

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

**Date of decision: 21.08.2024**

| Name of the Builder |               | M3M India Pvt. Ltd.<br>M/s Adhikaansh Realtors Pvt. Ltd.<br>M/s Aawam Residency Pvt. Ltd.                               |   |
|---------------------|---------------|---|---|
| Project Name        |               | Smartworld Gems   |   |
| S.no.               | Complaint No. | Complaint title   | Attendance  |
| 1.                  | CR/6648/2022  | Deepak Singhal V/s M3M India Pvt. Ltd.,<br>M/s Adhikaansh Realtors Pvt. Ltd.<br>and M/s Aawam Residency Pvt. Ltd.       | Jitender Kr. Saini<br>(Complainant)<br>Shriya Takkar<br>(Respondents) |
| 2.                  | CR/6650/2022  | Priti Singh V/s M3M India Pvt. Ltd.,<br>M/s Adhikaansh Realtors Pvt. Ltd.<br>and M/s Aawam Residency Pvt. Ltd.          | Jitender Kr. Saini<br>(Complainant)<br>Shriya Takkar<br>(Respondents) |
| 3.                  | CR/6652/2022  | Ashok Kumar V/s M3M India Pvt. Ltd.,<br>M/s Adhikaansh Realtors Pvt. Ltd.<br>and M/s Aawam Residency Pvt. Ltd.          | Jitender Kr. Saini<br>(Complainant)<br>Shriya Takkar<br>(Respondents) |
| 4.                  | CR/6940/2022  | Inderpreet Singh Virk V/s M3M India<br>Pvt. Ltd., M/s Adhikaansh Realtors Pvt.<br>Ltd. and M/s Aawam Residency Pvt. Ltd | Jitender Kr. Saini<br>(Complainant)<br>Shriya Takkar<br>(Respondents) |

|               |        |
|---------------|--------|
| <b>CORAM:</b> |        |
| Ashok Sangwan | Member |

**ORDER**

1. This order shall dispose off the 4 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.

2. 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, Smartworld Gems, Sector- 89, Gurugram, Haryana being developed by the respondents/promoter i.e., M/s Adhikaansh Realtors Pvt. Ltd. and M/s Aawam Residency Pvt. Ltd. The terms and conditions of the application form, 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 award of allotment, possession and delayed possession charges.
3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

|   |  |
|---|--|
| <b>Project Name and Location</b>          | "Smartworld Gems", Sector- 89, Gurugram, Haryana.  |
| <b>Project area</b>                       | 52.275 acres   |
| <b>Nature of the project</b>              | Residential Floors   |
| <b>DTCP license no. and other details</b> | 32 of 2021 dated 03.07.2021<br>Valid up to- 02.07.2026<br>Licensee- Adhikaansh Realtors Pvt. Ltd. and Aawam Residency Pvt. Ltd |
| <b>RERA Registered/ not registered</b>    | Registered vide no. 70 of 2021 dated 25.10.2021<br>Valid up to- 30.09.2025   |
| <b>Occupation certificate</b>             | Not yet obtained   |
| <b>Possession Clause</b>                  | Not provided   |



