2022 also shared the photographs of the unit in question. Further, the respondent was also informed that the utility bill would be raised by the maintenance agency as per the billing cycle and since, she was not coming forward to take possession of the unit therefore she was liable to pay holding charges as per the terms of the buyers agreement. However, the respondent despite repeated requests did not come forward to take physical possession of the unit and get the conveyance deed registered and thus was in default of her contractual obligations. That respondent no.2 vide invoice dated 12.12.2022 requested the respondent to pay the

- maintenance charges for the month of December, 2022. The said charges were payable as per the terms of the buyer's agreement.
- p. The complainant developer wrote a number of emails from the months of January, 2023 to March, 2023 requesting the respondent to come forward and take physical possession of the unit after inspecting the same, execute maintenance agreement and make payments towards stamp duty charges so that get the conveyance deed can be registered. It was yet again informed that the utility bill would be charges irrespective of the fact the allottee takes possession or not. Since, the respondent was not coming forward to take possession she was liable to pay holding charges as per clause 7.7.1 and 7.7.3 of the buyers agreement. However, the respondent was dilly-dallying taking physical possession on one pretext or the other.
- q. That vide emails dated 30.03.2023, 11.04.2023 reminders were issued to the respondent that the maintenance bill was overdue for the months of January, 2023 to April, 2023 and the respondent was requested to clear the same. The said amount was payable in accordance with clause 11.3 of the buyers agreement.
- r. That various emails were sent to the respondent from April, 2023 to May, 2023 requesting her to come forward and take physical possession of the unit, execute maintenance agreement and get the conveyance deed registered, but to no avail. That respondent allottee despite being well aware of the fact that the snags were rectified and the same being communicated to her

through various mails dated November 2022, 29.04.2023, 01.05.2023, 08.06.2023, 14.06.2023, 21.06.2023. The respondent till date has not come forward to take physical possession of the unit which is complete, execute maintenance agreement and get the conveyance deed registered post payment of stamp duty and registration charges. The respondent further is also not clearing her dues payable to complainant no.2 towards maintenance charges. Thus, the respondent is in default of her contractual obligations as well as obligations under the Real Estate (Regulation and Development) Act, 2016. That it is relevant to mention that the complainant developer has already spent enormous amount of money towards the due construction and development of the project of which the occupation certificate has been granted and the same is ready for occupation. The respondent have failed to come forward and take over the physical possession of the unit in accordance with the terms of the buyer's agreement and get the conveyance deed registered. Therefore, it is the complainant developer who after having spent enormous sums of money (including funds borrowed from banks and financial institutions and other entities) to construct the present phase.

- s. It is also relevant to point out that despite the harsh prevailing conditions (COVID 19 pandemic) and having borrowed funds from the banks and financial institutions and other entities, the complainant developer completed the construction and development of the project much before the agreed time limit

and the occupation certificate has been granted for the unit of the respondent-allottee.

- t. That the present complaint is filed under Section 19 (6), Section 19 (7), Sec 19(10) and Sec 19(11) of the Real Estate (Regulation and Development) Act, 2016 seeking the reliefs that the respondent allottee be directed to take physical possession of the unit which is ready post completion of necessary formalities, make payments towards maintenance/utility charges along with prescribed rate of interest as well as holding charges and get the conveyance deed executed post payment of stamp duty and registration charges. It is submitted that the respondent is in breach of her contractual obligations. The complainants herein have performed their contractual obligations as per the terms of the buyer's agreement.

C. Relief sought by the complainant:

4. The complainants have sought following relief:
- Direct the respondent to take the physical possession of the unit after completion of requisite formalities including execution of maintenance agreement.
 - Direct the respondent to get the conveyance deed executed post payment of stamp duty & registration charges.
 - Direct the respondent to pay holding charges to complainant no. 1 as per the terms and conditions of the buyer's agreement.
 - Direct the respondent to pay outstanding maintenance dues along with prescribed rate of interest to complainant no. 2.

