

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

Order reserved on:	18.01.2024
Order pronounced on :	07.03.2024

NAME OF THE BUILDER		ROSHNI BUILDERS PRIVATE LIMITED	
PROJECT NAME		"M3M BROADWAY"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/5325/2022	Vineeta Kukreti and Gaurav Mehta V/S Roshni Builders Private Limited & M/s Chaahat Homes Infratech Pvt. Ltd.	Shri Chaitanya Singhal Advocate Ms. Shriya Takkar Advocate for R1 Shri Dhruv Lamba Advocate for R2
2.	CR/5327/2022	Vineeta Kukreti and Gaurav Mehta V/S Roshni Builders Private Limited & M/s Chaahat Homes Infratech Pvt. Ltd.	Shri Chaitanya Singhal Advocate Ms. Shriya Takkar Advocate for R1 Shri Dhruv Lamba Advocate for R2
3.	CR/5328/2022	Jai Parkash Mehta & Krishna Kumari V/S Roshni Builders Private Limited & M/s Chaahat Homes Infratech Pvt. Ltd.	Shri Chaitanya Singhal Advocate Ms. Shriya Takkar Advocate for R1 Shri Dhruv Lamba Advocate for R2

**CORAM:**

Shri Vijay Kumar Goyal

**Member****ORDER**

1. This order shall dispose of all the 3 complaints titled as above filed before this authority 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.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "M3M Broadway" (Commercial Complex) being developed by the same respondent/promoter i.e., M/s Roshni Builders Private Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the paid-up amount along with interest.
- The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount and relief sought are given in a table below:

<b>Project Name and Location</b>	<b>Roshni Builders Private Limited at "M3M Broadway" situated in Sector- 71, Gurugram.</b>		
<b>Possession Clause: -</b> <b>7. POSSESSION OF THE UNIT</b> <b>7.1 Schedule for possession of the said Unit: - The Developer agrees and understands that timely delivery of possession of the Unit along with the car parking space(s), if any, to the Allottee and the Common Areas to the Association of Allottee or the competent Authority, as the case may be, as provided under the Act and Rules 2(1)(f) of the Rules, 2017, is the essence of the Agreement.</b>			
<b>Occupation certificate: - 13.12.2021</b>			
<b>Complaint No., Case Title</b>	<b>CR/5325/2022 Vineeta Kukreti and Gaurav Mehta V/S Roshni Builders Private Limited &amp; M/s Chaahat Homes Infratech Pvt. Ltd.</b>	<b>CR/5327/2022 Vineeta Kukreti and Gaurav Mehta V/S Roshni Builders Private Limited &amp; M/s Chaahat Homes Infratech Pvt. Ltd.</b>	<b>CR/5328/2022 Jai Parkash Mehta and Krishna Kumari/S Roshni Builders Private Limited &amp; M/s Chaahat Homes Infratech Pvt. Ltd.</b>
<b>Reply status</b>	27.01.2023 by respondent no.1	27.01.2023 by respondent no.1 and	27.01.2023 by respondent no.1 and

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	and 10.10.2023 respondent no. 2	10.10.2023 respondent no. 2	10.10.2023 respondent no. 2
<b>Unit no.</b>	R4 106 [ As per page no. 50 of the complaint]	R4 107 [ As per page no. 92 of the complaint]	R4 105 [ As per page no. 94 of the complaint]
<b>Area admeasuring</b>	403 sq. ft. [As per page no. 50 of the complaint]	403 sq. ft. (carpet area) and 809.06 sq. ft. (super area) [ As per page no. 92 of the complaint]	403 sq. ft. (carpet area) and 801.43 sq. ft. (super area) [ As per page no. 94 of the complaint]
<b>Date of agreement for sale</b>	Annexed but not executed [As per page no. 46 of the complaint]	Annexed but not executed [As per page no. 44 of the complaint]	Annexed but not executed [As per page no. 46 of the complaint]
<b>Due date of handing over of possession</b>	31.10.2023 (As per RERA registration)	31.10.2023 (As per RERA registration)	31.10.2023 (As per RERA registration)
<b>Offer of possession</b>	Not offered	Not offered	Not offered
<b>Cancellation of the unit</b>	30.11.2021 [As per page no. 105 of the complaint]	30.11.2021 [As per page no. 103 of the complaint]	27.11.2021 [As per page no. 105 of the complaint]
<b>Total Consideratio n / Total Amount paid by the complainant (s)</b>	<b>TSC:</b> <b>Rs.1,20,61,967/-</b> (As per payment plan on page no. 30 of the complaint) <b>AP: Rs.12,06,196/-</b> (As per sum of receipts annexed by the complainants)	<b>TSC:</b> <b>Rs.1,21,76,806/-</b> (As per payment plan on page no. 94 of the complaint) <b>AP: Rs.12,17,680/-</b> (As per sum of receipts annexed by the complainants)	<b>TSC:</b> <b>Rs.1,20,61,972/-</b> (As per payment plan on page no. 30 of the complaint) <b>AP: Rs.12,06,196/-</b> (As per sum of receipts annexed by the complainants)