| S. No. | Complaint no., Case title, Date of filing of complaint and reply status   | Unit no. and size | BBA          | Due date of possession | Total sale consideration and Total amount paid by the complainant  | Date of request of refund by the complainant                                | Relief sought              |
|--------|---|-------------------|--------------|------------------------|--|---|----------------------------|
| 1.     | CR/6648/2022<br>Deepak Singhal V/s M3M India Pvt. Ltd. & Ors.<br><br><b>DOF:</b><br>20.10.2022<br><br><b>RR:</b><br>09.02.2023,<br>26.06.2024 | Not allotted      | Not executed | Cannot be ascertained  | <b>TC:</b><br>Cannot be ascertained<br><br><b>AP:</b><br>Rs. 7,00,000/-<br><br><b>Amount refunded-</b><br>Rs.7,00,000/-<br>[Page 64 of reply]  | 29.01.2022<br>[Page 63 of reply]  | Allotment, DPC, Possession |
| 2.     | CR/6650/2022<br>Priti Singh V/s M3M India Pvt. Ltd. & Ors.<br><br><b>DOF:</b><br>20.10.2022<br><br><b>RR:</b><br>09.02.2023,<br>25.06.2024    | Not allotted      | Not executed | Cannot be ascertained  | <b>TC:</b><br>Cannot be ascertained<br><br><b>AP:</b><br>Rs. 2,00,000/-<br><br><b>Amount refunded-</b><br>Rs.2,00,000/-<br>[As per Annexure-2 at page 6 of application dated 28.06.2024] | 01.02.2022<br>[As per Annexure-1 at page 5 of application dated 28.06.2024] | Allotment, DPC, Possession |
| 3.     | CR/6652/2022<br>Ashok Kumar V/s M3M India Pvt. Ltd. & Ors.<br><br><b>DOF:</b><br>20.10.2022<br><br><b>RR:</b><br>09.02.2023,<br>25.06.2024    | Not allotted      | Not executed | Cannot be ascertained  | <b>TC:</b><br>Cannot be ascertained<br><br><b>AP:</b><br>Rs. 7,00,000/-<br><br><b>Amount refunded-</b><br>Rs.7,00,000/-<br>[Page 61 of reply]  | 28.01.2022<br>[Page 60 of reply]  | Allotment, DPC, Possession |

|    |  |              |              |                       |   |                                  |                            |
|----|--|--------------|--------------|-----------------------|---|----------------------------------|----------------------------|
| 4. | CR/6940/2022<br><br>Inderpreet Singh Virk V/s M3M India Pvt. Ltd. & Ors.<br><br><b>DOF:</b><br>21.10.2022<br><b>RR:</b><br>09.02.2023,<br>25.06.2024 | Not allotted | Not executed | Cannot be ascertained | <b>TC:</b><br>Cannot be ascertained<br><br><b>AP:</b><br>Rs. 7,00,000/-<br><br><b>Amount refunded-</b><br>Rs.7,00,000/-<br>[Page 64 of reply] | 28.01.2022<br>[Page 63 of reply] | Allotment, DPC, Possession |
|----|--|--------------|--------------|-----------------------|---|----------------------------------|----------------------------|

**Note:** In the table referred above certain abbreviations have been used. They are elaborated as follows:

| Abbreviation | Full form                        |
|--------------|----------------------------------|
| DOF          | Date of filing of complaint      |
| RR           | Reply received by the respondent |
| TC           | Total consideration              |
| AP           | Amount paid by the allottee/s    |

4. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/6648/2022** titled as **Deepak Singhal V/s M3M India Pvt. Ltd. & Ors.** are being taken into consideration for determining the rights of the allottee(s).

**A. Project and unit related details**

5. The particulars of the project, the details of 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:

**CR/6648/2022 titled as Deepak Singhal V/s M3M India Pvt. Ltd. & Ors.**

| S.no. | Particulars                        | Details  |
|-------|------------------------------------|--|
| 1.    | Project name and location          | "Smartworld Gems", Sector- 89, Gurugram, Haryana.  |
| 2.    | Project area                       | 52.275 acres   |
| 3.    | Nature of the project              | Residential Floors   |
| 4.    | DTCP license no. and other details | 32 of 2021 dated 03.07.2021<br>Valid up to- 02.07.2026<br>Licensee- Adhikaansh Realtors Pvt. Ltd. and Aawam Residency Pvt. Ltd |

|     |  |  |
|-----|--|--|
| 5.  | RERA Registered/ not registered  | Registered vide no. 70 of 2021 dated 25.10.2021<br>Valid up to- 30.09.2025     |
| 6.  | Allotment letter   | Not provided   |
| 7.  | Builder buyer agreement  | Not executed   |
| 8.  | Flat no.   | Not allotted   |
| 9.  | Unit admeasuring   | Not provided   |
| 10. | Possession clause  | Not provided   |
| 11. | Due date of possession   | Cannot be ascertained  |
| 12. | Total sale consideration   | Cannot be ascertained  |
| 13. | Amount paid by the complainant   | Rs. 7,00,000/-<br>(As admitted by the respondent no. 2 & 3 at page 2 of reply) |
| 14. | Surrender/Cancellation request by complainant seeking refund of the deposited amount | 29.01.2022<br>[Page 63 of reply]   |
| 15. | Amount refunded  | 17.05.2022<br>(page 64 of reply)   |
| 16. | Occupation certificate   | Not yet obtained   |
| 17. | Offer of possession  | Not offered  |

