



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

Complaint no.	:	453 of 2023
First date of hearing:		11.08.2023
Date of decision	:	12.07.2024

Asha Chaturvedi Rama Kant Chaturvedi Address: - Flat no. 27, Eklavya Apartments, Plot no. 18/1, Sector-13, Rohini, Sector-7, Delhi-110085	Complainants
Versus	
M/s Paryapt Infrastructure Pvt. Ltd. Office at: - 6 th floor, M3M Tee Point, North Block, Sector-65, Gurugram-122101	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
Sh. Siddhant Sharma	Advocate for the complainants
Ms. Shriya Takkar	Advocate for the respondent

ORDER

1. The present complaint dated 07.02.2023 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.N.	Particulars	Details
1.	Name and location of the project	"M3M Atrium 57", sector-57, Block H, Sushant Lok-III, Gurgaon
2.	Nature of the project	Commercial Space
3.	Project area	1.425 acres
4.	DTCP license no.	10-16 of 1996 dated 16.02.1996
5.	RERA Registered/ not registered	Registered Vide no. 81 of 2021 issued on 29.11.2021 valid up to 15.05.2025
6.	Earlier booked unit in project M3M Broadway	R2 107
7.	Unit no.	R1 102, Block 01, 1 st Floor, Type Retail [Page 37 of complaint]
8.	Unit admeasuring area	224 sq. ft. of super area [Page 37 of complaint]
9.	Allotment letter	31.03.2022 [Page 27 of the complaint]
10.	Agreement for sale	06.06.2022 (registered) [page 33 of complaint]



11. Possession Clause		<p>7. Possession of the Commercial Space/Unit</p> <p>7.1 Schedule for possession of the Commercial Space/Unit</p> <p>ii. The Promoter assures to offer possession of the Commercial Space/Unit along with right to use 0 (zero) car parking space (if any) on or before 15.05.2025 as per agreed terms and conditions herein on or before the Completion Time Period unless there is a delay due to Force Majeure Event, reasons beyond the control of the Promoter, noncompliance on the part of the Allottee(s) including on account of any default on the part of the Allottee (s) including on account of any default on the part of the Allottee(s), court orders, Government Policy/guidelines, decisions affecting the regular development of the Project or due to any event or reasons, which is recognised as a ground for extension by the Authority.</p>
12. Due date of possession		15.05.2025 (as per possession clause)
13. Total sale consideration		Rs.1,80,34,871/- [as per payment plan on page 80 of the complaint]
14. Total amount paid by the complainant		Rs. 58,77,141/- (Rs. 15,00,000/- paid on booking + Rs. 43,77,141/- paid in respect of booking of unit in M3M Broadway)



15.	Pre Cancellation Notice	25.05.2022 (Page no. 86 of complaint)
16.	Cancellation Notice	16.06.2022 (Page no. 87 of complaint)
17.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
4. That the complainants are the prospective co-owners of commercial unit no. R1 102 Block-01, type retail on 1st floor Gurugram, Haryana admeasuring 224 Sq. ft. respectively.
5. That the complainants through an expression of interest dated 05.03.2021 expressed their interest in booking one of the commercial units in the project of M3M India Pvt. Ltd and paid Rs. 5,00, 000/- as the confirmation amount.
6. That the respondent sent an email dated 09.03.2021 confirming the booking made by the complainants of commercial unit R2 107 in M3M Broadway by the complainants.
7. That an email dated 12.03.2021 was received from the senior sales executive of the respondent company i.e., Mr. Rakshit Jain mentioning the cost sheet of commercial unit of M3M Broadway R2 107 in which the total consideration was mentioned to be Rs. 1,09,42,853/-.
8. That on 15.11.2021 CRM Broadway Mr. Rahul informed through whatsapp message about the receipt of OC by the Builder and also advised to visit their office after 3rd Jan 2022 for further query.