**The complainants in the above complaint(s) have sought the following reliefs:**

1. Direct the respondent company to refund the entire amount of Rs.12,06,196/- paid by the complainants along with interest at the prescribed rate on the paid amount from the date of payment till actualisation.
2. Direct the respondent to pay the litigation cost.
3. To impose a penalty of at least Rs.25,00,000/- under section 63 of the Act of 2016 on account of misleading advertisement on respondent no. 1(promoter) and contravening the provisions of section 11(2) of the Act of 2016 and directions to the builders/promoters with regard to advertisement of real estate projects.
4. To cancel the RERA registration of respondent no. 2 on account of misleading advertisement.

**Note: In the table referred above, certain abbreviations have been used.**

**They are elaborated as follows:**

**Abbreviation Full form**

**TSC** Total Sale consideration

**AP** Amount paid by the allottee(s)

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4. The aforesaid complaints were filed by the complainants against the promoter on account of different payment plan in the allotment letter issued to the complainants than shown in the booking scheme and cancelling the unit way before the due date on account of non-payment, seeking refund of the amount paid along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case *CR/5325/2022, case titled as Vineeta Kukreti and Gaurav Mehta V/S Roshni Builders Private Limited & M/s Chaahat Homes Infratech Pvt. Ltd.* are being taken into consideration for determining the rights of the allottee(s) qua refund of the paid-up amount along with interest and compensation.

**A. Unit and project related details**

7. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"M3M Broadway, Sector- 71, Gurugram.
2.	Project area	7.84875 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	<b>71 of 2018 dated 25.10.2018 valid till 24.10.2023</b>

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5.	Name of licensee	Roshni Builders Pvt. Ltd., Highrise Propbuild Pvt. Ltd
6.	RERA Registered/ not registered	31 of 2018 dated 14.12.2018 valid up to 31.10.2023
7.	Unit no.	R4 106, 1 <sup>st</sup> floor & Block-4 (As per page no. 45 of the complaint)
8.	Unit area	403 sq. ft. (As per page no. 50 of the complaint)
9.	Date of booking	26.07.2020 (As alleged by the complainant on page no. 10 of the complaint)
10.	Allotment letter	07.08.2020 (As per page no. 24 of the complaint)
11.	Date of execution of agreement for sale	Annexed but not executed (As per page no. 46 of the complaint)
12.	Possession clause (As per annexed agreement for sale)	<b>7. POSSESSION OF THE UNIT</b> <b>7.1 Schedule for possession of the said Unit:</b> - <i>The Developer agrees and understands that timely delivery of possession of the Unit along with the car parking space(s), if any, to the Allottee and the Common Areas to the Association of Allottee or the competent Authority, as the case may be, as provided under the Act and Rules 2(1)(f) of the Rules, 2017, is the essence of the Agreement.</i> (As per page no. 24 of the complaint)
13.	Due date of possession	31.10.2023 (As per RERA registration)
14.	Total sale consideration	Rs.1,20,61,967/- (As per payment plan on page no. 30 of the complaint)
15.	Amount paid by the complainant	Rs.12,06,196/- (As per receipt information on page no. 37-42 of the complaint)
16.	Occupation certificate /Completion certificate	13.12.2021 (As per page no. 106 of the reply)
17.	Offer of possession	Not Offered
18.	Pre cancellation notice	11.11.2021 (As per page no. 104 of the complaint)
19.	Demand letter	22.10.2021 (As per page no. 102 of the complaint)
20.	Cancellation letter	30.11.2021 (As per page no. 105 of the complaint)

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**B. Facts of the complaint:**

