



Complaint no.976/2018

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 976 OF 2018

Prem Lata

....COMPLAINANT(S)

VERSUS

M City Infrastructure Pvt Ltd.

....RESPONDENT(S)

**CORAM:**

**Anil Kumar Panwar**  
**Dilbag Singh Sihag**

**Member**  
**Member**

**Date of Hearing: 30.10.2019**

**Hearing: 8<sup>th</sup>**

**Present: -**

Ms. Srishti Girdhar, Counsel for Complainant

Mr. Vibhor Bagga, Counsel for respondent

### **ORDER (ANIL KUMAR PANWAR-MEMBER)**

1. Complainant in this case is seeking relief of refund on the averments that she had booked a shop in respondent's project named "M-City"

by paying booking amount of Rs. 10.00 lacs through three cheques dated 19.10.2013 issued in the name of M/s Surbhi Realbuild Pvt. Ltd. Said cheques were received by Shri Sudhir Mohan, Director of the company. It was further averred that the complainant had already paid a sum of Rs. 79,00,112/- against the total sale consideration of Rs. 1,02,14,400/-. The details of the amounts so paid are narrated as under: -

S. No.	Date	Amount paid	Mode of payment	To whom paid
Detail of amount paid to M/s Surbhi Realbuild Pvt. Ltd (respondent no 2).				
1.	19.10.13	3,00,000.00	Cheque No. 409592.	Sudhir Mohan, Director.
2.	19.10.13	3,00,000.00	Cheque No. 238891	Sudhir Mohan, Director.
3.	19.10.13	4,00,000.00	Cheque No. 860725	Sudhir Mohan, Director.
4.	19.10.13	1,25,000.00	Cash	Sudhir Mohan, Director.
Detail of amount paid to M/s M-City Infrastructure (respondent no 1).				
5.	09.11.13	14,00,000.00	Cheque No. 96431	Sudhir Mohan, Director.
6.	13.11.13	6,75,000.00	Cheque No. 96432	Sudhir Mohan, Director.
7.	27.01.14	6,00,056.00	Cheque No. 409594	Sudhir Mohan, Director.
8.	18.02.14	12,00,000.00	Cheque No. 96435	Sudhir Mohan, Director.



9.	27.03.14	3,00,000.00	Cheque No. 096436	Sudhir Mohan, Director.
10.	05.04.14	4,00,000.00	Cheque No. 96437	Sudhir Mohan, Director.
11.	19.05.15	12,00,000.00	Cheque No. 719332	Sudhir Mohan, Director.
12.	19.12.14	10,00,000.00	RTGS through SBI	Sudhir Mohan, Director.
	Total:	79,00,112.00/-		

2. The complaint was initially filed against M/s M. City Infrastructure Pvt. Ltd. but the complainant has subsequently amended her complaint and impleaded M/s Surbhi Realbuild Pvt. Ltd. as Respondent No. 2. Shri Sudhir Mohan was stated to be the Director of both the companies i.e. respondents 1 and 2.
3. An agreement to sell was executed between the parties on 06.06.2014 and the complainant was thereby allotted a shop bearing No. F-12A measuring 798 Sq. fts. on the first floor in City Mall situated at Rewari. Although possession of the shop was agreed to be delivered on or before 31.03.2015 but the complainant has not received the same till date. Whenever she had approached the respondent for delivery of possession, a vague assurance was given to her that it would be delivered within six months. Fed up by such assurances, the complainant has filed the present complaint for refund of the already paid amount along with interest.



4. Respondent No. 1 filed reply averring that Shri Sudhir Mohan, Director of the Respondent Nos. 1 and 2, had taken certain financial assistance from the complainant and the amount paid to him was not for sale of a shop in as much as it was not mentioned in any of the receipts issued to the complainant that the money had been received towards sale of shop. It was averred that the agreement relied upon by the complainant is a forged and fabricated document and Sudhir Mohan was never authorized by the Respondent No. 1 to execute the alleged agreement. The answering respondent has further averred that since the payments have been made in the name of two different companies having two different entities, payment made to the name of one company cannot fasten any liability on the other company.

