

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

**Complaint no.:** 5870 of 2022  
**Date of complaint:** 31.08.2022  
**Date of order:** 12.11.2024

1. Akhilesh Kumar Naithani  
2. Kusum Naithani  
**Both R/o:** - A001, Bestech Parkview Spa Next,  
Sector-67, Gurugram.

**Complainants**

Versus

1. M3M India Private Limited through Its director  
**Regd. Office at:** 6<sup>th</sup> Floor, M3M Tee Point, North  
Block, Sector-65, Gurugram, Haryana-122101  
2. Martial Buildon Pvt. Ltd.  
**Regd. Office at:** - Paras Twin Towers, Tower-B, 6<sup>th</sup>  
floor, Golf Course Road, Sector-54 - 122002

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Jaswant Singh Kataria (Advocate)  
Shri Rohan Malik (Advocate)

**Complainants**  
**Respondent**

**ORDER**

1. The present complaint has been filed by the complainant/allottees 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 thereunder 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:

Sr. No.	Particulars	Details
1.	Name of the project	M3M Urbana, sector 67
2.	Land area	8.2125 acres
3.	Nature of the project	Commercial complex
4.	OC received on	23.02.2017
5.	Unit no.	SB/R/GL/06/21
6.	Unit area	900 sq. ft.
7.	Date of allotment	30.09.2015 (Page 54-56 of reply)
8.	Date of builder buyer agreement	24.11.2015 (Page 63 of reply)
9.	Possession clause	<b>15. Possession of the commercial unit</b> <i>15.1 The Company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the Commercial Unit within a period of Twelve months (12) months from the date of the execution of this Agreement ("Commitment Period"). Should the possession of the Commercial Unit not be given within the Commitment Period, the Allottee agrees to an extension of One Hundred and Eighty (180) days ("Grace Period) after expiry of the Commitment Period for handing over the possession of the Commercial Unit.. In case of failure of the Allottee to make timely payments of any of the installments as per the Payment Plan,</i>



		<i>along with other charges and dues as applicable or otherwise payable in accordance with the Payment Plan or as per the demands raised by the Company from time to time in this respect, despite acceptance of delayed payment alongwith interest or any failure on the part of the Allottee to abide by any of the terms and conditions of this Agreement, the time periods mentioned in this clause shall not be binding upon the Company with respect to the handing over of the possession of the commercial unit.</i> <b>(Emphasis supplied)</b>
10.	Due date of possession	24.5.2017 (grace period is allowed)
11	Total sale consideration	Rs. 2,06,57,495/- (As per statement of account page 117 of the reply)
12	Amount paid by the complainant	Rs. 59,85,622/- (As per statement of account page 117 of the reply)
13	Occupation certificate	23.02.2017
14	Notice of possession	23.03.2017
	1. Pre-cancellation notice	04.10.2017
	2. Cancellation letter issued on	18.01.2018 ( page 121 of reply)
15	Grace period utilization	Not allowed

**B. Facts of the complaint:**

3. The complainants have made the following submissions: -

- I. That the complainants, in the year 2015, booked a commercial unit with a possession linked payment plan (30% at time of booking and 70% at time of offer of possession) in the project named "M3M URBANA" (Gurgaon, Haryana) of the respondent at Sector 67, Gurgaon, Haryana. The complainants were allotted unit no. SB/R/GL/06/21 admeasuring 900 sq. ft.

super area for a total consideration of INR 1,82,38,162.50/- vide provisional allotment letter dated 30.09.2015.