8. The complainants have made the following submissions:

- I. That on 26.07.2020, the complainants on being lured and deceived by representations and tall claims of the respondent booked a commercial unit in respondent's project "M3M BROADWAY" located in Sector- 71, Gurugram, Haryana through RERA registered agent namely "M/S CHAAHAT HOMES INFRATECH PRIVATE LIMITED" and paid an amount of Rs.3,50,000/- towards the booking of the said unit via cheque bearing no. 004329 dated 30.07.2020 in favor of the respondent no. 1
- II. That on 07.08.2020, the respondent sent an allotment letter to the complainants through speed post. As per the terms of allotment letter the complainants were allotted commercial unit no. R4- 106 having carpet area of 403 sq. ft. for a total sale consideration of Rs.1,20,61,967/-. Further as per the payment plan attached to the allotment letter, payment of the unit was to be made in 4 stages (i.e. 2.9 % of total sale consideration on booking, 7.1 % of total sale consideration on signing of builder buyer's agreement, 80% of total sale consideration on application of OC and 10% of total sale consideration on offer of possession.)
- III. That the complainants were surprised and was in a state of utter shock to see the payment plan attached with the allotment letter since it was agreed at the time of sale/ booking between the complainants and the respondent that the complainants had to pay only 10% of the total sale consideration on booking and rest 90% of the total sale consideration on "Offer of Possession" after receiving occupation certificate in the year 2023. The complainants had opted for "10: 90 payment plan" at the time of booking/ sale wherein 10 percent amount was to be paid

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- on booking and rest 90 percent was to be paid on offer of possession, however the respondent sent a different payment plan annexed with the allotment letter.
- IV. That at the time of booking the respondent no. 1 and real estate agent respondent no. 2 had showed an advertisement brochure of the project "M3M BROADWAY" to the complainants wherein the 10:90 payment plan was mentioned in which 90% payment was to be made on offer of possession. That pursuant to it the complainants got interested in investing money in buying the commercial unit and paid a booking amount of Rs.12, 06,196/- to the respondent.
- V. That on 31.08.2020, the respondent sent 2 copies of BBA to the complainants via speed post for ratification, signatures and to return the duly signed copy of BBA to the respondent and to get the BBA registered in the sub-registrar office. However, the complainants did not signed the copy of agreement for sale/ BBA to the respondent since the terms and conditions regarding the payment plan in the BBA and provisional allotment letter were not acceptable to the complainants since the complainants had opted for 10: 90 payment plan under the "3D Scheme" which was showed to the complainants at the time of sale/booking.
- VI. That after receiving copy of BBA the complainants immediately rushed to the office of the respondent and met Mr. Gaurav Jain (CRM) for getting the payment plan changed in the allotment letter and builder buyer's agreement. The respondent assured the complainants that they will execute an addendum (additional clauses) to the allotment letter and BBA and will change the payment plan. However, the respondent did not execute the "Addendum Agreement" for changes in

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- allotment letter and BBA in spite of various requests and kept on sending demand letters.
- VII. The complainants on 02.09.2021 sent an e-mail to the respondent objecting the wrong payment plan annexed to allotment letter and BBA and requested respondent to change it to 10:90 plan as originally agreed at the time of sale/ booking and gave reminder to execute addendum to allotment letter and BBA for correct payment plan but the respondent did not reply to the said e-mail.
- VIII. That on 02.09.2021 and 30.09.2021, the complainants through e-mail gave a second reminder and third reminder to Mr. Gaurav Jain (CRM Head) of respondent to execute addendum agreement for changing payment plan in allotment letter and BBA. However the respondent did not reply to the said e-mails.
- IX. That on 01.10.2021, the respondent replied to the e-mail dated 30.09.2021 of the complainants, gave acknowledgment and stated that they have forwarded the query of complainants to Ms. Preeti Chauhan (CRM Team) of the respondent.
- X. That on 08.10.2021, the respondent sent an e-mail to the complainants informing that demand on "Application of OC" has been deferred to "on offer of possession" after receipt of occupation certificate and that no interest will be charged on the said deferment.
- XI. That on 25.10.2021, the respondent sent an e-mail attached with a "demand letter" of Rs.96,49,578/- demanding 80% payment of the total sale consideration on account of making application for grant of occupation certificate. That the said demand letter was illegal and was in total contradiction to the previous e-mail of the respondent dated 08.10.2021 wherein the respondent have assured that they will raise

