

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

Complaint no.	:	5654 of 2022
Date of decision	:	29.03.2024

Ajay Yadav through POA Shri Ashok Kumar R/o: C-119, Ground Floor, Rosewood City, Sector 49, Gurugram - 122018, Haryana	Complainant
Versus	
M/s M3M India Pvt. Ltd. Office at: - Paras twin towers, Tower B, 6th floor, Golf Course road, Sector 54, Gurugram - 122002	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
Sh. Ashok Kumar father of complainant in person	Advocate for the complainant
Ms. Smriti Srivastava	Advocate for the respondent

ORDER

1. The present complaint dated 29.08.2022 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 provision 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:

S.No.	Heads	Information
1.	Project name and location	M3M Woodshire, Dwarka Expressway Sector 107, Gurugram
2.	Project area	18.88125 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	33 of 2012 dated 12.04.2012 valid upto 11.04.2018
5.	Name of licensee	Cogent Realtors Pvt. Ltd.
6.	HRERA registered/ not registered	Not Registered
7.	Occupation certificate granted on	24/07/2017 at page no 52 of reply
8.	Provisional allotment letter dated	02.02.2018 (Page no. 64 of reply)
9.	Unit no.	MM TW-B02/1002 10 th floor, tower-B2
10.	Unit measuring	1366 sq. ft.
11.	Date of execution of buyer's agreement	BBA not executed



12	Possession clause	Clause 46:- Within 36 months from the date of start of construction.
13	Due date of possession	N/A
14.	Total sale consideration	Rs.72,93,757/- (page 66 of reply)
15.	Total amount paid by the complainants	Rs.7,22,135/- (As per page no. 11 of complaint and as per page 76 of reply)
16.	Date of offer of possession	Not offered
17.	Demand cum pre cancellation dated	02.07.2018 (Page 70 of reply)
18	Demand letter dated	27.12.2018 (Page 71 of reply)
19	Pre cancellation notice	19.02.2019 (Page 74 of reply)
20	Last and final opportunity letter dated	16.03.2019 (Page 75 of reply)
21	Cancellation letter dated	08.04.2019 (Page 76 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
4. Pursuant to the elaborate advertisements, assurances, representations and promises made by respondent about their premium group housing project called *THE WOODSHIRE* at Sector 107, Gurugram with impeccable facilities and believing the same to be correct and true, he considered booking a flat and paid an advance amount of Rs. 1,00,000 on 16.01.2018 vide receipt dated 22.01.2018.
5. Subsequently, he made another payment of Rs. 6,22,135/- vide cheque no. 012754 drawn on AXIS Bank dated 22.01.2018. Till November 2018, he had paid a total of Rs. 7,22,135/-.
6. He on various representations and assurances by the respondent booked a residential apartment through allotment letter in the project on the date 02-02-2018.
7. That on 06.03.2018 a loan sanction letter was signed between complainant and the India Bulls Housing Finance Limited as a financier for home loan for an amount of Rs. 55,00,000. The loan agreement was approved on behalf of the complainant but there was some discrepancies on the part of the builder
8. That the respondent deliberately and with a mischievous intent tricked him through false promises and forced into paying up huge amounts to the respondent.
9. The respondent was negligent from the starting of the allotment due to which even loan could not be sanctioned and he requested to cancel the booking and refund the money. That the respondent on 19.02.2019 issued a pre cancellation notice without any legitimate ground. He through email dated 05.03.2019 responded to the pre cancellation letter

by stating that the loan was sanctioned on his part but the loan was not disbursed due to certain formalities pending at respondent end.

10. That the respondent on 08.04.2019 through post send an intimation of termination letter stating the cancellation of allotted unit and forfeiting the earnest money.
11. Hence, he is no longer wishes to continue in the project as there is no certainty about the delivery of possession and do not want the money invested in the project to be wasted.
12. In *Emmar MGF Land Ltd. & Ors. vs. Amit Puri, II (2015) CPJ 568 NC*, wherein it was laid down that after the promised date of delivery, it is the discretion of the complainant whether he wants to accept the offer of possession, if any, or seek refund of the amounts paid with reasonable interest, it is held that it is well within the complainant's right to seek for refund of the principal amount with interest and compensation as construction is still not complete. That the complainant cannot be made to wait indefinitely for the delivery of possession when he has already paid the entire consideration.