- II. That the respondent executed the builder buyer agreement dated 24.11.2015. The Agreement contained various one-sided and arbitrary clauses, yet the complainants could not negotiate on any of the terms, since the respondent had already collected significant amount of money from the complainant. The complainants was allotted commercial unit admeasuring 900 sq. ft. super area, bearing unit no. SB/R/GL/06/21, Block 7 in "M3M URBANA" project at Sector 67, Gurgaon, Haryana.
- III. That the complainants believing in the false assurances and promises of the respondent of timely possession, made all payments as per the payment plan as and when the demands were raised even though possession of the unit was not offered as promised on 24.11.2016 and as on 16.03.2019 had made a total payment of Rs. 59,85,622/- to no avail as no complete and legal possession of the unit has been offered to the complainants till date despite the expiry of more than 5 years since due date of possession. As per request they did not waived the illegal charges put by them the said requests were made in 2018, March-April-May 2019.
- IV. That the respondent issued the notice of offer of possession dated 23.03.2017 wherein the respondent requested the complainants to clear the pending dues on or before 21.04.2017 and take possession of the unit. The offer of possession was made but the construction work was in progress. It is reiterated here that the unit was booked under a possession linked payment plan wherein 70% of the total consideration is to be paid at the time of offer of possession.
- V. That the respondent cannot arbitrarily demand final payment without even completing the construction work. The complainants raised these prima facie issues to the respondent vide email dated 08.04.2017 and the

respondent replied vide email dated 17.07.2017 wherein it was reiterated that "we are trying to get in touch with you but we were unsuccessful, kindly share your contact details."

- VI. That the complainants visited the office of respondent many times and told that complainants are ready to clear their dues and take possession but respondent has arbitrary stated that 24% interest will be charged for delay in taking possession. There is delay on part of the respondent who failed to give the possession to the complainants as per the builder buyer agreement dated 24.11.2015.
- VII. That thereafter complainants approached the respondent and requested that to waive off the 24% interest charged by the respondent by transferring the amount of other 2 booked units i.e. SB/R/GL/07/11 & SB/R/GL/07/11 and respondent gave the assurance to complainants for settlement but the respondent did not settle the matter.
- VIII. That despite the same, the malicious conduct of the respondent towards the complainants further continued and the respondent issued a pre-cancellation notice dated 04.10.2017 wherein delay interest, to no fault of the complainants, was also arbitrarily charged at a high rate with malafide intentions to pressurize the complainants to make immediate payment and take possession of the incomplete unit.
- IX. That despite multiple communications to the respondent of its illegal act of making the final demand without completing the construction work, the respondent issued an arbitrary and completely illegal Intimation of termination dated 18.01.2018 cancelling the booked unit to no fault of the complainant.
- X. That the respondent arbitrary issued a Letter dated 21.07.2022 alongwith a cheque of Rs. 31,11,170/- to foreclose the loan account of the Complainants



by making payment of Rs. 31,11,170/- to the ICICI Bank Ltd. without informing to the complainant.

XI. It is pertinent to mention here that due to such arbitrary and illegal conduct of the respondent, the complainants had filed a consumer complaint before the Hon'ble NCDRC on 03.07.2020 which was dismissed vide Order dated 15.09.2021 under the sole pretext that the complainants were not consumers and thereby were directed to pursue a remedy before the appropriate forum. During the pendency of the proceedings, the M3M is believed to have transferred the unit to someone else where the loan is still going upon that unit.

XII. It is thereby submitted that the complainants have endured substantial financial losses, mental hardships and constant harassment due to the deceitful, fraudulent and malafide conduct of the respondent. The complainants have always been ready and willing to make all payments and take possession of the unit and have made all payment as per the payment plan as and when demanded by the respondent and despite the same, no possession has been offered till date even though more than 5 years have expired since due date of possession.

XIII. That the complainants have been left with no other recourse but to approach the Authority seeking possession of the unit along with delay possession charges for the arbitrary and substantial delay in offering possession of the unit.

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

4. The complainants have sought following relief(s):

- I. Direct the respondent to offer immediate possession of unit no. SB/R/GL/06/21 fully constructed complete in all respects and pay delay possession charges @ MCLR+1%p.a. thereafter till the actual date of offer of physical possession.