D. Reply filed by the respondent:



5. The respondent has contested the complaint on the following grounds:
- No occupation certificate has been issued in respect of the project named M3M Prive 73, located in Sector-73, Gurugram, Haryana. The one issued by the Town & Country Planning Department, Haryana vide memo. no. ZP-517/AD/RA)/2021/21537 dated 31.08.2021 is not in respect of project named M3M Prive-73 but is in respect of the next building which stands erected on the adjoining plot of land in the same Sector-73, Gurugram, Haryana having deceptively similar and identical project named M3M Urbana Business Park, Gurugram, Haryana.
 - That the above said Occupation Certificate dated 31.08.2021 is based on an Application moved by the First Complainant on 16.03.2021 (Page 142-143 of the Paper Book) in respect of yet some other commercial colony in Sector-66, Gurugram, Haryana. The said application dated 16.03.2021 is also supported with Completion Certificate in Form HR-V(2) purportedly issued by Architect and Engineer and in Form HR-VI Completion Certificate by an Architect. Moreover, the application is supported by a Certificate purportedly issued by a Chartered Accountant as per order dated 9.3.2016 i.e. prior to alleged Registration of the Project named M3M Prive-73 as per alleged registration certificate as detailed in Annexure 1 of the Complaint bearing Registration No. 27 of 2019 dated 24.5.2019

- c. That all the formalities as detailed in the Application dated 16.03.2021 moved by the First Complainant in respect of some commercial colony in Sector-66, Gurugram, Haryana like obtaining Completion Certificate, Certificate from the Chartered Accountant etc. have neither been obtained in respect of the Project named M3M Prive-73, Gurugram, Haryana nor were ever made available to the respondent at any point of time.
- d. That the description of the Building as shown in the Occupation Certificate as per Memo. No. ZP-517/AD/RA)/2021/21537 dated 31.08.2021 (Page 139-140 of the Paper Book) does not match with the Structure of Building of the Project named M3M-Prive-73. The description of the Building (Page 139 of the Paper Book) shows the number of Floors as Lower Ground Floor + Ground Floor + Upper Ground Floor + 1st to 2nd Floor with Basement-1, Basement-2, Mumty & Machine Room whereas the Building at M3M-Prive-73 does not have such floors. As per their own version as detailed in the supporting Annexure 1 Part-2 (Page 10-11 of Paper Book) the nature of the project is mentioned as Commercial Project. This Part-2 giving Project related details as given in Column 7 relating to "Part completion certificate/Completion Certificate" has been deliberately left blank with the sole motto better known to the complainants.
- e. That at no point of time ever the Proposed Building Plan and the sanction of the Building Plan was ever shown to the Respondent with a view to know as to whether adherence has been given to the FAR, Number of Commercial Units, total coverage area etc.

- f. That the Occupation Certificate dated 31.08.2021, though not given in respect of Project named M3M Prive 73, yet is subject to various conditions. The prime conditions being (i) Fire No Objection Certificate from Fire Station Officer, Gurugram (ii) Environment Clearance issued by State Environment Impact Assessment Authority, Haryana, (iii) Structure Safety Certificate, Internal & External services report from Chief Engineer HSVP, Panchkula, Certificate of Registration of Lifts. Also other facilities, systems and amenities like Water Harvesting System, Day & Night marking as per International Civil Aviation Organization, Provision of Electricity Generation Sets and Parking facilities etc. are yet to be obtained by the First Complainant in respect of the Project under reference i.e. M3M Prive 73, Sector 73, Gurugram in which the Respondent has purchased Unit No. 109, at First Floor of the said project by paying the entire amount of consideration
- g. That the Project named M3M Prive-73 is not complete from any angle and ready for occupation for running the proposed commercial establishment to be run by the Respondent. The following are the anomalies in the present day status of the entire Project:
- i. The entire commercial complex christened as M3M Prive73 is open to Sky with no cover for stopping the Rain Water. There is no Sun Shade for protection of the Unit purchased by the Respondent from Rain & Sunshine. The paraphernalia of Covering the entire Commercial Centre is

lying on the top of the Complex as shown in the On Site Actual Photographs obtained by the Respondent as on 22nd November, 2023.

