

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

**Complaint no.** : 2306 of 2023  
**Date of complaint** : 02.06.2023  
**Date of decision** : 29.05.2024

1. Dilbag Sharma,  
2. Mamta Sharma,  
**Both R/o** : - Qtr. No. C-6, Type-III, Tower 20,  
Kidwai Nagar East, New Delhi-110023.

**Complainants**

Versus

M3M India Private Limited  
**Regd. Office At:** M3M Tee Point, 6<sup>th</sup> Floor,  
Golf Course Extension Road, Sector-65,  
Gurugram, Haryana-122101.

**Respondent**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Bhajan Lal Jangra (Advocate)  
Shriya Takkar (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint has been filed by the complainant/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 under the provisions of the Act or the



Rules and regulations made there under or to the allottees 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 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 and location of the project	"M3M Sky Walk", Sector-74, Gurgaon
2.	Nature of the project	Mixed use colony
3.	DTCP license no.	121 of 2008 dated 14.06.2008 valid upto 13.06.2023 (area 7.44 acre)
4.	RERA Registered/ not registered	17 of 2018 (Amended) dated 17.10.2022 valid upto 31.03.2025
5.	Unit no.	Not on record
6.	Unit admeasuring area	2032 sq. ft. of super area [page no. 49 of reply]
7.	Expression of Interest acknowledgement letter	16.12.2020 [page 49 of reply]
8.	Date of builder buyer agreement	Not executed
9.	Possession clause	Not provided
10.	Due date of possession	16.12.2023 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> ]
11.	Total sale consideration	Rs.1,64,21,994/- [page 49 of reply]
12.	Total amount paid by the complainant	Rs.5,00,000/- [as admitted by respondent]
13.	Occupation certificate	Not on record
14.	Intimation of termination	15.04.2022 [page 50 of reply]
15.	Amount refunded through cheque vide letters dated 28.08.2023	Rs.5,00,000/-



**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:
- I. That in the year 2020, the sales team of the respondent approached the complainants and represented that the respondent is developing a residential project named "M3M Skywalk" located at Sector - 74, Gurugram and made tall claims that necessary permission, and license have been obtained from the competent authority and is a RERA approved project.
  - II. That the complainants made specific query for the representative of the respondents regarding the approval of project from RERA Authority for the purpose of seeking permission from the competent department authority under CCS Conduct Rules, 1964. The representative of the respondent told the complainants that necessary papers have been filed to the RERA Authority, Gurugram for registration of project and the approval would be available from RERA authority within one month.
  - III. That the complainants bonafidely acted upon the representations of the respondent and booked a residential unit bearing no. 2104, in Tower 2, Skywalk at Sector -74, Gurugram by signing a booking application form for the apartment/unit on 09.08.2020 and paid booking amount of Rs.5,00,000/- which was acknowledged and received by the respondent.
  - IV. That after booking of the said unit, the complainants requested the respondent to provide a copy of RERA approval so that necessary permission can be taken from their respective department as per CCS conduct rules, but despite many follow ups, the respondent neglected to provide RERA approval to the complainants. Hence, the

complainants could not tender the payment within time solely attributable to the negligent conduct of the respondent.

- V. That respondent instead of providing RERA approval to the complainants put pressure upon the complainants to sign BBA agreement, but the complainant requested that it can only be signed after receipt of RERA approval. In this regard, the complainants sent numerous mails to the respondent, but the same was of no effect.
- VI. That the respondent should not have taken booking in the project before RERA approval. However, the respondent took the booking without securing the RERA approval. In the case titled as HARERA, Gurugram V/s M3M India Pvt Ltd, complaint bearing no. 1521/2021 wherein the Authority had given clear warning with respect to advertising, selling, marketing, booking, or offering for sale apartment in any project before getting the project registered with the Haryana Real Estate Regulatory, Authority, Gurugram.
- VII. That the respondent acting illegally, thereafter, sent a termination letter dated 15.04.2022 on the old address of the complainants. The complainants had updated new address of the complainants where they are residing through mail dated 04.02.2022 and 21.04.2022, but despite the same, the respondent sent cancellation letter to the old address.
- VIII. That the complainants came to know of the said cancellation in only in the month of April 2023 when the complainants forthwith approached the respondent and made request to provide the copy of RERA approval of the project and called upon to recall the letter of termination issued mischievously in an illegal manner by resorting to unfair trade practice.

