

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

Complaint no.	:	2718 of 2023
Date of decision	:	12.04.2024

1. Meenakshi Bajaj 2. Om Prakash Bajaj Both R/o: 2/50, Jangpura Extension, Old Double Storey, New Delhi - 110014	Complainants
Versus	
1.M/s M3M India Pvt. Ltd. Office at: - 6th floor, M3M Tee Point, North Block, Sector - 65, Gurugram, Haryana 2. M/s 360 Realtors Office at:- 201, A-201 C, Global Foyer, Golf Course Road, Sector - 43, Gurugram, Haryana 3. M/s Prompt Engineering Pvt. Ltd. Office at :- LGF, F-22, Sushant Shopping Arcade, Sushant Lok Phase -1, Gurugram, Haryana	Respondents

CORAM:	
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
None	Advocate for the complainants
Ms. Smriti Srivastava and Shriya takkar	Advocate for the respondent

ORDER

1. The present complaint dated 12.06.2023 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.	Particulars	Details
1.	Name of the project	"M3M Sky Walk", Sector 74, Gurugram, Haryana
2.	Nature of the project	Residential Project
3.	Date of booking	30.08.2021 (page 43 of complaint)
4.	Unit no.	Not mentioned (As per annexure A4 on page 28 of complaint)
5.	Unit admeasuring area	2032 sq. ft. of super area (As per page 20 of complaint)
6.	Allotment letter	Not allotted
7.	Date of builder buyer agreement	Not executed
8.	Complete details of booking through mail	03.11.2022 (page 45 of complaint)
9.	Complainant mail w.r.t. update on status and installment due	29.10.2022 (As per page no. 49 of complaint)

10.	Provisional acknowledgement	Undated At page 43 of complaint - the payment have been made on 30.08.2021 and 04.09.2021
11.	Termination of booking	02.11.2022 (As per page no. 51 of complaint)
12.	Mail w.r.t termination	03.11.2022 (page 47 of reply)
13.	Total sale consideration	Rs.1,54,43,200/- (As per annexure c5 on page no. 45 of complaint)
14.	Total amount paid by the complainants	Rs.15,24,000/- (As per annexure c3 on page no. 43 of complaint)
15.	Occupation certificate	Not Obtained
16.	Amount (Rs. 15,24,000/-) refunded to complainants by respondent no. 1	08.12.2023

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -
4. In August 2021, the complainants were shown one unit being Unit No. 3005 in Tower I admeasuring 2032/- sq. ft. super area in M3M Skywalk project at Sector 74, Gurgaon. To this end, they submitted to officials of the respondent No. 1, two cheques bearing nos. 916950 and 916951 for an amount of INR 3,00,000/- and INR 12,24,000/- respectively.
5. In consideration of this payment, on 30.08.2021, the respondent no. 1 issued a 'provisional acknowledgement' in favour of the complainants duly acknowledging the payment received from the complainants.

Additionally, taking advantage of the fact that they were innocent senior citizens, respondent Nos. 1 and 2 got them to execute an undated "expression on interest" (EOI) document.

6. On 11.10.2021, respondent No. 2 even confirmed the allotment of unit No. 3005 in Tower I (admeasuring 2032 sq. ft. in Super Area) in M3M Skywalk, reiterating the same particulars that were mentioned in the payment schedule that accompanied the EOI document.
7. Thereafter, they received no further information about paying the second installment from respondent Nos. 1 and 3, and they also did not respond to their query regarding the status of RERA registration of M3M Skywalk project. The complainants even wrote an email to respondent No. 1 at its official email ID (info@m3mindia.com) enquiring about the status of the RERA registration and the likely date of handing over possession of the residential unit to them (**Annexure C-6 @page 47 of the complaint**). They further reiterated their readiness to pay further amounts and requested the respondent no. 1 to do the formalities for the process, so that the builder buyer agreement could be executed.
8. Thereafter, to the utter shock of complainants, by communication dated 02.11.2022, the respondent No.1 unilaterally cancelled/ terminated the EOI that had been issued in favour of the complainants.
9. Thereafter, aggrieved by the conduct of respondent no. 1's unilateral termination of the EOI, complainants filed the present complaint on 29.03.2023. The matter was listed for the first hearing on 10.11.2023 and was thereafter listed on 23.02.2024 for further proceedings. Subsequently, on 08.12.2023, without any prior intimation or any communication, respondent no. 1 refunded INR 15,24,000/- to

complainant No. 1's account. This amount was returned after more than two years of the initial deposit and without any interest.

10. Hence it is clear that at the time when complainants made the initial deposit of INR 15,24,000/- in August 2021, Project M3M Skywalk had no RERA registration. Further, the amount refunded by respondent nos. 1 on 08.12.2023 has been done without any intimation to the complainants and after more than 2 years. Moreover, no interest has been returned either.
11. In the present case, respondent Nos. 1 and 3 unilaterally terminated the EOI without any justification, despite complainants at the time, being ready and willing to comply with it and following up with them multiple times as demonstrated above.
12. In the light of the above submissions, it is thus humbly requested to this Hon'ble Authority to pass an order in their favour and direct respondent Nos. 1 and 3 to pay to complainants the interest due to them and also penalize them for making false representations to complainants as well as to this Hon'ble Authority.