9. That due to prevailing conditions because of Covid the complainants visited the office of respondent on 07.03.2022 for Broadway project and they informed the complainant that they need to pay the entire amount immediately. Thereafter, the complainants were give two other choices provided by respondent i.e., a) Cancel the booking made in project M3M Broadway and forfeit the entire amount or b) shift to any other ongoing/under construction project of M3M.
10. That without intimation, the respondent shifted the booking from Broadway to Atrium-57 which came as shock to the complainants as they had requested for refund of the amount paid by them.
11. That the complainants communicated that they need to pay further Rs. 15,00,000/- booking amount for Atrium-57. The complainants now requested the respondent that as they have transferred the booking from Broadway to Atrium 57, they would want the respondent to transfer the amount of RS. 43,77,177/- towards the booking amount for Atrium-57.
12. That after due consideration and several meetings, the respondents accepted the request of the complainant and thereafter a corrected cost sheet of M3M Atrium 57 including the amount of Rs. 43,77,177/- was sent to the complainants which confirmed the booking in the name of the complainants vide email dated 11.03.2022, 25.03.2022 and 31.03.2022.
13. That the respondent sent a pre cancellation notice dated 25.05.2022 to the complainants asking to clear the dues.
14. That the respondent terminated expression of interest dated 01.06.2022.
15. That a sale agreement was execute by the parties for the commercial unit M3M Atrium on 06.06.2022 and further paid an amount of Rs. 15,00,000/- to the respondent, the respondent again assured the

complainants that the payment made at the time of booking in Broadway project would be transferred into his account.

16. That a cancellation notice dated 16.06.2022 was issued by the respondent to the complainants cancelling the allotment of Unit no. 102 M3M Atrium 57.

17. That the complainants has paid an amount of Rs. 58,77,141/-, the promoter is ,liable to refund the said amount paid by the by the buyer along with compensation as per section 18 of the RERA Act, 2016.

C. Relief sought by the complainant:

18. The complainant has sought following relief(s)

I. Direct the respondent to refund the amount of Rs. 58,77,141/- along with interest @ 18% p.a. with effect from 05.03.2021 to the complainants towards purchase of commercial unit.

19. 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

20. The respondent contested the complaint on the following grounds.

21. The complainants claim to have entered into an expression of interest with M/s. M3M India Pvt. Ltd seeking priority allotment of a unit in one of the projects of M3M India Pvt. Ltd. The expression of interest was entered into between the complainants and M3M India and the same was not entered into with the respondent. Therefore, the respondent herein being a separate entity from M3M India has no role to play with respect to the said expression of interest. Further, as alleged by the complainants



- in their complaint they made payment of Rs. 43,77,141/- to M3M India Pvt. Ltd.
22. That the complainants showed interest in a project being developed by M3M India Pvt. Ltd. in the name and style of M3M Broadway and requested for a booking to be made in the said project in their favour, after which an email dated 09.03.2021 was sent by M3M India Pvt. Ltd. whereby their booking was acknowledge and the complainants were offered unit no. R2 107 in M3M Broadway, however, as is evident from the said email, the offer was subject to realisation of cheques to be paid to the developer i.e. M3M India Pvt. Ltd.
23. That the mark 'M3M' is being used by the respondent herein under the name and style of "M3M Atrium 57" under a license arrangement with M3M India Pvt. Ltd. There is brand licensing arrangement between M3M India Pvt. Ltd. and respondent, whereby M3M India Pvt. Ltd. has granted the Respondent a limited license to use the brand name, logos, image and other such signage, solely for the purpose of activities related to promotion/advertising ("Branding Rights") for the project.
24. That in addition to the arrangement between the respondent herein and M3M India Pvt. Ltd. for the grant of branding rights in favour of the company, it has also been agreed between the companies that, at the request of the respondent herein, M3M India Private Limited has agreed to provide customer related support and assistance to the respondent herein, which is limited to handling customer related verbal and/or written communication including queries, feedback, comments etc. On behalf of the respondent herein with respect to the project.
25. That on request of the complainants an email dated 10.03.2022 was sent to the complainants containing the cost sheet of the unit to be booked in