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- demand of payment only on "offer of possession" after receiving occupation certificate.
- XII. That on 27.10..2021, the respondent sent an e-mail to the complainants informing that the respondent has extended pre-handover benefits till the offer of possession instead of on "Application of OC".
- XIII. That on 13.11.2021, the respondent sent an e-mail along with pre-cancellation letter dated 11.11.2021 to the complainants stating that the respondent has cancelled the unit on account of non-payment of dues.
- XIV. That in response to the pre-cancellation letter, the complainants wrote an e-mail to the respondent on 14.11.2021 wherein they objected to the pre-cancellation letter and gave reference to his previous e-mails communication with the respondent dated 08.10.2021 wherein the respondent have informed that the demand of money will be raised only on "offer of possession" after receiving occupation certificate not before that. The complainants further stated that the respondent didn't abide by the payment plan mentioned in the allotment letter and BBA sent by the respondent and further stated that at the time of booking it was communicated by the respondent through advertisements and marketing brochures that sale was made under the "3D Scheme" in which 3 deals were there in 1 offer. According to the "3D Scheme" first deal was a "10:90 payment plan" in which 10 % was to be paid at the time of booking and remaining 90% was to be paid at the time of offer of possession. That second deal was "Exit Anytime" and third deal was "9 year Lease Guarantee". The complainants further stated in the email that it was a clear cut case of

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- mis-selling and that the complainants will not bear any losses arising out of the said illegal cancellation.
- XV. That on 30.11.2021, the respondent sent cancellation letter through speed post and cancelled the unit of the complainants on account of non-payment of dues.
- XVI. That in response to the cancellation letter the complainants wrote a detailed e-mail to the respondent on 21.12.2021 challenging the cancellation letter and stated that the complainants did not abide by the payment plan mentioned in the allotment letter sent by the respondent and further stated that it was conveyed to complainants by respondent no. 1 and 2 at the time of sale/ booking that 10:90 plan will be applicable upon them.
- XVII. The complainants had continuously written e-mails to the respondent for changing the payment plan to 10:90 payment scheme which was originally agreed at the time of booking however the respondent did not pay any heed to it and continued to send demand letters for payment and finally cancelled the allotment of the complainants.
- XVIII. That the respondent received occupation certificate of its project "M3M BROADWAY" on 13.12.2021. That prior to receiving OC and prior to offering possession, the respondent sent illegal demand letters and wrongly cancelled the unit of complainant.
- XIX. Thus keeping in view the above mentioned facts it is a clear cut case of mis-selling and the respondent had violated Section 12 of Act of 2016. Therefore, the complainants are seeking refund of Rs.12,06,196/- paid to the respondent along with interest and compensation.
- XX. That the respondent had committed grave and unfair trade practices by providing false advertisement brochure to the complainants which violates Section 12 of RERA.

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XXI. That the cause of action firstly arose at the time of booking/ sale when the respondent depicted false, fabricated and misleading brochures to the complainants for purchase of the commercial unit and lured the complainants to invest his money in to the project of the respondent. The cause of action further arose when the respondent sent allotment letter and copy of builder buyer's agreement with different payment plan and not 10:90 payment plan which was opted for at the time of sale/ booking. That the cause of action further arose when the respondent sent early payment demands to the complainant before receiving occupation certificate and before offering possession. That the cause of action further arose when the respondent sent pre-cancellation notice and cancellation letter to the complainants on account of illegal demand of payments prior to offering possession. That the cause of action is a continuing cause of action and still subsisting one since the respondent had wrongly cancelled the unit of the complainants and had violated Section 12 of RERA Act and failed to return the amount paid by complainants along with interest and compensation.

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

9. The complainants have sought following relief(s):
  - i. Direct the respondent to refund the entire amount of Rs.12,06,196/- paid by the complainants along with interest at the prescribed rate on the paid amount from the date of payment till actualisation.
  - ii. Direct the respondent to pay the litigation cost.
  - iii. To impose a penalty of at least Rs.25,00,000/- under section 63 of the Act of 2016 on account of misleading advertisement on respondent no. 1(promoter) and contravening the provisions of section 11(2) of

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the Act of 2016 and directions to the builders/promoters with regard to advertisement of real estate projects.

- iv. To cancel the RERA registration of respondent no. 2 on account of misleading advertisement.