**B. Facts of the complaint**

6. The complainant has made the following submissions in the complaint: -
- I. That in July 2021 the complainant was approached by Suhail Ahmed, M/s Investors Clinic Infratech Private Limited along with Sh. Shouryaa Bambi, Salesman, Smart World Developers, at Smart World Sale Gallery, Sector 82, Gurugram.
  - II. That using false promises and crafted documents they lured the complainant for making payment as Expression of Interest of Rs 2 lakhs



without getting RERA registration number for project namely 'City of Dreams', Sector 89, Gurugram. Then, after enquiring about the HRERA registration, they again promised the complainant that the registration number will be obtained by the company shortly.

III. That the promise of allotment apartment at price of Rs 65.2 lakhs which is 10 lakhs cheaper price as they are offering bookings before HRERA Registration number of their project namely Smart World Gems, Sector 89, Gurugram. It has been informed that price is Rs 70 lakhs for 2.5 BHK. Further, complainant opted for 10:90 payment plan out of offered plans, which is as under: -

- a) 10% (Rs 7 lakhs): - before the date of booking.
- b) 90%: - 80% will be funded by a home loan + 10% at the time of possession.
- c) For a home loan, the builder will enter into a tri-agreement with the bank and customer. Builder will bear the interest till possession which is promised in August 2023 and if possession gets delayed builder will continue to bear the interest of home loan.
- d) For 10% at the time of possession, the builder will adjust Rs 4.8 lakhs, and the customer has to pay only Rs 2.2 lakhs (Rs 7 lakhs - Rs 4.8 lakhs). This discount offered to complainant with condition to deposit EOI within 15 days of launch. The complainant along with his friends paid this amount within 8 days.

IV. That in November 2021, the developer got the HRERA registration number and asked the complainant to pay an additional Rs 5,00,000/- for final booking and filled application form. The complainant visited their sales gallery and reassured every promise with Shouryaa and Suhail. The complainant raised certain queries like layout is modified compared with



- that given to the complainant at the EOI stage. They promised the complainant that same will be taken care in final building and we can also verify the same at the time of signing of builder buyer agreement.
- V. That on 24.01.2022, the complainant approached Smart World Developers Team, CRM office, IFC tower, Sector 66, Gurugram and it was clearly brought up during the discussion that they were not able to keep up with the promises made at the time of EOI payment against project Smart World Gems, Sector 89, Gurugram. They refused to share details of the booking stating a reason that the units allotted to the complainant as well as other friends is in Phase-II of project Smart World Gems, Sector 89, which is frozen portion of project as per HARERA provisions. Upon the doubt/question of the complainant that they are selling 583 sq. feet carpet area against promising 700 sq. feet plus area, they remained silent and refused any comments. Even they arrogantly said the company have no refund policy also and nothing can be done.
- VI. That on 08.03.2022, the complainant raised complaint to Director, Town & Country Planning, Haryana and District Town Planner, Gurugram. However, no action has been taken.
- VII. That on 17.05.2022, the builder instead of resolution of the complaint, refunded the deposited amount and now planned to sell the unit at higher prices.
- C. Relief sought by the complainant: -**
7. The complainant has sought following relief(s):
- I. Direct the respondent to allot a unit, to give possession and to pay delay possession charges.

