

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

Complaint no.: 5407 of 2024
Date of filing of complaint: 22.11.2024
Date of order: 23.12.2025

1. Ms. Rupun Ahluwailia
 2. Mr. Kamal J.S. Ahluwalia
- Both RR/o:** - D-393, Block-D, Defence Colony, New Delhi- 110024

Complainants

Versus

1. M/s Hans Propcon Private Limited
 2. M/s M3M India Limited
- Regd. Office at:** - Paras Twin Towers, Tower-B, 6th Floor, Golf Course Road, Sector-54, Gurugram- 122002
Also at: - Office No. 1221A, Devika Tower, 12th Floor, Nehru Place, New Delhi- 110019

Respondents

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Shri Deepak Kaushik and Rahul Thareja (Advocates)
Ms. Shriya Takkar (Advocate)

**Complainants
Respondents**

ORDER

1. The present complaint 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 to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

2. The particulars of the project, the details of 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 " <i>The Marina</i> ", Sector-68, Gurugram
2.	Project area	13.2118 acres
3.	Project type	Residential group housing colony
4.	DTCP License no. & validity status	93 of 2014 dated 13.08.2014 valid up to 12.08.2026
5.	HRERA registration	Registered vide no. 57(a) of 2017 dated 17.08.2017 Valid upto 30.05.2023 (Including 6 months grace period covid-19)
6.	Unit no.	MRTW-03/1501, Level-15, Marina Tower-03 (Page no. 35 of complaint)
7.	Area of the unit	1304 sq. ft. [Super Area] (Page no. 35 of complaint)
8.	Allotment letter	25.03.2015 (Page no. 26 of complaint)
9.	Builder Buyer's Agreement	21.07.2015 (Page no. 32 of complaint)
10.	Possession clause	"16. POSSESSION OF THE APARTMENT 16.1 <i>The company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the apartment within a period of Forty-Eight months from the date of commencement of construction which shall mean the date of laying of the first plain cement concrete/mud-mat slab of the tower or the date of execution of this agreement, whichever is later ("Commitment period"). should the possession of the apartment not be given within the commitment period, the allottee</i>

		<p><i>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 apartment....."</i></p> <p>[Emphasis supplied] (Page no. 55 of complaint)</p>
11.	Due date of possession	21.01.2020 (Note: - 48 months calculated from the date of execution of buyer's agreement in the absence of date of laying of the first plain cement concrete/mud-mat slab of the tower including 180 days grace period being unqualified)
12.	Total sale consideration	Rs.1,10,40,760/- (As per payment plan at page no. 160 of reply)
13.	Total amount paid by the complainants	Rs.13,62,436/- (As per cancellation letter dated 14.11.2019 at page no. 180 of reply)
14.	Reminder letter	13.09.2016, and 06.10.2016 (Page no. 175 and 176 of reply)
15.	Last and final opportunity	06.01.2017 (Page no. 177 of reply)
16.	Demand cum pre cancellation letter	21.08.2017 (Page no. 178 of reply)
17.	Cancellation letter	14.11.2019 (Page no. 180 of reply)
18.	Occupation certificate	14.09.2020 (Page no. 185 of reply)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That relying on the representations, warranties, and assurances of respondent no. 2 about the timely delivery of possession the complainants booked two units each in the Respondent no. 2's project M3M 'Golf Estate-Fairway East' [Unit Nos. **MGE-2 TW-01/14A** and



MGE-2 TW-07/10B] and M3M 'Urbana' [Unit nos. **SB/R/1L/06/08** and **SB/R/1L/06/07**]. Due to the untimely death of the complainant no. 2's father, the allottee vide email dated 17.02.2013 requested for transfer of the amount of Rs.81,07,415 paid for two units in the 'golf estate-fairway east' and termination of the agreement. However, the request was partially considered by the management and the respondents offered to book two residential units in another project, i.e. 'M3M The Marina' and the same was informed to the applicants vide email dated 20.01.2015.

- II. Subsequently, two units were allotted in M3M "The Marina" vis. MR/TW/03/1501 and MR/TW/03/1504 in the name of complainant no.1 i.e. Ms. Rupan Ahluwalia. The complainants requested clarification of the transfer and disbursement of the amount earlier paid for the two units in M3M 'Golf Estate-Fairway East'. The unit no. MR/TW/03/1501 was allotted vide an allotment letter dated 25.03.2015. The builder buyer's agreement was executed on 21.07.2015 for the sale consideration of Rs.1,10,40,760/-.
- III. Thereafter, the complainants somehow arranged the funds and paid Rs.30,19,032/- on 10.01.2015 and Rs.14,59,388/- on 05.11.2015 to the respondents. The complainant's multiple times sought clarifications regarding the heavy amount of miscellaneous fees which was charged for the said transfer of the units. The complainants due to financial situations could not make further payments and the said unit was cancelled vide letter dated 14.11.2019. A booking amount of Rs.13,62,436/- was made towards the said unit. The respondents not only unfairly charged miscellaneous fees amounting to Rs. 23 lacs and delay payment interest but also charged more than 10% of the total



cost of the unit. 10% of the total consideration amounts to Rs.11,04,076/-.