- IX. That in response to the letter dated 15.04.2023, the complainants sent a mail contending the issue and calling upon the respondent for restoration of the unit, but no response was received from the respondent.
- X. That the respondent has illegally and arbitrarily cancelled the booked unit and forfeited sale consideration sum of Rs.5,00,000/- paid by the complainants. Hence, left with no efficacious remedy with the complainants except to file the present complaint before the Authority for seeking restoration of the residential unit no. 2104.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s).
- I. Direct the respondent to restore the residential unit by revoking the termination of expression of interest dated 15.04.2022.
- II. Direct the respondent to provide RERA approval of the project.
- III. Direct the respondent to sign builder buyer agreement in respect of the residential unit.
- IV. The respondent may be directed to refund the amount paid alongwith interest if there is any bar granting the above relief.
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 06.11.2023 on the following grounds: -
- i. That the complainants herein have sought relief of allotment of the alleged unit in M3M Skywalk which is a RERA registered project of M/s. Prompt Engineering Pvt. Ltd. However, the complainants have



failed to make M/s. Prompt Engineering Pvt. Ltd. a party to the present lis. Thus, the complaint is clearly defective in nature and is liable to be dismissed on the ground of non-joinder of necessary party.

- ii. That the complainants had submitted an Expression of Interest (EOI) for booking/allotment of a unit in the project of respondent wherein the construction is completed, and the occupation certificate has been received. The complainants along with the Expression of Interest (EOI) also tendered a sum of Rs. 4,00,000/- towards the confirmation of their EOI. Further, the EOI did not constitute allotment of any specific unit in any project of the respondent.
- iii. That thereafter the complainants showed interest in booking of a unit in 'M3M Skywalk', Sector 74, a project being developed by associate company M/s. Prompt Engineering Pvt. Ltd. Pursuant to the said request and discussion between the parties, the respondent no.1 issued acknowledgment letter. That vide the said letter the complainant was informed that the allotment of unit is subject to final selection of the unit as per availability, confirmation of booking, completion of all booking formalities and execution of all requisite documents at the complainants end so as facilitate the allotment of the unit and transfer of funds in the project of associate company M/s. Prompt Engineering Pvt. Ltd. The complainants were also informed through the letter that in the event, the booking formalities are not completed by the complainants, or the unit was selected by them, or requisite documents are not executed, the respondent at its sole discretion reserves its right to cancel the EOI.
- iv. That the complainants paid an amount of Rs.1,00,000/- to M/s. Prompt Engineering Pvt. Ltd. towards booking of a unit in 'M3M Skywalk'. That the complainants were well aware about their duty to



come forward to confirm booking, complete all booking formalities and execute all requisite documents including documentation for funds transfer. That despite constant follow ups by the respondent, the complainants herein failed to come forward to execute all necessary documents for transfer of funds and complete the booking formalities, therefore the respondent was constrained to terminate the Expression of Interest vide termination letter dated 15.04.2022 and forfeit the amount deposited. Further, it is submitted that no unit was ever allotted to the complainants.

- v. That the complainants had signed and submitted the Expression of Interest after duly understanding all the clauses stipulated at their own free will and thus is not entitled to relief claimed. It is submitted that the respondent is acting in accordance with the terms of the EOI and acknowledgement letter. The present complaint has been filed with total disregard to the terms of the EOI signed by the complainants and acknowledgment letter issued. The default of the complainants in coming forward to complete all booking formalities and execute all requisite documents, amounts to default as per the EOI and the acknowledgment letter. However, without prejudice to its rights and claims, the respondent company vide letter 28.08.2023 had sent cheques bearing nos. 004580 and 004581 in the name of the complainants for Rs.2,00,000/- each. Further, on enquiry the respondent got to know that M/s. Prompt Engineering Pvt. Ltd. had also sent cheque nos. 528381 and 52832 in the name of complainants for Rs.50,000/- each. It is apposite to mention that the respondent in its bona fide had already sent the refund of the complainants. Therefore, the present complaint ought to be dismissed at the threshold itself on this pretext only that the respondent had already



processed the refund of the amount paid by the complainants with bona fide intentions and to amicably resolve the matter with the complainants.

