

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

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| Complaint no. | : | 1250 of 2023 |
| Date of complaint | : | 21.03.2023 |
| Date of order | : | 10.07.2024 |

Arshdeep Singh, S/o Sukhdarshan Singh,
R/o: - Ramesh Dwivedi Lane, W15J Pocket,
J238 Western Avenue, Sainik Farms,
New Delhi-110062.

Complainant

Versus

1. M/s Manglam Multiplex Private Limited

Regd. Office at: - Cabin-1, LGF, F-22,
Sushant Shopping Arcade, Sushant Lok,
Phase-1, Gurugram-122002.

2. M3M India Private Limited

Regd. Office at: - SB/C/5L/008, M3M Urbana,
Sector-67, Gurugram Manesar Urban Complex,
Gurugram, Haryana.

Respondents

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Gaurav Rawat (Advocate)

Shriya Takkar (Advocate)

Complainant

Respondents

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 thereunder 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 Latitude, Sector-65, Gurugram |
| 2. | Nature of the project | Residential |
| 3. | DTPC License no. | 234 of 2007 dated 16.10.2007, 52 of 2009 dated 28.08.2009, 35 of 2010 dated 06.05.2010, 114 of 2014 dated 20.08.2014, 122 of 2014 dated 22.08.2014 Valid upto 05.05.2025 |
| 4. | Name of Licensee | Munglam Multiplex Private Limited |
| 5. | RERA Registration | Registered vide no 56 of 2017 dated 17.08.2017 Valid upto 31.01.2023 |
| 6. | Unit no. | ML TW-01/2602 (page 28 of complaint) |
| 7. | Unit area | 2380 sq. ft. (page 28 of complaint) |
| 8. | Date of allotment | 16.02.2015 [page 21 of the complaint] |
| 9. | Date of builder buyer agreement | 20.07.2016 (page 27 of complaint) |
| 10. | Possession clause | <i>16.1 POSSESSION OF THE APARTMENT The Company, based upon its present plans and estimates, and subject to all exceptions,</i> |



| | | |
|-----|-------------------------------------|--|
| | | <p><i>proposes to offer the possession of the Apartment within a tentative 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/Project or the date of the execution of this Agreement, whichever is later ("Commitment Period"). Should the offer of 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. 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 along with 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> |
| 8. | Date of commencement of the project | 26.12.2016 [first plan cement concrete/mud slab of the tower was laid on 26.12.2016 as per Annexure R-16 on page 130 of reply] |
| 9. | Due date of possession | 26.06.2021 [calculated from the date of commencement of construction i.e., 26.12.2016] (Grace period of 6 months is allowed being unqualified) |
| 10. | Total sale consideration | Rs.3,07,31,280/- [as per payment plan on page 50 of complaint] |

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| 11. | Total amount paid by the complainant | Rs.95,77,280/- [as per termination letter on page 129 of reply] |
| 12. | Occupation Certificate received on | 21.01.2021 [page 133 of reply] |
| 13. | Demand letter | 02.11.2020 [page 127 of reply] |
| 14. | Pre-cancellation letter issued on | 01.12.2020 (page 128 of reply) |
| 15. | Cancellation letter dated | 16.12.2020 (page 60 of complaint) |

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant was allotted an apartment bearing no. ML TW-01/2602, 26th Floor having super area measuring 2380 sq. ft. in project of the respondent named "M3M Latitude", Sector 65, Gurugram vide provisional allotment letter dated 16.02.2015. Thereafter, a buyer's agreement dated 20.07.2016 was executed between the parties regarding the said allotment for a total sale consideration of Rs.3,07,31,280/-.
- II. That as per clause 16.1 of the agreement, the respondent proposes to offer the possession of the apartment within 48 months from the date of commencement of construction.
- III. That the complainant kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail.