II. Direct the respondent to pay a sum of INR 1,00,000/- to complainants as reimbursement of legal expenses /-.

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 respondent.**

6. The respondent has contested the complaint on the following grounds: -

- i. That it is pertinent to mention here that before approaching the Authority, complainants had also filed a complaint bearing no. 562/2020 before the Hon'ble National Consumer Redressal Commission which has already been dismissed.
- ii. That the complainants had also filed a police complaint before the Commissioner of Police, Gurugram (Haryana) on the same facts which was investigated and on 02.11.2021 it was concluded by the SHO, Police Station Sector 65, Gurugram that no action is required in the matter because the complaint filed by the complainants on the same facts before the NCDRC has already been dismissed.
- iii. That the complainants have initiated the litigation on the same subject matter before the NCDRC and did not get the desired relief and therefore now is raising the same issue before the Authority, which cannot be allowed. The pleadings made herein are repetition of the pleading made before the National Consumer Disputes Redressal Commission. It is submitted that there is no justification on the part of the complainants to approach the Authority raising similar issues and for the same reliefs, which is expressly prohibited. It is submitted that the laws of the country do not permit forum shopping. Thus, this matter needs to be dismissed on this ground alone.
- iv. That the respondent company provisionally allotted the unit bearing no. "SB/R/GL/06/21" in favour of the complainants vide provisional allotment

letter dated 30.09.2015. The complainants as per their own decision and after fully understanding their obligations opted for a possession linked payment plan. It is submitted that all the demands have been raised from time to time as per the payment plan opted by the complainants.

- v. That in furtherance of the allotment, the respondent company had sent the buyers agreement to the complainants for due execution at their end vide letter dated 30.10.2015. It is submitted that the buyer's agreement was executed between the parties on 24.11.2015. It is pertinent to mention that the buyer's agreement duly covers all the liabilities and rights of both the parties. It is submitted that the cost of the commercial unit for an area admeasuring 921.95 Sq. Ft. was Rs. 1,93,00,168.10/- plus taxes, stamp duty and other charges.
- vi. That the complainants have been defaulters and have defaulted in making timely payments on various occasions, constrained by which the respondent sent various reminder letter to the complainants requesting them to clear their dues time and again.
- vii. That the construction of the tower in which the unit of the complainants was located was completed well within time and the occupation certificate was applied for on 23.12.2016. The occupation certificate was granted by the competent authorities on 23.02.2017 after due verification and inspection.
- viii. That without any further delay the respondent sent the offer of possession to the complainants vide letter dated 23.03.2017 to the complainants. The respondent had offered the possession of the said unit in accordance with the terms of the buyer's agreement. However, the complainants failed to come forward to take over the possession and make the payment of the outstanding dues.
- ix. That despite regular follow ups and reminders, the complainants failed to come forward to clear their outstanding dues and take possession of the unit.



That being left with no other option the respondent was forced to send a pre-cancellation notice dated 04.10.2017, but to no avail.

x. That on account of the wilful breach of the terms of the allotment and the buyers agreement even after the issuance of the pre-cancellation notice by failing to come forward to take over the possession of the unit and clear their outstanding dues, the respondent was constrained to cancel the allotment of the complainants vide termination letter dated 18.01.2018.

7. All other averments made in the complaint were denied in toto.

8. 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**

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

##### **E.I Territorial jurisdiction**

10. 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**

11. 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, —;*

**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.*

12. 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.

**F. Relief sought by the complainants**

**F.II. Direct the respondent to offer immediate possession of unit no. SB/R/GL/06/21 fully constructed complete in all respects and pay delay possession charges @ MCLR+1%p.a. thereafter till the actual date of offer of physical possession.**

13. The complainant was allotted unit no SB/R/GL/06/21, in the project "M3M Urbana, sector 67" by the respondent builder for a total consideration of Rs. 2,06,57,495/- against which the complainant paid a sum of Rs. 59,85,622/-. The respondent had sent pre-cancellation notice dated 04.10.2017 to make payment of the outstanding amount. The complainant continued with their default and again failed to make payment even after receipt of pre-cancellation letter.
14. The complainants received cancellation notice dated 18.01.2018 and respondent had refunded an amount of Rs. 31,11,170/- being the balance loan to the ICICI bank vide cheque and on 01.09.2023, an amount of Rs. 2,53,076/- was paid to the complainant's post deduction of bank contribution and non-refundable amount as per term and conditions of buyer's agreement.
15. On contrary, the respondents contested that the termination was lawful due to the complainants' repeated defaults in making the required payments. The respondent emphasized that the complainants had failed to meet their obligations under the agreed payment plan, leading to the rightful forfeiture of the booking amount.
16. The authority has gone through the payment plan (Annexure-A) of the buyer agreement executed between the parties, same is extracted below for ready reference:

