



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

**Complaint no.** : 7019 of 2022  
**Date of complaint** : 27.10.2022  
**Date of decision** : 07.08.2024

Nitish Sharma,  
**R/o:** - H. No. 172, Mayfield Gardens,  
Sector-51, Gurugram, Haryana-122018.

**Complainant**

Versus

1. Roshni Builders Private Limited  
**Regd. Office At:** LGF, F-22, Sushant Shopping  
Arcade, Sushant Lok Phase-1, Gurugram,  
Haryana-122002.  
2. Highrise Propbuild Private Limited  
**Regd. Office At:** 1221-A, Devika Tower, 12<sup>th</sup> Floor,  
6 Nehru Place, New Delhi-110019.

**Respondents**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Sukhbir Yadav (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 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. N.	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	71 of 2018 dated 25.02.2018 valid till 24.10.2023
5.	Name of licensee	Roshni Builders Pvt. Ltd., Highrise Propbuild Pvt. Ltd
6.	RERA Registered/ not registered	Registered vide no. 31 of 2018 dated 14.12.2018 valid upto 31.10.2023
7.	Unit no.	R7 UG-09, upper ground floor, block-7 (Page no. 48 of the complaint)
8.	Area admeasuring	271.68 sq. ft. (Carpet area) 550.73 sq. ft. (Super area) (Page no. 48 of the complaint)
9.	Welcome letter	28.01.2019 (Page no. 50 of the reply)
10.	Allotment letter	08.01.2019 (Page no. 34 of the complaint)
11.	Date of execution of agreement for sale	10.07.2019 (Page no. 44 of the complaint)
12.	Possession clause	<b>7. POSSESSION OF THE UNIT</b> <b>7.1 Schedule for possession of the said Unit:</b> - 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

		<i>and Rules 2(1)(f) of the Rules, 2017, is the essence of the Agreement.</i>	
13.	Due date of possession	31.10.2023 [as per details mentioned in the RERA registration certificate]	
14.	Total sale consideration	Rs.99,81,342/- (As per payment plan at page no. 93 of the complaint)	
15.	Amount paid by the complainant	Rs.50,51,238.35/- - Rs.2,33,917/- (rebate provided by respondents) = <b>Rs.48,17,321.35/-</b> (As per applicant ledger dated 13.09.2022 at page no. 106 of the complaint) (inadvertently mentioned as Rs.50,51,238/- on proceedings dated 15.05.2024)	
16.	Occupation certificate /Completion certificate	13.12.2021 (Page no. 71 of the reply)	
17.	Offer of possession	16.12.2021 (Page no. 107 of the complaint)	
18.	Pre cancellation notice	17.01.2022 (Page no. 79 of the reply)	
19.	Cancellation letter	01.02.2022 (Page no. 108 of the complaint)	

### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That the complainant was allotted a unit bearing no. R7 UG 09, Upper Ground Floor, Block-7 in project of the respondents named 'M3M Broadway' located at Sector- 71, Gurugram vide allotment letter dated 28.01.2019. Thereafter, an agreement for sale was executed between the parties regarding the said allotment on 10.07.2019 for a total sale consideration of Rs.99,81,342/-.
- II. That the complainant repeatedly held verbal discussions with the respondents regarding possession of the unit. However, the



respondents continued to represent and assure that the construction is going in full swing and the possession would be handed over promptly with due compliance to all the governing laws and safety protocols.

- III. That the complainant for over two years had already paid an amount of Rs.49,90,671/- as per the agreed payment plan and the respondents finally sent a notice for offer of possession dated 16.12.2021 and it was written in the notice that project has been completed and company has obtained occupancy certificate.
- IV. That when the complainant visited the construction site, to his utter shock and dismay, the construction of the entire project was still far from completion and the construction activity on the floors above the floor of the complainant was still going on which made the unit of the complainant unfit for taking possession, yet the respondents were continuing to make fraudulent and false representations in order to cheat the complainant.
- V. That the complainant further paid an amount of Rs.60,567.35/- in favour of the respondents. The total amount paid by the complainant till date stands to the tune of Rs. 50,51,238.35/-.
- VI. That the complainant made several telephonic calls to the representatives/agents of the respondents in order to get update on the work completion of the allotted unit but the representatives/agents of the respondents started ignoring the complainant's calls and paid no heed to the concerns of the complainant and despite not providing any conclusive answer about the status of construction, the respondent sent a pre-cancellation notice dated 17.01.2022 to the complainant for cancelling the allotted unit on account of default in making payment and non-compliance of



other formalities of offer of possession even though the respondents completely failed to complete the unit and fit for taking possession. It is pertinent to mention herein that the complainant never got any intimation of the pre-cancellation notice issued by the respondents neither any call nor other communication was ever made by the respondents with regard to the cancellation of the allotment.