**D. Reply by the respondent no. 1:**

10. The respondent contested the complaint on the following grounds:

- a. That at the very outset, the complaint filed by the complainants is baseless, vexatious and is not tenable in the eyes of law. That the complainants have neither any cause of action or any local standi to maintain the present complaint against the respondent especially when the complainants have actually defaulted in making the payments and now are attempting to seek complete amendment/modification/rewriting of the terms and conditions of the application form/allotment letter which cannot be permitted under law.

**b. The complainants are not entitled to any relief whatsoever:**

- i. That after making independent enquiries and only after being fully satisfied about the project "M3M Broadway", a commercial project being developed in a planned and phased manner consisting of modern office spaces, entertainment, food and beverage outlets, modern office spaces, upscale efficient lofts situated in Sector 71, Gurugram, Haryana. The complainants applied for booking of two units in the said project. The complainants submitted an application form with an amount of Rs.3,50,000/- towards booking of a unit in the project 'M3M Broadway' through their broker M/s. Chaahat Homes Infratech Pvt. Ltd. i.e. respondent No. 2 herein. In due consideration of the complainants commitment to make timely payments, the respondent allotted commercial unit no. R4 106 vide allotment letter dated 05.08.2020. That the complainants as per

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- their own free will and after fully understanding their obligations opted for specific payment plan i.e. 10:80:10 plan.
- ii. That vide demand letter dated 06.08.2020, the respondent raised the second demand. That post receipt of the allotment letter and the aforementioned demand letter, the complainants made the payment of Rs.1,50,000/- on 09.08.2020, Rs.3,58,118/- on 24.08.2020, Rs.3,40,000/- on 26.08.2020 and Rs.8,078/- on 27.08.2020 respectively. It is submitted that the complainants had accepted the said payment plan and in furtherance of the same had made the said payments. The complainants were bound by the terms and conditions contained in the allotment letter and the payment plan attached as it clearly emphasised the fact that timely payment is the essence. It is submitted that in furtherance of the allotment letter, the respondents herein dispatched copies of buyer's agreement to the complainants for due execution at their end along with covering letter dated 31.08.2020. But despite making repeated requests the complainants did not execute the buyer's agreement for reasons best known to them.
- iii. That the respondent has paid an amount of Rs.1,41,459/- to the complainants as pre-handover amount from the period of 31.08.2020 to 01.10.2021 and the same was duly accepted by the complainants.
- iv. That the respondent completed the construction and development of the complex much before the agreed time limit and the applied for the grant of occupation certificate on 31.08.2021. Thereafter the complainants being very well aware about the stage of construction for the very first time raised frivolous issues regarding the unit in question being booked under the 3D scheme in September, 2021. It

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is submitted that the unit in question was never booked under any scheme. It is submitted that the complainants have raised the said issue after more than one year of booking with the sole motive to get rid of their contractual obligations. It is submitted that the complainants have miserably failed to bring to the notice of the Authority any document to substantiate their alleged claim that the unit was booked under the 3D scheme.

- v. That vide demand letter dated 22.10.2021, the respondent raised the demand due on application for grant of occupation certificate. It is submitted that all the demands were raised as per the payment plan opted by the complainants on the achievement of the relevant construction milestone. That since the complainants failed to come forward to clear their outstanding dues despite continuous reminders and follow ups as a result of which the respondent was compelled to issue pre-cancellation notice dated 11.11.2021 calling upon the complainants to clear their outstanding dues.
- vi. That on account of wilful breach of the terms of the allotment and non-execution of the buyer's agreement and also on account of failure to clear outstanding dues despite repeated requests, the respondent was constrained to terminate the allotment of the unit vide cancellation notice dated 30.11.2021.
- vii. That the default of the complainants in making timely payments and complying with other obligations is duly covered under the application form/allotment letter, and the cancellation and forfeiture of the earnest money along with other non-refundable amounts has been in accordance with the same.
- viii. That the total loss suffered by the respondent comes to Rs.17,49,168/- approx.) which includes earnest money deduction

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@10% to the tune of Rs.12,06,197/- and Rs.2,17,115/- GST on earnest Money/-, taxes to the tune of Rs.1,29,324/-, pre-handover amount to the tune of Rs.1,41,459/-, and further sum of Rs.49,172/- was the interest payable by the complainants for the delayed payments and GST on interest is Rs.5,901/-. It is submitted that the complainants are raising these frivolous issues as an afterthought in order to unjustly enrich themselves.