S.no.	Instalment	Value
1	Within 30 days of booking	30% of basic + 30% of car parking + 30% of PLC + 30% of IDC + 30% of EDC
2	Within 30 days of notice of possession	70% of basic + 70% of car parking + 70% of PLC + 100% of IFMS + 70% of IDC + 70% of EDC + 100% of registration charges + 100% of Meter Connection Charges + 100% of applicable stamp Duty

17. On considering the documents available on record as well as submissions made by both the parties, it can be ascertained that the complainant has only paid an amount of Rs. 59,85,622/- against the subject unit. The respondent has sent various reminder letters dated 26.10.2015 and 24.11.2015 to make payment of the outstanding amount but the complainant did not pay any heed to the respondent. Thereafter, the respondent-builder offered possession to the complainant after obtaining occupation certificate from the competent Authority, the respondent-builder sent pre-termination letter to the complainant stating that clear outstanding dues within 15 days from the date of this letter. The authority is of considered view that the respondent is right in raising demands as per payment plan agreed between the parties. However, the complainants continued with their default and again failed to make payment even after obtaining of occupation certificate and pre-termination letter dated 04.10.2017 leading to cancellation of unit vide letter dated 18.01.2018.

18. As, per clause 7.2 of the buyer agreement, the respondent/promoter have right to cancel the unit and forfeit the earnest money where an allotment of the unit is cancelled due to default of complainant to make timely payments as per the agreed payment plan. Clause 7.2 of the buyer agreement is reproduced under for ready reference:

7.2.

*In the event of failure of the Allottee to perform the obligations or to fulfill the terms and conditions as set out in the Application and this Agreement, including but not limited to the occurrence of any Event of Default as described herein, the*

*Company may cancel this Agreement and forfeit the Earnest Money and other amounts including interest accrued on delayed payments, any commission/brokerage/margin paid by the Company to a Channel Partner (in case the booking is made by the Allottee through a Channel Partner) and thereafter, refund the balance amount, if any, without interest in the manner.*

19. Further, section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the application form is held to be valid.
20. 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 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."*

21. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builders are directed to refund the amount received from the complainant after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 11.10% (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, from the date of cancellation letter i.e. 18.01.2018 till its realization on such balance amount after deduction of amount already refunded to the financial institution or to the allottee within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G.II Direct the respondent to pay litigation cost of Rs.1,00,000/-.**

22. The complainants are seeking above mentioned relief w.r.t. compensation and litigation. Hon'ble Supreme Court of India in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & rs. 2021-2022(1) RCR (C), 357* held that an allottee is entitled to claim compensation & 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 & 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 & legal expenses.

**G. Directions of the authority.**

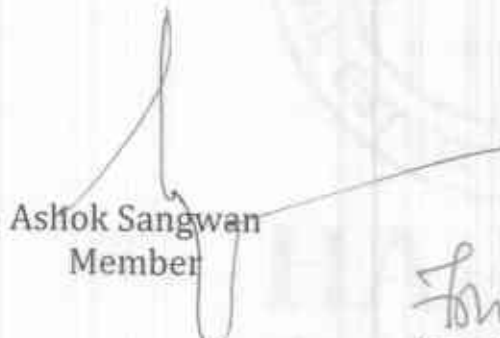



23. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):


- i. The respondents are directed to refund the paid-up amount to the complainants i.e. Rs.59,85,622/- after deducting 10% of the sale consideration being earnest money along with interest at the rate of 11.10% from the date cancellation letter dated 18.01.2018 till its realization on such balance amount after deduction of amount already refunded to the financial institution or to the allottee.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

24. Complaint stands disposed of.

25. File be consigned to the registry.

  
Ashok Sangwan  
Member

  
Arun Kumar  
Chairman

  
Vijay Kumar Goyal  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 12.11.2024**