

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

Complaint no.: 4665 of 2023
First date of hearing: 18.01.2024
Date of Order: 16.01.2025

1. Mr. Mandeep Singh Kohli
2. Mrs. Jasmeen Kaur

Complainants

Both R/o: House No. 2089, Sector-48-C,
Aashiana Enclave, Near Motor Market,
Chandigarh-160047

Versus

1. M/s M3M India Pvt. Ltd.
Office: Paras Twin Towers, Tower-B, 6th
Floor, Golf Course Road, Sector-54,
Gurugram-122002
2. M/s Port Your Property India Pvt. Ltd.
Office: Unit no. CB/C/6L/Office/017, M3M
Urbana, Sector-67, Gurugram Manesar Urban
Complex, Gurugram-122102

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Sunil Kumar(Advocate)
Ms. Shriya Takkar and Ms. Smriti Srivastava
(Advocates)

Complainants
Respondents

ORDER

1. The present complaint dated 09.10.2023 has been filed by the complainants/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 provisions of the Act or the Rules and regulations made there under or to the allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"M3M Woodshire"
2.	Nature of project	Group Housing Colony
3.	RERA registered/not registered	N.A
4.	DTCP License no.	N.A
5.	Allotment letter	N.A
6.	Unit no.	N.A
7.	Unit measuring	N.A
8.	Date of execution of Apartment buyer's agreement	N.A
9.	Possession clause	N.A
10.	Total Sale Consideration	N.A
11.	Total amount paid by the complainant	Rs.87,52,993/- (As confirmed by both the parties during proceedings dated 16.01.2025)
12.	Occupation certificate dated	N.A
13.	Offer of possession	N.A

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
- I. That the complainants impressed by the respondents advertisement under head "Port Your, Property" under PYP Scheme. Hence complainants met with M3M personals and a comfort letter in relation to credit against old unit was handed over to the complainants expression

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of interest to port your property to part with the rights entitlements and interest in the unit being plot no. 81, admeasuring 245 sq. yds. in the project being "Gobind City" (old unit) development by RKM Housing Limited in favour of the complainants and issue carpet area 425.00 sq. ft. tentative super area 1104.39 sq. ft. on a total consideration Rs. 1,58,25,910/- in your 2021 payment plan PCV. An email was sent on 06.02.2021, an amount of Rs.46,00,000/- against the old unit under PYP scheme.

- II. That the complainants have made a payment of Rs.33,17,770/- to M3M on various dated i.e. 03.11.2020, 12.02.2021, 18.02.2021, 17.02.2021, 21.02.201, 10.03.2021, 06.04.2021.
- III. That an acknowledgement of Expression of Interest for second unit i.e., SA1718 was issued by the respondent M3M in favour of the complainants in October 2021 and issued carpet area 415.00 sq. ft. tentative super area 1078.00 sq. ft. for a total consideration Rs. 1,34,63,050/-.
- IV. That the total amount paid by the complainants against the various expression of interest to book the unit is Rs.33,17,770/-, Rs.46,00,000/- (which has to be adjusted against the old property of the complainants) plus Rs.53,85,300/- which comes to a total of Rs.1,33,03,070/-. The aforementioned amount is paid to M3M and PYP but unfortunately neither an allotment letter was issued nor the buyer's agreement has been executed. Hence, the complainants filed the present complaint seeking refund with interest as per Act of 2016.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - i. Direct the respondents to refund the amount paid by the complainants along with the prescribed rate as per the Act of 2016.

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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 on the following grounds:
- I. That the respondent no. 1 i.e., M3M India Private Limited is engaged in the business of construction and development of real estate projects and has carved a niche for itself in the real estate and infrastructure sector.
 - II. The present reply for and on behalf of the respondent no.1 is being filed by Anisha Mitra who has been duly authorized by the Board of Directors of the respondent company vide Board Resolution dated 21.11.2022 , to sign and verify the present reply and to do all such acts ancillary thereto.
 - III. That the respondent no. 2 is a trust validly incorporated under the Indian Trust Act, 1882. The present reply for and on behalf of the respondent no.2 is being filed by Raghav Aggarwal, who has been duly authorized by the Board of Directors of the respondent trust vide its Board Resolution dated 25.08.2023, to sign and verify the present reply and to do all such acts ancillary thereto.
 - IV. That at the outset, the respondents deny each and every statement, submissions and contentions set forth in the complaint to the extent the same are contrary to and/or inconsistent with the true and complete facts of the case and/or the submissions made on behalf of the respondents in the present reply. The respondents further humbly submit that the averments and contentions, as stated in the complaint under reply, may not be taken or deemed to have been admitted by the respondents, save and except what are expressly and specifically admitted and the rest may be read as travesty of facts.