- ii. The Fire Fighting System is also in doldrums as most of the Compartments of the Fire Fighting System are lying hanging in the air without any connection with the Main Rain Water Drainage System. The Pipe Lines providing for Internal Fire Fighting system for almost every single commercial unit in the said commercial complex is also in limbo being not connected to any main pipe line
- iii. The Galleries in front of the Shops on the First and Second Floor are too scanty to allow the visitors and shoppers to walk smoothly in the corridors and/or to rush to the lower floors in case of some mis-happening.
- iv. The provision of only Two Numbers of Lifts is not sufficient for the visitors and shoppers. The Escalators are totally dependent on Power Back-Up.
- v. Only one Unit of 500 KVA capacity Diesel Generation Set has been provided in the entire Commercial Complex which is not sufficient for the Power Back-Up in the event of disconnection of the Power Supply from the main Grid.
- vi. The Main Entrance of the entire Commercial Complex is at a Height of about ten feet with stairs with no provision for a Ramp for the disabled and old aged persons/shoppers using Wheel Chair.

- vii. The water supply system for each unit of the commercial complex is also not in place.
 - viii. The outlet for the waste water is also not connected to any outflow source leading to the Ground Floor or some other place for final disposal of the waste water of the commercial units in the said commercial complex.
 - ix. The underground water storage/hydrant for the entire commercial complex is also not visible to the naked eye and approachable by External Fire Fighting System.
 - x. Hence in the absence of any legally tenable Occupation Certificate issued by a competent authority in respect of the Project named M3M Prive-73, Sector-73, Gurugram, Haryana the present complaint is liable to be dismissed with exemplary cost in favour of the Respondent and against the Complainants.
- h. That despite the claim of the First Complainant having completed the entire commercial complex in all respects and allegedly having obtained Occupation Certificate way back in August, 2021 not even a single buyer of the commercial units has made his/her proposed commercial establishment operational. The entire commercial complex is lying totally vacant and in fully non-running condition despite lapse of more than two years from the date of obtaining alleged Occupation Certificate dated 31.08.2021.

- i. That the complaint on behalf of the Second Complainant named M/S M Worth Facilities Pvt. Ltd. is also not maintainable on the following counts:
1. There is no privity of contract between the Second Complainant and the Respondent. No Agreement has been executed and got registered with any Registering Authority between the Second Complainant and the Respondent in respect of provision of any sort of services in the said commercial complex.
 2. No scavenging service is being provided by the Second Complainant in the said commercial complex as observed by the Respondent in the recent past. There is no permanent office of the Second Complainant housed in the entire Commercial Complex named as M3M Prive 73.
 3. The entire commercial complex is secured by only two number of Watch & Ward staff that is not sufficient for the security of the shop keepers and the shoppers who are expected to throng the commercial complex when it is complete in all respects for occupation.
 4. That the Second Complainant does not fall in any of the three categories of Promoter, Agent and Buyer as per the provisions of the R.E.R.Act 2016. Hence the complaint of the Second complainant is not maintainable before this Hon'ble Forum of Law/Authority. On the contrary the Respondent is entitled to the relief of refund of Advance money paid towards Maintenance Account & IFMS amounting Rs.

2,19,871.00 duly paid by the Respondent and acknowledged by the Second Complainant.

- j. That the First Complainant has stopped paying the assured return charges month by month on the pretext of having obtained the Occupation Certificate way in August, 2021 and not paying anything to the Buyers now.
- k. That the First Complainant is basically relying upon Seller Buyer Agreement dated 3.1.2020 which has also got various legal lacunae on grounds of its execution and registration with the Registration Authorities.
- l. That the entire complaint is hit by the Doctrine of Caveat Venditor and in terms of the provisions envisaged under Section 35 (2) of the R.E.R. Act, 2016 there is a provision for discovery and production of relevant documents for the purpose of deciding the issues involved in the matter based on the issues raised by the rival parties. Unfortunately the First Complainant is relying upon the Doctrine of Caveat Emptor which is not applicable to the instant case under pending adjudication before this Hon'ble Forum of Law/Authority.
- m. That the Complainants have not come to this Hon'ble Forum of Law/Authority with clean hands and have concealed various facts which are now being placed on record through communications exchanged between the Respondent and the Complainants. The complainants have deliberately not filed the entire exchange of correspondence with a view to shirk their responsibility of settlement of the entire dispute either by way

of refunding the entire amount of consideration with interest or with allotment of some alternative commercial unit available with the First complainant in the adjoining Project which is near completion and ready for fitment of individual commercial units.