8. On the date of hearing, the authority explained to the respondents/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

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

9. The respondent no.1 has contested the complaint on the following grounds:
- i. That the answering respondent has no locus or any concern with the lis in question as it is a separate and a distinct legal entity, which has erroneously been impleaded by the complainant in the array of the respondents. Hence the name of M3M India Pvt. Ltd. has to be deleted and the complaint needs to be dismissed on account of the mis-joinder and non-joinder of necessary parties.
  - ii. That upon enquiry and information received, the project in question in this complaint is known as "Smartworld Gems" located at Sector 89, Gurugram, Haryana. The said project is part of the licensed affordable plotted colony under the Deen Dayal Jan Awaas Yojna, which is being promoted and developed by M/s. Adhikaansh Realtors Private Limited. Smartworld Gems is a RERA registered project of Adhikaansh Realtors Private Limited. Therefore, M3M India Pvt. Ltd. i.e, respondent no.1 herein has no privity of contract with the complainant.
  - iii. That the respondent no.1 in the present complaint is neither a necessary party nor a proper party and there is no privity of the contract in existence with the complainant herein. That the booking amount against the said unit was paid to and received by M/s. Adhikaansh Realtors Private Limited, the promoter and developer of the project and the application form signed by the complainant was also submitted to the M/s. Adhikaansh Realtors Private Limited. It is submitted that no





payments whatsoever have been made to the respondent no.1 with respect to the subject unit and thus no cause of action has arisen to make the respondent no.1 a party to the present complaint. Thus, from the above, it is clear that a complaint can only be filed against a promoter, allottee or real estate agent. That the respondent no.1 herein is neither the promoter nor the real estate agent of the project and no cause of action and the relief prayed for is attributable against the respondent no.1.

10. The respondent no.2 & 3 have contested the complaint on the following grounds:
- i. That the complainant after conducting his own due diligence and independent enquiries and only after being fully satisfied about the project of the respondent, applied for allotment of an independent floor residence through his broker in the project "Smartworld Gems", Sector 89, Gurugram being developed by the answering respondent vide application form and paid an amount of Rs. 5,00,000/- towards the booking amount on 08.11.2021. It is submitted that the complainant on his own free will and understanding and after having read and understood all the terms of the application form, signed the application form.
  - ii. That thereafter the complainant for reasons best known to him did not come forward to select the unit as a consequence of which no unit was allotted to him.
  - iii. That the complainant had earlier expressed his interest of purchasing a ready to move in unit in one of the properties acquired by the associate company M/s. Suposhaa Realcon Pvt. Ltd. and paid an amount of Rs.2,00,000/- towards the confirmation of EOI. Since, the complainant

- did not come forward to complete the booking formalities and finalise the unit therefore, the associate company cancelled the expression of interest.
- iv. That the complainant vide email dated 29.01.2022 had himself requested for the refund of the amount deposited towards EOI and application form. Though the contents of the email dated 29.01.2022 are disputed and denied by the respondent however, the respondent company being a customer-oriented company acceded to the request of the complainant. The respondent acting on the request of the complainant cancelled the booking application form in accordance with Clause 10 of Schedule VI and refunded the amount of Rs.5,00,000/- on 17.05.2022, even though the respondent was entitled to forfeit the amount deposited.
- v. That as far as the amount of Rs.2,00,000/- is concerned the same was also refunded on 17.05.2022 by the associate company basis request sent by the complainant. It is submitted that the refund of the amount of Rs. 7,00,000/- was processed as per the request of the complainant and the same was duly accepted by him without any protest or demur. Thus, the complainant is estopped from raising any issues at this belated stage.
- vi. That the complainant as an afterthought to earn out of real estate speculations after a period of approximately 7 months post receipt of the refund amount filed the present complaint seeking allotment of alleged unit bearing no. N-146B. From the facts stated hereinabove, it is absolutely clear that the no unit was ever allotted to the complainant and neither the complainant has any privity of contract with the answering respondent. Thus, the complainant has no locus standi to approach this Authority. Therefore, the present complaint is liable to dismissed on this ground alone.

11. 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 submission made by the parties.