- IV. That as per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit timely paid a total sum of Rs.95,77,280.00 towards the said unit.
- V. That the complainant vide email dated 16.04.2019 requested the respondent to cancel his booking and sought refund of the entire paid-up amount with interest. Thereafter, repeated reminders through email were sent to the respondent but it failed to provide reply till date.
- VI. That the respondent instead of replying to the above-mentioned queries, arbitrarily sent pre-cancellation letter to the complainant and the complainant after receiving it raised objection through various emails, but the respondent again failed to provide reply to same till date. Thereafter, the respondent sent a termination letter dated 16.12.2020 to the complainant forfeiting the amount paid by the complainant which is violation of the RERA Act, 2016.
- VII. That the complainant is entitled to get refund of the entire amount paid along with interest at the prescribed rate from date of payment to till the realization of money under section 18 & 19(4) of Act.
- VIII. That the complainant after losing all the hope from the respondent company, having his dreams shattered of owning a unit & having basic necessary facilities in the vicinity of the project and also losing considerable amount, is constrained to approach this Authority for redressal of his grievance.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondents to refund the entire paid-up amount along with prescribed rate of interest.



5. On the date of hearing, the authority explained to the respondents/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 respondents

6. The respondents have contested the complaint by filing reply dated 05.09.2023 on the following grounds: -
- i. That the complainant requested for allotment of an apartment in the complex 'M3M Latitude' which was being developed at Sector-65, Gurugram, Haryana. In due consideration of the commitments made by the complainant to make timely payments and to remain bound by the various terms and conditions, the respondent company provisionally allotted apartment bearing no. ML TW- 01/2602 vide allotment letter dated 16.02.2015. It is submitted that the cost of the apartment for an area measuring 2380 sq. ft. was Rs.3,07,31,280/- plus taxes and other charges. Thereafter, a buyer's agreement was executed between the parties on 20.07.2016.
 - ii. That the respondent has raised several demands as per the payment plan opted by the complainant. However, the complainant failed to pay outstanding dues as per the payment plan. Since, the complainant failed to clear his dues, the respondent issued pre-cancellation notice dated 01.12.2020.
 - iii. That being totally aware about the payment plan and his obligation to make timely payments, the complainant still did not come forward to clear his pending dues, as a consequence of the same the respondent issued termination letter dated 16.12.2020 cancelling the allotment of



- the complainant and forfeiting the amount deposited by him in accordance with clause 8.2 of the buyer's agreement.
- iv. That in accordance with clause 16.1 of the apartment buyer's agreement, the possession of the said apartment was to be handed over within 48 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. The mud slab was laid on 26.12.2016 and the buyer's agreement was executed between the parties on 20.07.2016. Thus, the due date of possession would be reckoned from the date of laying the mud slab being the later date i.e. 26.12.2016. Thus, the possession timeline comes out to be 26.06.2021 (48 months + 6 months from 26.12.2016).
- v. That the respondent after completing the construction of Tower in which the apartment of the complainant was located applied for the grant of occupation certificate and the competent authorities after due verification and inspection granted the occupation certificate in respect of the said tower to the respondents on 21.01.2021.
- vi. That the allotment of the complainant was cancelled on accounts of payment defaults on 16.12.2020, much before the due date of possession i.e. 26.06.2021.
- vii. That the complainant has failed to fulfil the obligations stated in the terms of the agreement executed between the parties and is trying to take the benefit of his own wrongs for not making payment of pending dues. It is submitted that the complainant failed to make payments despite issuance of repeated demands/reminders vide letters dated 10.04.2019, 03.05.2019, 20.05.2019, 07.06.2019, 02.11.2020 and



01.12.2020. Since, the complainant did not come forward to clear his dues despite sending repeated reminders as a consequence of the same the respondent was constrained to terminate the allotment of the complainant vide intimation of termination dated 16.12.2020 and forfeit the amount deposited as per the terms of the buyer's agreement.

7. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

8. 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

9. 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.

10. 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 complainant.

F.I Direct the respondents to refund the entire amount by the complainant along with prescribed rate of interest.

11. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

“Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be



*prescribed.”
(Emphasis supplied)*

12. Clause 16.1 of the buyer's agreement dated 20.07.2016 provides the time period of handing over possession and the same is reproduced below:

16.1 POSSESSION OF THE APARTMENT

The Company, based upon its present plans and estimates, and subject to all exceptions, proposes to offer the possession of the Apartment within a tentative 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/Project or the date of the execution of this Agreement, whichever is later ("Commitment Period"). Should the offer of 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. 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 along with 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.”

13. **Due date of handing over possession and admissibility of grace period:** As per clause 16.1 of the buyer's agreement dated 20.07.2016, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months from the date of commencement of construction i.e., the date of laying of the first plain cement concrete/ mud mat slab of the tower/project or the date of the execution of this agreement, whichever is later plus 6 months of grace period. As per record, the first PCC slab of the tower in question was laid on 26.12.2016 and the buyer's agreement was executed on 20.07.2016. Therefore, the due date has been calculated as 48 months from the date



of laying of first PCC slab i.e. 26.12.2016. Further a grace period of 6 months is allowed to the respondents being unqualified. Thus, the due date of possession come out to be 26.06.2021.

14. The complainant was allotted a flat bearing no. ML TW-01/2602, 26th Floor having super area of 2380 sq. ft. in project of the respondents named "M3M Latitude", Sector 65, Gurugram vide provisional allotment letter dated 16.02.2015 for a total sale consideration of Rs.3,07,31,280/- and he has paid a sum of Rs.95,77,280/- against the same. Thereafter, the buyer's agreement was executed between the parties on 20.07.2016. As per clause 16.1 of the buyer's agreement, the due date of possession was 26.06.2021. However, the complainant has already withdrawn from the project vide email dated 16.04.2019 and sought refund of the paid-up amount before the due date of possession i.e., 26.06.2021, but the said request was not acceded by the respondents. Though, it is contended on behalf of respondents that it has cancelled the allotment of the unit on the ground of non-payment vide letter dated 16.12.2020 and is liable to forfeit the entire paid-up amount in terms of earnest money, statutory taxes, brokerage etc. But the plea advanced in this regard is untenable. The complainant had already withdrawn from the project by writing email dated 16.04.2019. So, any cancellation of the allotted unit on the basis of non-payment of amount due on the basis of letter dated 16.12.2020 does not hold any ground. Thus, after withdrawal from the project before the due date of possession, the respondents could not have retained more than 10% of the sale consideration and was bound to return the remaining. Even the Hon'ble Apex court of the land in cases of *Maula Bux Vs. Union of India (1973) 1 SCR 928*, *Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs*,

(2015) 4 SCC 136, and followed by the National Consumer Dispute Redressal Commission, New Delhi in consumer case no. 2766/2017 titled as *Jayant Singhal and Anr. Vs. M/s M3M India Ltd.* decided on 26.07.2022 took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder and as such, there is hardly any actual damage. So, it was held that 10% of the sale price is reasonable amount to be forfeited in the name of earnest money. Thus, keeping in view the principles laid down by the Hon'ble Apex court in the above mentioned two cases, the rules with regard to forfeiture of earnest money were framed by the authority known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, providing as under: -

"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."

15. So, keeping in view the aforesaid factual and legal provisions, the respondents cannot retain the amount paid by the complainant against the allotted unit and are directed to refund the paid-up amount of Rs.95,77,280/- after deducting 10% of the sale consideration of

Rs.3,07,31,280/- being earnest money along with an interest @10.95% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount from the date of surrender i.e., 16.04.2019 till actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. Directions of the authority

16. 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):

- i. The respondents/promoter are directed to refund the paid-up amount of Rs.95,77,280/- after deducting 10% of the sale consideration of Rs.3,07,31,280/- being earnest money along with an interest @10.95% p.a. on the refundable amount from the date of surrender i.e., 16.04.2019 till its realization.
- ii. 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.

17. Complaint stands disposed off.

18. File be consigned to the registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.07.2024