C. Relief sought by the complainants:

13. The complainants have sought following relief(s)
 - I. To direct the respondent to revoke/withdraw the termination letter dated 02.11.2022 as the same is being unfair and illegal.
 - II. To direct the respondent to execute BBA
 - III. To impose penalty upon respondent as per section 61 of RERA
 - IV. To conduct enquiry under section 35 of the act against the respondent.

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 no. 1 and 3

15. The respondent no. 1 and 3 contested the complaint on the following grounds. The submission made therein, in brief is as under: -

16. The present complaint has been filed with *malafide* intentions to wriggle out of contractual obligations as there is no cause of action for the relief sought has been made out in the present Complaint. It is submitted that the Complainants after making independent enquiries, conducting requisite due diligence and only after being completely satisfied about the projects of Respondent No.1 Company, approached Respondent No.1 through their broker i.e. Respondent No.2 herein and submitted an Expression of Interest (EOI) for provisional booking/ provisional Allotment of the unit in one of the projects of the Respondent No.1 Company and tendered an amount of Rs.3,00,000/- for the same vide cheque bearing number 916950 dated 30.08.2021 drawn on Punjab National Bank. Thereafter, the Complainants on account of their own freewill and financial capacity, further made another payment vide cheque bearing number 916951 for a total consideration of Rs.12,24,000/- towards the confirmation of EOI. It is submitted that the Complainants had signed and submitted the EOI after duly understanding all the clauses stipulated under the EOI.

17. 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 upon mutual discussion between the parties, the Respondent No.1 issued a letter for confirmation of the Expression of Interest, thereby acknowledging the receipt and confirmation of the EOI. That vide the said confirmation letter the Complainant was categorically 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 being Respondent No.3 herein. The Complainants were also informed through the letter of confirmation of EOI, 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 No.1 at its sole discretion reserves its right to cancel the EOI.

18. From the facts stated hereinabove, it is absolutely clear that the Complainants were not coming forward to complete the booking formalities and the same were pending on the Complainant's part since September 2021, consequently, the expression of interest was cancelled by the Respondent No.1 vide intimation of termination dated 02.11.2022. The Complainants were duly informed about the cancellation of the expression of interest vide email dated 03.11.2022.
19. 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

20. 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

21. 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

22. 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 complainants.

- I. To direct the respondent to revoke/withdraw the termination letter dated 02.11.2022 as the same is being unfair and illegal.
- II. To direct the respondent to execute BBA
- III. To impose penalty upon respondent as per section 61 of RERA
- IV. To conduct enquiry under section 35 of the act against the respondent.

23. The counsel for the complainants stated that they have booked the unit on 30.8.2021 by paying a sum of Rs. 15,24,000/- against total consideration of Rs. 1,54,43,200/- and further alleged that they did not

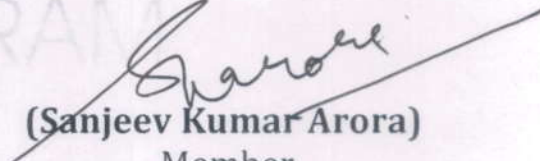
receive any demand post booking and however, a mail of termination of the unit was received on 2.11.2022. The counsel for the respondent states that as per annexure R-2 page 34, which is 'expression of interest' which clearly states that the allottee understand the EOI constitutes only an offer and is not an acknowledgement or promise of any allotment of the unit. The counsel for the respondent further stated that as per page 45 of the complaint, the confirmation of the booking was given by M3M 60 Realtors which has no link with the respondent no.1 and 3 which are M3M India Private limited and Prompt Engineering Pvt. Ltd. hence the respondent no.1 and 3 have never acknowledged and accepted them as an allottee.

24. Further stated that R1 had received a sum of Rs. 15,24,000/- from the complainant which has already been refunded to the complainants. The counsel for the respondent further draws attention of the authority towards orders passed in CR NO.2207/2023 booking advance for allotment of unit in M3M Urbana was given to M3M India Pvt. Ltd. and as per which EOI was sent to the complainants but later on the amount was refunded in full on failure of the complainants to come forward and finalize the payment. Further stated that as per EOI, page 35, para 2, "*it is clearly agreed upon by the complainant if for any reason whatsoever, no allotment is made in their favour within a period of 6 months from the date of this EOI, the company shall repay and given back the amount tendered by the complainant without any interest or compensation in full settlement of the account of the complainant.*"

25. In the present complaint, despite requests made by the respondent, the complainants failed to come forward to complete the booking formalities and thus, the respondent was constrained to terminate the booking of

the complainant and has already refunded the full amount received by it regarding the said booking vide NEFT on 08.12.2023 to the complainants.

26. As per the expression of interest, "it is clearly agreed upon by the complainant if for any reason whatsoever, no allotment is made in their favour within a period of 6 months from the date of this EOI, the company shall repay and given back the amount tendered by the complainant without any interest or compensation in full settlement of the account of the complainant." Acting upon that the respondent refunded the entire amount received as further process of allotment could not be completed in the prescribed time. Further the allotment has not been made within the prescribed time period.
27. Keeping in view the above-mentioned facts the promoter has already refunded during pendency of the proceeding the total paid up amount to them through NEFT on 08.12.2023 and the same has been accepted by them. Hence, cancellation is deemed to have been accepted by the complainants.
28. Complaint stands disposed of.
29. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12.04.2024