**c. The complainants have failed to make out a case under Section 12 of the Act of 2016:**

- I. The respondent never published any false advertisement/brochure to the complainants which violates Section 12 of the Act of 2016. Though the scheme was floated by the respondent however, the unit in question was never booked under any such scheme. That post receipt of the allotment letter and the demand letter, the complainants had accepted the said payment plan and made the payment of Rs.1,50,000/-, Rs.3,58,118/-, Rs.3,40,000/- and Rs.8,078/- on 09.08.2020, 24.08.2020, 26.08.2020 and 27.08.2020 respectively in furtherance of the same. The complainants were bound by the terms and conditions contained in the allotment letter and the payment plan clearly emphasised the fact that timely payment is the essence.
- II. Thereafter the complainants being very well aware about the fact that the construction stands completed and Occupation Certificate stands applied for, raised frivolous issues regarding the unit in question being booked under the 3D scheme in September, 2021 for the very first time. The complainants have raised the said issue after more than one year of booking with the sole motive to get rid of their contractual obligations. The complainants have miserably

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failed to bring to the notice of the Hon'ble Authority any document to substantiate their alleged claim that the unit was booked under the 3D scheme.

**d. The complainants are not genuine consumers:**

i. That the complainants are not consumers and end users since they had booked the following two units in the project M3M Broadway:

- i) Unit no. R4 106
- ii) Unit no. R4 107.

It is further submitted that the complainants relatives one Jai Prakash Mehta and Krishna Kumari have also booked unit no. R4 105 as a speculative investors and to make profits and gains. Thus, it is clear that the complainants had invested in the units in question for commercial gains, i.e., to earn income by way of rent and/or re-sale of the property at an appreciated value and to earn premium thereon. Since the investment has been made for the aforesaid purpose, it is for commercial purpose and as such the complainants are not consumers/end user. The complaint is liable to be dismissed on this ground alone. Under these circumstances, it is all the more necessary for the complainants, on whom the burden lies, to show how the complainants are consumers.

ii. The complainants have not disclosed their financial position and the statement of income and assets for the last 5 (five) years prior to the date of booking of the above unit. It is necessary for the complainants to file copies of its income tax returns for the 5 (five) years prior to the date of booking.

iii. Details of the total assets both moveable and immovable together with the value of each asset in the name of the complainants should

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also be disclosed, which would indicate whether the aforesaid booking was done, like other properties, for investment purposes.

- e. The complainants are in default of their contractual obligations and are raising frivolous issues in order to escape their liability cast upon them by the virtue of the terms of agreement and unjustly trying to enrich themselves. Therefore, the complainants are not entitled to any relief whatsoever.
11. Copies of all the relevant documents have been filed and placed on 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.
12. During the proceedings dated 18.01.2024, the counsel for the respondent no. 2 stated that no material evidence has been placed on record w.r.t real estate agent and requested for the deletion of its name from the complaint. No useful purpose would be served by keeping it as respondent no. 2. Therefore, its name is required to be deleted from the list of respondent's.

**E. Jurisdiction of the authority:**

13. 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**

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.

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Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

### **E.II Subject matter jurisdiction**

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)(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;*

#### **Section 34-Functions of the Authority:**

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

14. 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
15. 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 and followed in ***M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** 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."*

16. 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. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)**, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by them.

**F. Findings on objections raised by the respondent:**

**F.I Objection regarding the complainants being investors.**

17. The respondent has taken a stand that the complainants are the investors and not consumers. Therefore, they are not entitled to the protection of the Act and are not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the

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promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the documents placed on record, it is revealed that the complainants are buyers and paid a price of Rs.12,06,196/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference.

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors is not entitled to protection of this Act also stands rejected.

**A. Findings on relief sought by the complainants:**

**G.I Direct to the respondent to refund the entire amount of Rs.12,06,196/- paid by the complainants along with interest at the prescribed rate on the paid amount from the date of payment till actualisation.**

19. The complainants were allotted a unit in the project of respondent "M3M Broadway", in Sector 71, Gurugram vide allotment letter dated 07.08.2020 for a total sum of Rs.1,20,61,967/-. Though no buyer's agreement was executed between the parties, but in furtherance of the allotment letter,

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the complainants started paying the amount due against the allotted unit and paid a total sum of Rs.12,06,196/.