- M3M Atrium57, thereby detailing the cost of the unit and the manner in which payments were supposed to be made. The booking amount was mentioned as Rs. 11,00,000/- instead of 15,00,000/-, a revised cost sheet was sent to the complainants vide email dated 11.03.2022.
26. That in pursuance of the above email exchange and being satisfied with the cost sheet shared, the complainants submitted a booking application dated 16.03.2022 for unit bearing no. R1-102.
27. That for the purpose of booking a unit in the project 'M3M Atrium57', the complainants made a payment of Rs. 15,00,000 on 22.03.2022.
28. That as a good will gesture, the respondent company agreed to the request of the complainants made vide email dated 11.03.2022 to adjust the amount paid towards the unit in M3M Broadway, pursuant to which an email dated 25.03.2022 was sent to the complainants containing the final cost sheet of the unit. The complainants were specifically informed that the adjustment of the amount paid towards the unit in M3M Broadway shall only be upon submitting of transfer documents by the complainants.
29. That pursuant to the receipt of the booking amount, the respondent herein issued an allotment letter dated 31.03.2022 to the complainants unit bearing no. R1-102. The complainants opted for a specific payment plan. The cost of the unit as per the allotment letter issued was Rs. 1,80,34,871/- plus Rs. 1,46,496/- towards power back up charges and IFMS along with taxes and other charges.
30. The respondent thereafter sent three copies of the buyers agreement to the complainants vide dispatch letter dated 04.04.2022 for execution at their end. The complainants were requested to sign and send the agreement to the respondent within 30 days.



31. In terms of the payment plan annexed with the allotment letter, the respondent raised a demand dated 18.04.2022 for an amount of Rs. 73,92,2284/-. As per the said demand notice, the due date for payment was 06.05.2022 for payment of Rs. 73,92,228/- subject to execution of agreement. The issuance of the said demand letter dated 18.04.2022, the complainants again requested the respondent herein to adjust the amount of Rs. 43,77,141/- paid by the complainants to M3M India Pvt. Ltd. for their unit in M3M Broadway, towards the said demand. The complainants were once again informed that the adjustment of the aforementioned amount would be processed only upon their submitting the transfer documents which they had failed to do so. Further, the complainants were also informed that the adjustment of Rs. 43,77,141/- shall be done only when the complainants made payment of Rs. 30,15,087/- i.e. the deficit amount after adjusting Rs. 43,77,141/- from the demand of Rs. 73,92,228/-.
32. That the signed agreement for sale/buyer's agreement was received by the respondent on 29.04.2022 and the complainant assured the respondent that they shall submit the transfer documents and deposit the deficit amount of Rs. 30,15,087/- within 10 days of the same. However, the said amounts were not received. Since the complainants failed to remit the deficit amount, the respondent was constrained to issue a pre-cancellation notice dated 25.05.2022, requesting the complainants to clear their dues. That upon receipt of the pre-cancellation notice, the complainants requested for some more time to remit the payment and submit the transfer documents. Upon the undertaking/re-assurance of the complainants to submit the transfer

- documents and remit the deficit amount of Rs. 30,15,087/-, the buyers agreement was finally executed and duly registered on 06.06.2022.
33. Despite the complainants undertaking to submit the complete transfer documents and to pay the deficit amount, the complainants failed to do so due to which the amount paid by the complainants towards unit in M3M Broadway could not be transferred by M3M India Pvt. Ltd. and adjusted against the demand dated 18.04.2022. Due to the failure of the respondent to remit the payment, the respondent issued a cancellation notice dated 16.06.2022 terminating the allotment made in favour of the complainants and forfeiting the amount paid by the complainants.
34. That the default of the complainants in making timely payments and complying with other obligations is duly covered under the buyers agreement, and the cancellation and forfeiture of the earnest money has been in accordance with terms of the buyer's agreement. The cost of the unit in question was Rs. 1,80,34,871/- plus Rs. 1,46,496/- towards power back up charges and IFMS along with taxes and other charges. The complainant made payment of Rs. 15,00,000/- only towards the said unit i.e. less than 10% of the basic price to be considered and treated as "Earnest Money" and therefore, the respondent is within its right to forfeit the entire amount.
35. That the respondent has fulfilled its contractual obligations under the allotment letter and buyers agreement however, despite that the complainants have failed to clear their outstanding dues. The complainants are in default of their contractual obligations and are raising these frivolous issues in order to escape their liability cast upon them by the virtue of the terms of allotment. Therefore, the complainants are not entitled to any relief whatsoever.