C. Relief sought by the complainant:

13. The complainant has sought following relief(s)
 - I. Direct the respondent to refund the total amount paid to them amounting to Rs. 7,22,135/- along with interest calculated at the MCLR rate of SBI plus 2% from the date of first payment.
 - II. Direct the respondent not to cancel the allotment of the unit.
 - III. Direct the respondent not to create any third-party rights against the said unit of the complainant

14. On the date of hearing, the authority explained to the respondent /promoter on the contravention 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

15. The respondent contested the complaint on the following grounds. The submission made therein, in brief is as under: -

16. That the respondent no.1 company without prejudice to its rights, to bring closure to the matter refunded an amount of Rs. 7,22,135/- to the complainant vide RTGS (RTGS: ICICR52023111400365777/UTIB0002456/Ajay Yadav) on 15.11.2023 as full and final settlement of all the dues of the complainant. Thus, the complainant is not entitled to any relief whatsoever and the present complaint merits dismissal. Copy of the image of the bank account statement evidencing the said transaction is marked and annexed.

17. At the very outset, the respondent wants to bring to the kind knowledge of this Hon'ble Regulatory Authority that the complainant has not approached this Hon'ble Regulatory Authority with clean hands and is guilty of suppression of material facts which are absolutely relevant for just and proper adjudication of this complaint. The occupation certificates for the project M3M Woodshire, group housing colony in Sector 107 Gurugram developed in a planned and phased manner were granted by the Competent Authorities on 20.04.2017 and 24.07.2017. That after making independent enquiries and only after being fully satisfied with the status of the project, the complainant applied for the allotment of a **'complete and ready to move in residential apartment'** through his broker Hari Om Real Estate in the project M3M

Woodshire, Sector 107 Gurugram, a group housing colony being developed in a planned and phased manner by the respondent.

18. That vide demand letter dated 17.02.2018, the respondent raised the second demand for an amount of Rs. 52,88,385/- due within 45 days booking. The said demand was payable on or before 8th March 2018. In furtherance of the allotment, the respondent herein dispatched copies of buyer's agreement to the complainant vide cover letter dated 22.02.2018 for due execution at his end, which was duly received by the complainant on 24.02.2018. The complainant for reasons best known to him did not come forward to execute the buyer's agreement.
19. That since the respondent did not come forward to execute the buyer's agreement nor cleared his dues as a result of which the respondent issued demand cum pre-cancellation notice dated 02.07.2018, requesting the complainant to pay an amount of Rs. 3,61,273/- towards the third instalment due within 6 months of booking and also requested him to clear his previous dues of Rs. 52,88,385/-. The said demand was payable on or before 21.07.2018.
20. The complainant despite constant reminders and notices did not clear the outstanding dues and did not come forward to execute the buyer's agreement, thus the respondent was constrained to issue pre-cancellation notice dated 19.02.2019 requesting payment of outstanding dues.
21. Even after the issuance of the reminder and the pre-cancellation notice, the complainant failed to make the payment due and therefore the respondent company was constrained to issue the last and final opportunity letter dated 16.03.2019 to the complainant. Despite sending constant reminders and notices, the complainant did not clear the

outstanding dues and nor did he not come forward to execute the buyer's agreement, thus the respondent was constrained to issue cancellation notice dated 08.04.2019 and forfeit the amount paid by the complainant in terms of the application form/allotment. It is submitted that the complainant had paid an amount being less than 10% of sales consideration against total dues of Rs. 72,93,757/- plus other charges. It is submitted that the cancellation has been done as per the agreed terms and is valid and binding.

22. Despite incurring various losses/damages to the tune of Rs. 21,86,446/- , the respondent, as a goodwill gesture, has refunded the entire amount paid by the complainant i.e. Rs. 7,22,135/-, without any deductions, vide cheque dated 21.06.2023 which has been duly sent on 26.06.2023 through registered post.
23. The present case is squarely covered by order dated 23.02.2024 passed by this Hon'ble Authority in the matter titled as : *Satish Kumar Prabhakar vs. Aawam Residency Pvt. Ltd.* (Complaint No. 6146 of 2022) wherein the Hon'ble Authority was pleased to hold as follows :

40. The total sale consideration of the unit was Rs.96,37,268/- and the complainant on the booking has paid an amount of Rs.9,47,977/-. Moreover an amount of Rs.3,00,000/- paid by the complainant towards the another project of M/s M3M India Private Limited earlier booked by the complainant was adjusted in the said unit. Thereafter the respondent raised the second instalment i.e. 30% of TCV within 30 days of booking and subsequently sent builder buyer agreement for signing on 07.02.2022 which the complainant has failed to execute and not paid the 30% of the amount as per payment plan. The

respondent issued reminder letters dated 08.02.2022, 15.03.2022 and pre-cancellation letter dated 22.03.2022 but the complainant failed to comply with his contractual obligations and therefore the allotment of the complainant was finally terminated vide letter dated 26.03.2022. Therefore, the cancellation of the unit is valid.