5. Learned counsel for the parties have been heard and record has been perused.

6. The respondent in paragraph 1 of his reply on merit has fairly conceded that Surinder Mohan is Director of both the companies namely, M/s M-City Infrastructure Pvt. Ltd. (respondent No. 1) and M/s Surbhi Realbuild Pvt. Ltd. (respondent No. 2). The complainant in order to prove that she has paid a total sum of Rs. 79,00,112/- for purchase of shop in question, has relied upon receipt dated 19.10.2013 and pass book entries revealing that all payments except one of Rs. 1,25,000/- were made through cheques or RTGS. She has attached at Page No. 16 of the amended complaint a document




revealing that Sudhir Mohan had acknowledged the total payments of Rs. 22 lacs which includes even the cash payment of Rs. 1,25,000/-. Signatures of Sudhir Mohan on the said document matches with his signatures appearing on sale purchase agreement. Significantly, the respondent has not disputed the payment of Rs.79,00,112/- and his plea, rather, is that Sudhir Mohan had taken financial assistance of that amount from the complainant. Such version of the respondent is not acceptable because there is specific mention in the receipts as well as in the sale purchase agreement that the payments were received for allotment of shop bearing No. F-12A in City Mall, Rewari. So, the Authority will hold that the amount was not paid as financial assistance and was rather received by Sudhir Mohan as Director of respondent companies for allotment of above-mentioned shop.

7. Respondent's learned counsel has sought to wriggle out of aforesaid situation by attacking at the genuineness of sale purchase agreement. Her contention is that the copy of agreement which the complainant had attached with original complaint was bearing her signatures only on the last page while the copy attached with amended complaint was bearing her signatures on each page. The argument would have carried some weight if signatures of respondent's representative were missing on any page of the agreement because there was a scope in that eventuality for the respondent to argue that pages not bearing signatures of Sudhir Mohan are not binding on



the respondents. That however is not the case because signatures of Sudhir Mohan are appearing on each page of the agreement which was filed with the original complaint as well as on the agreement which was filed with the amended complaint. It appears that the complainant on the main agreement had initially signed only on the last page and on realizing subsequently that her signatures are missing on other pages, she had signed the remaining pages as well. Absence of complainant's signatures on the copy earlier filed and presence of her signatures on the copy filed with amended complaint will not prove any kind of ill intent against the complainant. Rather, it will at the most prove merely the commission of a bona fide act on her part to put her signature at the place where it actually should have been to make the document binding on the parties concerned. So, the absence of complainant's signature on each page of the copy attached with original complaint cannot impeach the genuineness of sale purchase agreement.

8. The respondent as per terms of agreement entered between the parties was required to offer possession to the complainant on or before March, 2015. Respondent has nowhere indicated in his reply that he has already offered possession to the complainant or that his project is complete and ready for delivery of possession. So, the complainant due to failure of the respondent to deliver possession on the agreed time is indeed entitled to refund of the already paid amount.



9. For the reasons recorded above, the complaint is allowed and the respondent is directed to refund the amount of Rs. 79,00,112/- to the complainant along with interest at the rate prescribed in Rule 15 of the HRERA Rules, 2017 i.e. State Bank of India highest marginal cost of landing rate plus 2%. Such interest shall be payable from the dates on which amounts were deposited as indicated in the table reproduced in Para 1 of this order till the date on which the amount is actually refunded to the complainant.

The respondent shall refund the amount in two installments of which first installment shall comprise of 50% of the total amount and it should be paid within 45 days from the date of uploading of this order and the second installment shall comprise of the remaining amount and up-to-date interest and shall be paid in the next 45 days.

Complaint is accordingly **disposed of** and the file be consigned to the record room.



ANIL KUMAR PANWAR  
[MEMBER]



DILBAG SINGH SIHAG  
[MEMBER]