36. 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

37. 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

38. 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

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

F. Findings on the relief sought by the complainant.

- I. Direct the respondent to refund the amount of Rs. 58,77,141/- along with interest @ 18% p.a. with effect from 05.03.2021 to the complainants towards purchase of commercial unit.

40. In the present complaint the complainants are seeking refund of the total amount paid by them to the respondent company. The complainants earlier booked a unit by way of EOI in the project M3M Broadway, situated at sector- 71, Gurugram being developed by the M3M India Pvt. Ltd. and paid an amount of ₹43,77,141/- towards the said project. Thereafter, the unit was shifted from M3M Broadway, sector-71, Gurugram to M3M Atrium, sector-57, Gurugram and an amount of ₹15,00,000/- was paid towards the booking of the new unit. Further, it was agreed between the parties that the fund transfer would take place on completion of 30% of payment. The allotment letter for the said unit was provided on 31.03.2022 and a unit bearing no. R1 102 in Block 01 at 1st Floor was allotted to the complainants. The builder buyer agreement for the said unit was executed on 06.06.2022.
41. The complainants has stated that the respondent company has to transfer the amount of ₹43,77,141/- in the new unit but they failed to adjust the said amount and moreover they cancelled their unit on 16.06.2022. Hence, they seeks full refund of the amount i.e., ₹ 43,77,141/- and ₹15,00,000/- which were paid in new unit.
42. The plea of the respondent is otherwise and they stated that the amount of ₹ 43,77,141/- would be transferred only after submission of transfer document by the complainants but they failed to do so. Moreover, they were also informed that the adjustment will be done after making 30% of the payment towards the said unit. Therefore, the respondent issued a demand letter dated 18.04.2022. On failure of the complainant to make payment the respondent issued pre cancellation letter dated 25.05.2022. After pre cancellation letter complainants assured that they will make payment of deficit amount after adjustment of ₹ 43,77,141/- within 10



days so, the builder buyer agreement was executed on 06.06.2022. But thereafter no amount as paid by the complainants therefore the unit was finally cancelled on 16.06.2022.

43. The authority observes that the complainants initially reserved a unit in M3M Broadway, situated at Sector-71, Gurugram, via an Expression of Interest (EOI) and made a payment of ₹43,77,141/-. Subsequently, the unit was relocated to M3M Atrium, Sector-57, Gurugram, with an additional payment of ₹15,00,000/- for the new unit. The builder buyer agreement for the relocated unit was duly executed on 06.06.2022. As per the payment plan respondent started raising payments from the complainants. The complainants were required to remit the first installment of 8.32% of the Total Consideration Value (TCV) within 10 days of booking, followed by the second installment of 40.99% within 45 days of booking, subject to the signing of the builder buyer agreement. The total sale consideration for the unit amounted to ₹1,80,34,871/-. Despite having paid ₹15,00,000/- at the time of booking, the complainants failed to fulfill subsequent payment obligations. An amount of ₹43,77,141/- previously paid towards another project by M3M India Pvt. Ltd. was intended to be adjusted by the respondent after the complainants settled 30% of the payment for the new unit (page no. 97 of complaint) which the complainant has failed to pay. Consequently, the respondent issued a preliminary cancellation notice on 25.05.2022, followed by a cancellation notice on 16.06.2022. Therefore, the cancellation of the unit is valid.
44. The complainants are seeking refund of the total amount paid by them to the respondent company. The respondent during the course of hearing

stated that they have already refunded a sum of ₹43,77,141/- on 25.01.2024 through RTGS to the complainants.

45. Moreover, while refunding an amount of ₹ 15,00,000/- paid towards the second unit in the project M3M Atrium the deduction should be made. 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 Ors. 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 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 Limited* decided on 26.07.2022, held that 10% of basic sale price is 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 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."

46. Keeping in view the aforesaid legal provisions, the respondent is directed to refund the paid-up amount after deducting 10% of the sale consideration of the unit being earnest money within 90 days. However, in the present matter the complainants have paid only Rs. 15,00,000/- against the total sale consideration of Rs. 1,80,34,871/- which constitutes about only 8.31% of consideration money and hence, no case for refund of any amount is made out.
47. Complaint stands disposed of.
48. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12.07.2024