**E. Jurisdiction of the authority**

12. 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**

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

**E.II Subject matter jurisdiction**

14. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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.*

15. 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 objections raised by the respondent no.1**

**F.I Objection regarding maintainability of complaint against respondent no.1.**

16. The respondent no.1 has filed an application for dismissal of complaint qua it stating that the said project is being promoted and developed by M/s. Adhikaansh Realtors Private Limited and respondent no.1 has no privity of contract with the complainant. The booking amount against the said unit was paid to and received by M/s. Adhikaansh Realtors Private Limited and the application form signed by the complainant was also submitted to M/s. Adhikaansh Realtors Private Limited. Further, the respondent no.1 is neither the promoter nor the real estate agent of the project and no cause of action and the relief prayed for is attributable against the respondent no.1. After considering the documents available on record as well as submissions made by the parties, it is determined that the complainant has not submitted any document on record that establishes the liability of respondent no. 1. Additionally, no document w.r.t proof of payment being made to the respondent no.1 has been filed by him till date. Further as per Section 31 of the Act of 2016, any aggrieved person may file a complaint against any promoter, allottee or real estate agent. However, as per record, the respondent no.1 does not fall within the definition of promoter, allottee or a real estate agent as per sec 2(zk),

2(zm), 2(d) of the Act of 2016. In view of the above, the present complaint is not maintainable and is hereby dismissed qua respondent no.1.

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

**G.I Direct the respondent to allot a unit, to give possession and to pay delay possession charges.**

17. The complainant has submitted that in July 2021 the complainant was approached by Suhail Ahmed, M/s Investors Clinic Infratech Private Limited along with Sh. Shouryaa Bambi, Salesman, Smart World Developers, at Smart World Sale Gallery, Sector 82, Gurugram. Using false promises and crafted documents they lured the complainant for making payment as Expression of Interest of Rs 2 lakhs without getting RERA registration number. In November 2021, the developer got the HRERA registration number and asked the complainant to pay an additional Rs.5,00,000/- for final booking and filled application form. On 24.01.2022, the complainant approached the Smart World Developers Team at their office, and it was clearly brought up during the discussion that they were not able to keep up with the promises made at the time of EOI payment against project Smart World Gems, Sector 89, Gurugram. They refused to share details of the booking stating a reason that the units allotted to the complainant as well as other friends is in Phase-II of project Smart World Gems, Sector 89, which is frozen portion of project as per HARERA provisions. Even they arrogantly said the company have no refund policy also and nothing can be done. On 17.05.2022, the builder instead of resolution of the complaint, refunded the deposited amount and now planned to sell the unit at higher prices. However, the respondent no.2 & 3 have submitted that the complainant has applied for allotment of an independent floor residence through his broker in the project "Smartworld





Gems", Sector 89, Gurugram being developed by them vide application form and paid an amount of Rs. 5,00,000/- towards the booking amount on 08.11.2021. Thereafter, the complainant did not come forward to select the unit as a consequence of which no unit was allotted to him. Further, the complainant had earlier expressed his interest of purchasing a ready to move in unit in one of the properties acquired by the associate company M/s. Suposhaa Realcon Pvt. Ltd. and paid an amount of Rs.2,00,000/- towards the confirmation of EOI. As the complainant did not come forward to complete the booking formalities and finalise the unit, therefore the associate company cancelled the expression of interest. Moreover, the complainant vide email dated 29.01.2022 had himself requested for the refund of the amount deposited towards EOI and application form. Accordingly, the respondent acting on the request of the complainant, cancelled the booking application form and refunded the amount of Rs.5,00,000/- on 17.05.2022. As far as the amount of Rs.2,00,000/- is concerned, the same was also refunded on 17.05.2022 by the associate company on the basis of request sent by the complainant.

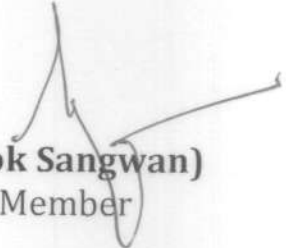
18. After considering the documents available on record as well as submissions made by the parties, the Authority is satisfied that the complainant is at fault and has failed to come forward to complete the booking formalities and finalize the allotment. Further, the respondents adhering to the request made by the complainant vide email dated 29.01.2022, has already refunded the entire amount received by it i.e., Rs.7,00,000/- in the account of the complainant. In view of the above, no case for allotment, possession as well as delay possession charges is made out. Thus, the present complaint stands dismissed being devoid of merits.



**HARERA**  
**GURUGRAM**

Complaint No. 6648 of 2022  
and 3 others

19. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
20. The complaints stand disposed off.
21. Files be consigned to registry.

  
**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.08.2024



**HARERA**  
**GURUGRAM**