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.

**F. Findings on the relief sought by the complainants.**

**F.I Direct the respondent to restore the residential unit by revoking the termination of expression of interest dated 15.04.2022.**

**F.II Direct the respondent to restore the residential unit by revoking the termination of expression of interest dated 15.04.2022.**

**F.III Direct the respondent to provide RERA approval of the project.**

**F.IV Direct the respondent to sign builder buyer agreement in respect of the residential unit.**

**F.V Direct the respondent to refund the amount paid alongwith interest if there is any bar granting the above relief.**

10. The complainants have submitted that they booked a residential unit having tentative super area of 2032 sq.ft. in the project of respondent named 'M3M Sky Walk' at Sector-74, Gurugram by signing a booking application form for the apartment/unit on 09.08.2020 and paid booking amount of Rs.5,00,000/- which was acknowledged and received by the respondent. Further, after booking of the said unit, the complainants requested the respondent to provide a copy of RERA approval so that necessary permission can be taken from their respective department as per CCS Conduct Rules, 1964, but despite many follow ups, the respondent neglected to provide RERA approval to the complainants. Hence, the complainants could not tender the payment within time solely attributable to the negligent conduct of the respondent and the respondent acting illegally, thereafter, sent a termination letter dated 15.04.2022 to the complainants. However, the respondent has submitted that the complainants showed interest in booking of a unit in 'M3M Skywalk', Sector 74, a project being developed by associate company M/s. Prompt Engineering Pvt. Ltd. Pursuant to



the said request and discussion between the parties, the respondent issued acknowledgment letter. That vide the said letter the complainants were informed that the allotment of unit is subject to final selection of the unit as per availability, confirmation of booking, completion of all booking formalities and execution of all requisite documents at the complainants end so as facilitate the allotment of the unit and transfer of funds in the project of associate company M/s. Prompt Engineering Pvt. Ltd. The complainants were also informed through the letter that in the event, the booking formalities are not completed by the complainants, or the unit was selected by them, or requisite documents are not executed, the respondent at its sole discretion reserves its right to cancel the EOI. The complainants were well aware about their duty to come forward to confirm booking, complete all booking formalities and execute all requisite documents including documentation for funds transfer. Moreover, despite constant follow ups by the respondent, the complainants failed to come forward to execute all necessary documents for transfer of funds and complete the booking formalities. Therefore, the respondent was constrained to terminate the Expression of Interest vide termination letter dated 15.04.2022. Further, after termination, the respondent vide letter 28.08.2023, had processed refund of the amount paid by the complainants through cheques bearing nos. 004580 and 004581 in the name of the complainants for Rs.2,00,000/- each with bona fide intentions and to amicably resolve the matter with the complainants. Also, on enquiry the respondent got to know that M/s. Prompt Engineering Pvt. Ltd. had also sent cheque nos. 528381 and 52832 in the name of complainants for Rs.50,000/- each.



11. After considering the documents available on record as well as submissions made by the parties, the Authority is of considered view that the complainants are at default and the respondent has rightly terminated the booking on failure of the complainants to come forward to complete the booking formalities and finalization of the allotment. Further, the ground taken by the complainants that they could not tender due payment against the booking within time due to default of the respondent in proving copy of RERA approval/ registration certificate cannot be considered a reasonable one as the said document is a public document and can be easily assessed by anyone from the website of the Authority. Furthermore, the respondent after terminating the allotment had already processed refund of the entire amount paid by the complainants towards the booking i.e., Rs.5,00,000/- through cheques vide letters dated 28.08.2023. In view of the above, termination is held valid. However, the respondent shall refund the booking amount paid by the complainants i.e., Rs.5,00,000/- , if not already done, within a period of 30 days in view of letters dated 28.08.2023. File be consigned to the registry.

**HARERA**  
**GURUGRAM**

(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.05.2024