41. Keeping in view the above-mentioned facts the promoter was to return the paid up amount on the date of cancellation itself and in the present matter the respondent has already refunded the total paid up amount Rs.12,47,977/-. Hence, no case for refund of any amount is made out.

III. Complaint stands disposed of.

IV. File be consigned to registry.

24. Even otherwise, the complainant is not entitled to get any reliefs as sought from this Hon'ble Authority as failure on the part of the complainant to perform his contractual obligations disentitles him from any relief. It is submitted that the amount paid (being less than 10% of the total consideration amount) ought to have been forfeited in accordance with the terms of application form and RERA Regulation dated 05.12.2018, but the respondent, has refunded the entire amount paid by the complainant i.e. Rs. 7,22,135/-, without any deductions, vide cheque dated 21.06.2023 which has been duly sent on 26.06.2023.

25. That the complainant was a constant defaulter in payments since 2018 much before the due date of possession. The complainant failed to clear dues despite sending repeated reminders/notices, as a result of which the allotment of the complainant was terminated vide cancellation dated

08.04.2019. Thus, no case is made out under Section 18 of the RERA Act, 2016. Thus, the present complaint merits dismissal.

26. 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

27. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

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

29. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainant.

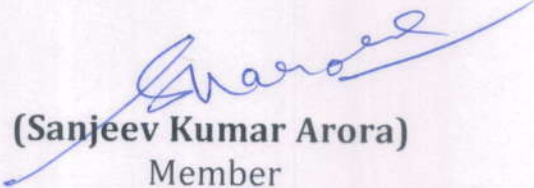
- i. **Direct the respondent to refund the total amount paid to them amounting to Rs. 7,22,135/- along with interest calculated at the MCLR rate of SBI plus 2% from the date of first payment.**

30. In the present complaint the complainant is seeking relief w.r.t refund of the said amount. The complainant was allotted a unit bearing no. MM TW-B02/1002 10th floor, tower-B2 in the project named "M3M Woodshire" at Sector-107 Gurugram vide allotment letter dated 02.02.2018. The total sale consideration of unit was Rs. 72,93,757/- and the complainant has paid a sum of Rs. 7,22,135/- towards the said unit.
31. As per the payment plan, which is annexed at page 41 of complaint, he has to make second instalment i.e., within 45 days of booking. The respondent started raising payments from the complainant however, the complainant defaulted in making payments and the respondent was to issue reminder letters dated 02.07.2018, 27.12.2018, 19.02.2019 and 16.03.2019. However, despite repeated follow ups and communications and even after the issuance of the pre-cancellation letter the complainant failed to act further and comply with their contractual obligations and therefore the allotment of the complainant was finally terminated vide letter dated 08.04.2019. Now the question before the authority is whether the cancellation issued vide letter dated 08.04.2019 is valid or not.
32. The authority observes that as per the payment plan the complainant has to pay the first instalment within 10 days of booking and thereafter the complainant has to pay the second instalment within 45 days of booking. The total sale consideration of the unit was Rs. 72,93,757/- and the complainant on the booking has paid an amount of Rs. 7,22,135/-. Thereafter the respondent raised second instalment within 45 days of booking and subsequently sent builder buyer agreement for signing

which the complainant has failed to execute and not paid the 72.5% of the amount as per payment plan. The respondent issued reminder letters dated 02.07.2018, 27.12.2018, 19.02.2019 and 16.03.2019 and pre cancellation letter dated 19.02.2019 but the complainant failed to comply with his contractual obligations and therefore the allotment of the complainant was finally terminated vide letter dated 08.04.2019. Therefore, the cancellation of the unit is valid.

- II. **Direct the respondent not to cancel the allotment of the unit.**
- III. **Direct the respondent not to create any third-party rights against the said unit of the complainant**

33. The above said reliefs become redundant as cancellation is valid and also he on the one side is seeking refund of the paid-up amount and on the other side seeking above mentioned reliefs which are contrary in nature. So the same become redundant.
34. Keeping in view the above-mentioned facts the promoter was to return the paid-up amount on the date of cancellation itself and in the present matter the respondent has already refunded the total paid up amount Rs. 7,22,135/- and complainant had accepted the same. Hence, no case for any further refund is made out.
35. Complaint stands disposed of.
36. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 29.03.2024