- n. The First Complainant and the Second Complainant have no common interest in the matter and also in the absence of any provision of law under R.E.R. Act, 2016 joining of hands in moving a Joint Complainant is not maintainable.
- o. That the First Complainant is claiming to have raised by the above said Project M3M Prive 73 on the basis of an October, 2008 Licence which is believed to have expired in October, 2016. Hence the Registration of the Project itself in the year 2021 is not invalid and not tenable under law. Hence the complaint is liable to be rejected on this score alone.
- p. That the First Complainant, even after filing of the present complaint under adjudication, admitted the claim of the Respondent about all the anomalies in the Project including the main flaw of non-completion of the entire project. Accordingly the First Complainant reiterated its offer of another commercial unit in the name of the Respondent. The First Offer of alternative commercial unit was offered on 26.09.2022 (Page 165 of the Paper Book) in M3M Urbana Business Park in Sector 67, Gurugram, Haryana. The First Complainant again offered the alternative commercial unit No. MS TW-02-2101 in the project named M3M Skywalk, Gurugram, Haryana (Page 183 of the Paper Book). The offer of alternative commercial unit remain

alive with the First Complainant even after filing of the present complaint under adjudication vide Communication sent by the First Complainant to the Respondent vide e-mails dated 12.09.2023 and 22.09.2023. Unfortunately due to exorbitant difference in the amount of consideration paid by the Respondent and demanded in respect of the alternative commercial units offered by the First Complainant from time to time no proposal made by the First Complainant for swap could be fructified. Hence the Respondent asked the First Complainant to refund the entire amount of consideration with interest which has been declined by the First Complainant.

6. 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 complainants.
7. The complainant and the respondent submitted the written submission in the authority dated 19.01.2024 & 22.12.2023 respectively.

E. Jurisdiction of the authority

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

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

10. Section 11(4)(a) of the Act, 2016 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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

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

11. So, in view of the provisions of the Act of 2016 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 complainants at a later stage.
12. 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.*** SCC Online SC 1044 decided on 11.11.2021 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 officer under Section 71 and that would be against the mandate of the Act 2016."

13. Furthermore, the said view has been reiterated by the division bench of Hon'ble Punjab and Haryana High Court in ***Ramprastha Promoter and Developers Pvt. Ltd. Vs Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021***. The relevant paras of the above said judgment reads as under:

"23) The supreme court has already decided on the issue pertaining to the competence/power of the authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.

24) The substantive provision of the Act having been interpreted by the Supreme Court; the Rules have to be in tandem with the substantive Act.

25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress

upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)**, and the division bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Vs Union of India and others. (supra)**", the authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottee along with interest at the prescribed rate.

F. Findings regarding relief sought by the complainant.

F.I. Direct the respondent to take the physical possession of the unit after completion of requisite formalities including execution of maintenance agreement.

15. In the present matter the complainants/promoter on one hand has approached the authority for seeking direction to the respondent/allottee to take the possession and on the other hand the respondent/allottee has filed the counter claim in its reply for refund of the amount paid by her to the complainant no. 1. Now, the question arises before the authority is as to whether the allottee/respondent is entitled for refund of the amount paid along with interest or she be directed to take the possession of the allotted unit.
16. In the present matter the promoter has proposed to hand over the possession of the apartment according to clause 7.1 of the BBA by



29.02.2024 i.e., the date mentioned for completion of the project by the promoter to the authority at the time of registration. Accordingly, the due date of possession comes out to be 29.02.2024. The complainant/promoter has offered the said unit to the respondent/allottee on 04.09.2021 after obtaining the occupation certificate from the competent authority on 31.08.2021 which is much prior to the due date of possession mentioned by the promoter in the BBA. Now, the matter before the authority is as to whether the allottee has right to seek refund or not, when the promoter has very well offered the possession of unit in accordance with the terms of buyer's agreement.