- VII. That the respondents without any intimation or informing the complainant of the previous notice, directly sent the cancellation notice to the complainant dated 01.02.2022 and cancelled the unit allotted to the complainant.
- VIII. That the complainant approached the respondent company to check for the status of the unit and to his utter shock and surprise for the very first time he got to know that the allotment of the complainant has been cancelled for payment default and non-compliance of the other conditions as per offer of possession. The complainant requested the respondents to recall the cancellation notice of the unit but the respondents outrightly declined the requests of the complainant and illegally forfeited the whole amount of Rs. 50,51,238.35/- paid by the complainant till date.
- IX. That the complainant is running from pillar to post requesting the respondents to either revive his allotment or refund the total amount paid by the complainant but the respondents by showing their illegal conduct are not responding to the complainant and neither are they refunding the amount paid by the complainant withheld by them by illegally cancelling the unit of the complainant.
- X. That the complainant has paid more than 50% of the consideration mentioned in the agreement due towards the unit. However, the respondents have illegally cancelled the allotment of the complainant





by showing his payment default which is on the contrary a deficiency on the part of the respondents that they offered possession of the unit which was not at all in the state of taking possession and was entirely in unsafe condition as the construction activity right above the floor of the complainant's unit was still going on and anything could fall down during construction work on the complainant's floor from the floors above which is highly unsafe and full of risk of life.

- XI. That after seeing the illegal conduct and mala fide practice of the respondents, the complainant has decided to withdraw from the project and to get a refund of the principal amount paid by him along with interest.

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

4. The complainant has sought following relief(s).
- I. Direct the respondent to refund the paid-up amount along with prescribed rate of interest.
- II. Cost of litigation.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondents**

6. The respondents have contested the complaint vide its reply dated 01.02.2023 on the following grounds: -
- i. That the complainant was provisionally allotted a unit bearing no. R7 UG 09, Upper Ground Floor in Block 7 vide allotment letter dated 28.01.2019 for a total sale consideration of Rs.99,81,342/- plus other charges as stated in the schedule of payment. Thereafter, the buyer's agreement was executed between the parties on 10.07.2019.



- ii. That all the demands raised by the respondent were as per the payment plan opted by the complainant. It is submitted that in view of the booking and commitment to make timely payments, the respondents offered the complainant a monthly pre-handover amount to provide the complainant the comfort of the respondent's commitment to deliver the unit on time and an amount of Rs.12,24,920/- has been paid to the complainant as pre-handover amount from 19.02.2019 to 01.11.2021.
- iii. That the respondents completed the construction and development of the retail component of the complex well within the time and the occupation certificate was granted by the competent authority on 13.12.2021.
- iv. That the respondents offered the possession to the complainant vide letter of possession dated 16.12.2021 and requested the complainant to take the possession of the unit which is ready and complete and clear his outstanding dues.
- v. That despite several requests and follow ups, the complainant failed to come forward to take over the possession and clear his outstanding dues. Therefore, the respondent was constrained to issues a pre-cancellation letter dated 17.01.2022.
- vi. That even after the issuance of the pre-cancellation notice, the complainant failed to come forward to take over the possession of the unit and clear his outstanding dues. Therefore, on account of the wilful breach of the terms of the allotment and the buyer's agreement, the respondent was constrained to terminate the allotment of the unit vide cancellation notice dated 01.02.2022.
- vii. That the complainant has wilfully agreed to the terms and conditions of buyer's agreement and now at this belated stage is attempting to



wriggle out of the contractual obligations by filing instant complaint before this Authority.

5. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority**

6. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E.II Subject-matter jurisdiction**

8. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11.....**

*(4) The promoter shall-*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

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

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





9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

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

**F.I Direct the respondent to refund the paid-up amount along with prescribed rate of interest.**

10. The complainant was allotted a unit bearing no. R7 UG 09, Upper Ground Floor, Block-7 in project of the respondents named 'M3M Broadway' located at Sector- 71, Gurugram vide allotment letter dated 28.01.2019. Thereafter, a buyer's agreement dated 10.07.2019 was executed between the parties regarding the said allotment for a total sale consideration of Rs.99,81,342/- and the complainant has paid a sum of Rs.48,17,321.35/- against the same in all. The respondent has submitted that it has completed the construction and development of the project and got the occupation certificate on 13.12.2021 and thereafter offered possession of the unit on 16.12.2021 subject to payment of outstanding dues. The complainant defaulted in making payments and the respondent was constrained to issue pre-cancellation notice dated 17.01.2022 requesting the complainant to comply with his obligation. 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 his contractual obligations and therefore the allotment of the complainant was finally cancelled vide cancellation letter dated 01.02.2022. However, the complainant has submitted that the respondent has illegally cancelled allotment of the complainant and has not followed the due procedure as prescribed under the agreement for sale dated 10.07.2019, before proceeding to cancellation and has also not refunded the amount after cancellation of the unit till date. Now



the question before the authority is whether the cancellation issued vide letter dated 01.02.2022 is valid or not.

11. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainant has paid Rs.48,17,321.35/- against the total sale consideration of Rs.99,81,342/-. The respondents have obtained occupation certificate from the competent authorities on 13.12.2021 and thereafter offered possession of the unit to the complainant on 16.12.2021 subject to payment of outstanding dues by 15.01.2022. As per record, the complainant failed to pay the due amount in time. Accordingly, a pre-cancellation letter dated 17.01.2022 (Annexure A-8 of complaint) was issued to the complainant requesting to make the due payment within 15 days from the date of letter, but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 01.02.2022. However, as per clause 7.6.4 of the agreement, joint inspection was required to be conducted for the unit allotted before handover of possession and only liability upon the complainant for not taking possession as per clause 7.7.1 of the said agreement was to pay holding charges for the entire period beyond such period mentioned in the notice for offer of possession. Further, as per clause 9.3(ii) read with clause 9.3(iv) of the agreement, the relevant timeline (90 days after the notice) was required to be adhered before termination of unit. It is evident from the record that any of the terms and conditions mentioned above was not followed by the respondents before proceeding to cancellation of the unit. Therefore, in view of the agreed terms of the agreement for sale dated 10.07.2019, the cancellation done by the respondents cannot be held valid in the eyes of law.



12. In the instant case, the unit was allotted vide agreement for sale dated 10.07.2019 and the due date for handing over for possession was 31.10.2023. The occupation certificate was received on 13.12.2021 and thereafter possession of the unit was offered on 16.12.2021. However, the complainant has surrendered the unit by filing the present complaint on 27.10.2022 i.e., post offer of possession after receipt of occupation certificate. Therefore, in this case, refund can only be granted after certain deductions. Though, it is contended on behalf of respondents that they are liable to forfeit amount towards earnest money, statutory taxes, brokerage etc. However, the Authority is of view that the respondents cannot not retain more than 10% of the sale consideration and is 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."*

13. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondents/promoter are directed to refund the deposited amount of Rs.48,17,321.35/- after deducting 10% of the sale consideration i.e., Rs.99,81,342/- being earnest money along with an interest @11% (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/withdrawal i.e., 27.10.2022 till actual refund of the amount after adjusting the amount/pre-handover amount paid by respondents, if any within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

**F. II Cost of litigation.**

14. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation and litigation charges 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 and litigation expense



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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation and litigation expenses.

**G. Directions of the Authority:**

15. 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 deposited amount of Rs.48,17,321.35/- after deducting 10% of the sale consideration i.e., Rs.99,81,342/- being earnest money along with an interest @11% on the refundable amount, from the date of surrender/withdrawal i.e., 27.10.2022 till actual refund of the amount after adjusting the amount/pre-handover amount paid by respondents, if any.
- 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.

16. Complaint stands disposed of.

17. File be consigned to the registry.

**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.08.2024