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- V. That the complainants have approached this Hon'ble Authority with unclean hands and have tried to mislead the Hon'ble Authority by making incorrect and false averments and stating untrue and/or incomplete facts and, as such, is guilty of *suppressio very suggestion falsi*. The complainants have suppressed and/or mis-stated the facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law. On this short ground alone, the complaint is liable to be dismissed.
- VI. That the complaint filed by the complainants is baseless, vexatious and is not tenable in the eyes of law therefore the complaint deserves to be dismissed at the very threshold.
- VII. That the complainants being investors had expressed their interest in booking multiple units in a ready to move in project of the respondent company and paid an amount of Rs.5,00,000 /- towards such interest to book multiple units after duly accepting all the clauses stipulated under the EOI. It is submitted that despite repeated requests the complainants did not come forward and finalise/complete the booking formalities of the units as a result of which no allotment was made.
- VIII. That the complainants have filed a case for the refund of the amount paid by them towards such expression of interest which has already been refunded to the complainants in a phased manner, and thus the present complaint is infructuous as the prayer of the complainants have already been fulfilled. Thus present complaint ought to be dismissed on this very ground itself.
- IX. That the complainants have suppressed and concealed material and vital facts which have a direct bearing on the very maintainability of the purported complaint and if there had been disclosure of these material facts, the question of entertaining the purported complaint would not have arisen.

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X. That the complainants had paid an amount of Rs.87,52,993/- only, against the interest to book multiple units and not an amount of Rs.1,33,03,070/- as allegedly claimed by the complainants. The complainants are misleading the Hon'ble Authority by claiming that they are entitled to a benefit of Rs.46,00,000/- towards their old property. The complainants have deliberately concealed to inform the Hon'ble Authority that the benefit claimed by the complainants were subject to the execution of documents in terms of the scheme, i.e., the deposit of original property papers, compliance of terms of the scheme etc. The same is evident from the letter dated 06.02.2021 annexed by the complainants in the complaint.

XI. That in view of aforementioned facts and submissions made, the captioned complaint is frivolous, vague and vexatious in nature. The captioned complaint has been made to injure and damage the interest and reputation of the respondents and that of the project. Therefore, the instant complaint is liable to be dismissed in limine.

7. Copies of all the relevant documents have been filed and placed on 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:

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

E.I Territorial jurisdiction

9. 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

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.

10. 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 complainants at a later stage.

F. Findings on the relief sought by the complainants:

F.I Direct the respondent to refund the amount paid by the complainants along with the prescribed rate of interest as per Act of 2016.

11. In the present complainant, the complainants expressed their interest to buy a property in the project of the respondent under the scheme "Port Your Property". The complainants have paid a total amount of Rs.87,52,993/- in a phased manner against the "Expression of Interest" to book multiple units. On 06.02.2021, the respondent issued a comfort letter in relation to credit against old unit was handed over to the complainants. In letter dated 06.02.2021, it was mentioned that the respondent has provisionally accepted the EOI of the

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complainants and in light of the same an amount not exceeding Rs.46,00,000/- shall be granted to the complainants subject to the following conditions:


- a. Execution of all the documents by you in terms of the scheme; and
- b. Fulfilment of all the terms and conditions by you, mentioned under the letter for Acceptance of EOI; and
- c. Compliance with the terms of the scheme; and
- d. Finalization of exact amount of the credit by the company.

12. The counsel for the respondents vide proceedings of the day dated 16.01.2025 stated that the complainants have never complied with the afore-mentioned conditions of the comfort letter dated 06.02.2021 which were necessary to port the old property against which an amount of Rs.46,00,000/- was agreed to be paid by the respondents and hence, no direction for its refund can be made.
13. The Authority while going through the documents placed on record observes that the amount of Rs.87,52,993/- paid by the complainants against which an expression of interest was issued by the respondents but it has not been culminated into the issuance of a any allotment letter or execution of buyer's agreement specifying the unit no. area of the unit, due date of possession and sale consideration etc.. Thus, in their absence, there is no failure on behalf of the respondent has been established. Moreover, the counsel for both the parties vide proceedings of the day dated 16.01.2025 has confirmed that the entire amount of Rs.87,52,993/- (admitted by both the parties) paid by the complainants has been refunded to the complainants.
14. On consideration of the above-mentioned facts, submissions made by the parties and provisions of the Act of 2016, the Authority is of the view that there is no provision in the Act of 2016 which provides to pay the interest on

the already refunded amount in the absence of any agreement to sale or allotment letter. Thus, no direction to this effect.

16. Hence, in view of the findings recorded by the authority on the aforesaid issues, no case of interest on the paid-up amount is made out. Hence, the complaint is liable to be dismissed being devoid of merits.

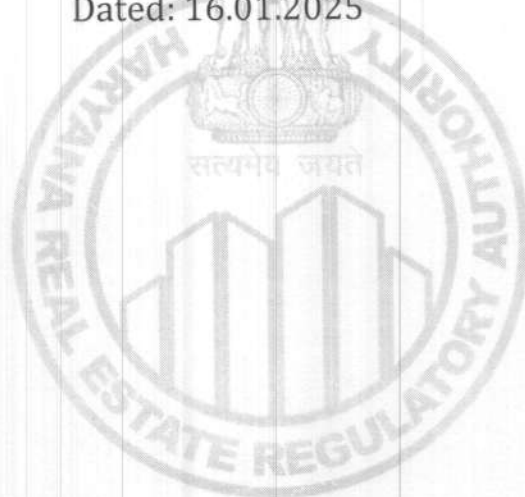
17. File be consigned to registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.01.2025



HARERA
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