17. In the instant matter the respondent/allottee has paid the full amount of ₹ 1,04,46,850/- out of the total sale consideration of ₹1,01,23,900/- and is seeking refund in its counter claim with the reasoning that the unit is not habitable. The authority is of the view that since the complainant/promoter has offered the possession of the said unit after obtaining occupation certificate from the competent authority within the time frame as prescribed in the BBA executed interse parties therefore, no fault of complainant is established under the provisions of the Act, 2016 for delay in handing over. As far as the adjudication of the question raised by the respondent of unit being uninhabitable, the authority opines that since the occupation certificate of the project has been granted by the competent authority as per the approved layout plan, therefore, the respondent may approach the competent authority for challenging OC, if any. For any other defect which is not as promised by the



respondent in the BBA, the respondent/allottee has a liberty to approach the Adjudicating officer for compensation under the provisions of the Act.

18. Keeping in view the above mentioned findings, the authority hereby directs the respondent/allottee to take the possession of the unit within a period of 2 months from the date of this order as per the provisions of section 19(10) of the Act, 2016. Further, if the respondent/allottee fails to take the possession within the timeframe mentioned above then the complainant/promoter is at liberty to terminate the subject unit of the respondent/allottee under section 11(5) of the Act, 2016 after forfeiting the earnest money of 10% plus 0.5% brokerage and the statutory dues.

F.II. Direct the respondent to get the conveyance deed executed post payment of stamp duty & registration charges.

19. As per Section 17 (1) of Act of 2016, the respondent is under obligation to get the conveyance deed executed. In the present case the possession of the allotted unit has yet not taken by the respondent/allottee. Therefore, the respondent is directed to take the possession of the subject apartment complete in all aspects and thereafter, execute a conveyance deed in their favour.

F.III. Direct the respondent to pay holding charges to complainant no. 1 as per the terms and conditions of the buyer's agreement.

20. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on

14.12.2020. Therefore, in light of the above, the complainants shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

F.IV. Direct the respondent to pay outstanding maintenance dues along with prescribed rate of interest to complainant no. 2.

21. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that since maintenance charges are applicable from the time a flat is occupied, its basic motive is to fund operations related to upkeep, maintenance, and upgrade of areas which are not directly under any individual's ownership. RERA's provisions enjoin upon the developer to see that residents don't pay ad hoc charges. Also, there should be a declaration from the developer in the documents that they are acting in own self-interest and that they are not receiving any remuneration or kick-back commission.

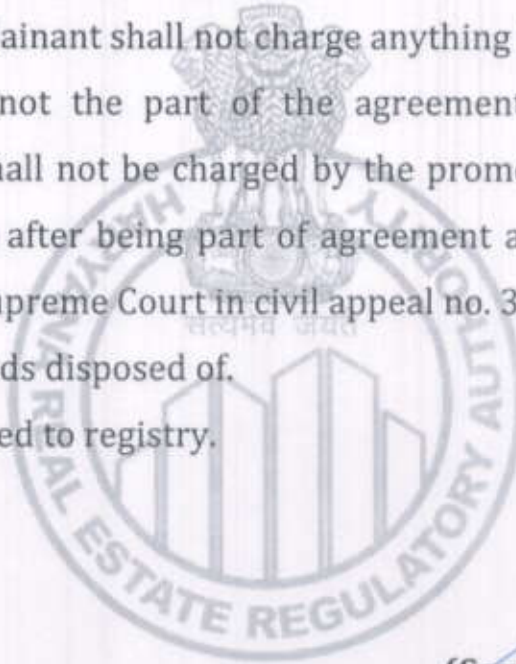
G. Directions of the authority

22. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- a. The respondent is directed to take the actual physical possession of the unit to the complainants within 2 months from the date of this order and thereafter, execute a conveyance deed in their favour as per the provisions of the section 17 of the Act. Further, if the respondent/allottee fails to take the possession within the timeframe mentioned above then the complainant/promoter is at liberty to terminate the subject unit of the

respondent/allottee under section 11(5) of the Act, 2016 after forfeiting the earnest money of 10% 0.5% brokerage and the statutory dues which are not refundable/adjustable.

- b. The respondent is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period within 30 days from the date of this order and the respondent shall take the possession within 60 days.
 - c. The complainant shall not charge anything from the respondent which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.
23. Complaint stands disposed of.
24. File be consigned to registry.




(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.02.2024