20. The respondent vide letter dated 22.10.2021 raised a demand which was due on application of occupation certificate as per the payment plan. After various reminders for payment of outstanding dues, the respondent issued a pre-cancellation letter on 11.11.2021 and finally terminated the allotment of the unit on 30.11.2021 on failure of payment of outstanding instalments.
21. The counsel for the complainants during the proceedings dated 18.01.2024 brought to the notice of the Authority that the unit was booked on payment of 10% consideration under a 10:90 plan under which the remaining 90% amount was required to be paid on offer of possession after obtaining OC. However, while issuing the allotment letter on 07.08.2020, the payment plan was unilaterally altered on 10:80:10 plan and was protested by writing three e-mails dated 03.09.2021, 21.09.2021 and 30.09.2021. And the respondent vide email dated 08.10.2021 assured that the remaining amount will be demanded at the time of possession and no interest shall be charged on such deferred payment. The counsel for the respondent stated that as per the allotment letter placed on record the unit was allotted on 10:80:10 plan only and a part payment was made by the complainants after issuance of allotment letter and the payment plan cannot be disputed at this stage. He further mentioned that no change in payment plan was accepted vide email dated 08.10.2021 rather cancellation was made on request of the complainants and they were seeking the pre-hand over amount and not change in payment plan vide email dated 02.09.2021 and as per clause 14 of the allotment letter, the respondent is entitled to forfeit 10% earnest money. Relevant portion of clause 14 is reproduced below:

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*"In the event of breach or default on the part of the allottee or his failure to comply with any of his obligations under the application form/allotment letter, including without limitation, obligation to make payments as per 'Annexure I' hereto in timely manner or where the allottee seeks to withdraw or cancel the allotment/agreement for sale in respect of the unit, the allottee shall be deemed to be in default and the company shall be entitled to forfeit the earnest money (being 10% of the total sale consideration)....."*

22. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of *Maula Bux VS. Union of India, (1970) 1 SCR 928* and *Sirdar K.B Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136*, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Indian Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer disputes Redressal Commissions in CC/435/2019 *Ramesh Malhotra VS. Emaar MGF Land Limited* (decided on 29.06.2020) and *Mr. Saurav Sanyal VS. M/s IREO Private Limited* (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as *Jayant Singhal and Anr. VS. M3M India Private Limited decided on 26.07.2022*, held that 10% of basic sale price is a reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed 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*

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*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."*

23. Keeping in view the aforesaid factual and legal provisions, the respondent can retain the amount paid by the complainant against the allotted unit as it is both the earnest money and 10% of the consideration amount. So, the same was liable to be forfeited as per clause 14 of allotment letter and Haryana Real Estate Regulatory Authority Regulation 11(5). However, the amount paid by the complainants i.e., Rs.12,06,196/- constitutes only 10% of sale consideration of Rs.1,20,61,960/- while amount up to 10% can be forfeited. Thus, no direction to this effect.

**G.II Direct the respondent to pay litigation costs to the complainants**

24. The complainants are seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra* held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

**G.III Impose a penalty of at least Rs.25,00,000/- under section 63 of the Act of 2016 on account of misleading advertisement on respondent no. 1 and contravening the provisions of section 11(2) of the Act of 2016.**

25. Though the 3D scheme was floated by the respondent as admitted by the respondent in its reply but the subject unit was not booked in the 3D scheme as per the documents placed on record. As per the allotment letter, the payment plan under which the unit was booked is 10:80:10 plan



and the payment in furtherance of same has been made by the complainants which means the payment plan mentioned in the allotment letter is accepted by the complainants. Thus, no issue of misleading advertisement arises, and therefore no direction to this effect.

**G.IV To cancel the RERA registration of the respondent no. 2 on account of misleading advertisement.**

26. No material evidence has been placed on record w.r.t real estate agent. And the same has been confirmed by the counsel for the respondent no. 2 during the proceedings of the day dated 18.01.2024. Thus, no direction to this effect.

**H. Directions of the authority:**

27. Hence, in view of the findings recorded by the authority on the aforesaid issues, no case of refund of the paid-up amount with interest is made out. Hence, the complaint is liable to be dismissed and as such is rejected.
28. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
29. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
30. Files be consigned to the registry.

**HARERA**  
**GURUGRAM**

V.1-3  
(Vijay Kumar Goyal)

**Member**

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.03.2024