- IV. That the complainants sent several reminder requests/reminders to the respondents for providing the statement of account but same has not been provided till date. The respondents imposed a hefty amount on the complainants on account of miscellaneous fees amounting to Rs.28 lacs and interest on delayed payment which is illegal and unjustifiable. The respondents did not refund any money to the complainants after cancellation of the unit. That M3M could have done this in the year 2012 when they were first approached by the complainants about the inability to pay because of the death of one of the complainant father.
- V. That the act and conduct of respondents are quite contrary to the settled terms and conditions as entered into between the complainants and respondents concerned. The present facts that there has been non-fulfilment of commitments at the respondents' end and the same has been acting contrary to the contractual terms. The complainants strongly opines that the method chosen by the respondents in duping the complainants amounts to unfair trade practices for which the respondents are liable to be punished by the law.

That the legal position with regard to the earnest money has been dealt in detail by Hon'ble Supreme Court in citations ***Maula Bux case v. Union of India - 1969 (2) SCC 522 and Satish Batra case -1969 (2) SCC 554***. Further, in the case of **M/s DLF V/s Bhagwanti Narula** decided on 06.01.2015 by the Hon'ble National Consumer Disputes Redressal Commission in Revision Petition No.3860 of 2014 while discussing the cases of Maula Bux case (supra), Satish Batra case



(Supra) and other cases as mentioned in para No.10 of the said order, has laid down that only a reasonable amount can be forfeited as earnest money in the event of default on the part of the purchaser and it is not permissible in law to forfeit any amount beyond a reasonable amount unless it is shown that the person forfeiting the said amount had suffered loss to the extent of the amount forfeited by him. Further, it was held that 20% of the sale price cannot be said to be a reasonable amount which the petitioner company could have forfeited on account of default on the part of the complainants unless it can show it had suffered a loss to the extent the amount was forfeited by it. In para 13 of the said order of the Hon'ble National Consumer Disputes Redressal Commission, it is held that an amount exceeding 10% of the total sale price cannot be forfeited by seller, since forfeiture beyond 10% of the sale price would be unreasonable and only the amount which is paid at the time of concluding the contract can be said to the earnest money.

- VI. That thereafter Complainants felt cheated and had approached the respondents on several occasions for refund of their amount deposited with the respondents of unit, however on each occasion respondents gave false and vague assurance to the complainants that the refund will be processed soon. That it is a matter of fact that no refund of any amount has been paid by the respondents, till date and hence, the cause of action continues.
- VII. That the complainants strongly opines that the method chosen by the respondents in duping the complainants amounts to unfair trade practice for which the respondents are liable to be punished in accordance with the law. In the present case, the mental agony and torture caused to the complainants is unquantifiable due to the

deliberate illegal acts of the respondents carried with the sole intention to harass the complainants and to gain illegal monetary benefits over the wrongful loss of the complainants.

- VIII. That in view of the above facts the Authority is requested to direct the respondents to refund the money, on the grounds as mentioned in the complaint and due to the utter mental and financial harassment caused to the complainants by the illegal, wrongful and *malafide* acts of the respondents and provide the money trail leading to Marina and where and how the money disappeared when it should have shown up in 1501, if the accounting was done properly then unit no. 1501 should have been paid up in 2015, and not been put up for cancellation.

C. Relief sought by the complainants:

4. The complainants have sought following relief:
- I. Direct the respondents to provide the statement of account for the two units of 'M3M THE MARINA'.
 - II. Direct the respondents to refund the amount deposited by the complainants and adjusted by the respondents into unit no. 1501.
 - III. Direct the respondents to give proper justification for charging hefty amount of miscellaneous fee. (Provide the money trail leading to Marina and where and how the money disappeared when it should have shown up in 1501, if the accounting was done properly then unit no. 1501 should have been paid up in 2015, and not been put up for cancellation).
 - IV. Direct the respondents to pay interest on the deposited amounts by the complainants from the date of payment till the date of refund, i.e., on a pro-rata basis;
 - V. To pass any other order against the respondents which the Authority deems fit.

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: -
- a. That the complainants have approached this Authority with unclean hands and have tried to mislead this 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. 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.
 - b. That the complainant no. 1 applied for booking of a unit in the project "M3M Marina", and the complainant no. 2 herein never applied for booking of the unit in the project "M3M Marina" being developed by the respondent company. The allotment letter and the buyer's agreement were solely issued in the name of the complainant no. 1 and complainant no. 2 herein is not privy to the understanding between the complainant no.1 and the respondent companies. Thus, the complaint is liable to be dismissed for misjoinder of parties.
 - c. That the respondent no.1 has been amalgamated with M/s. M3M India Private Limited (erstwhile M3M India Ltd.) vide order dated 04.10.2024 pursuant to a petition under section 233 and rule 25(5) by Ministry of Corporate Affairs, RD- Northern Region, PDIL Bhawan, Ground Floor, A-

14, Sector- 1, Noida, Uttar Pradesh-201301 and therefore now there is no entity by name and style of M/s. Hans Propcon Pvt. Ltd. and M/s. M3M India Pvt. Ltd. has been there in its place. On this ground as well, the complaint is bad for misjoinder of parties.

- d. That the present complaint pertaining to apartment no. MR TW-03/1501 was filed by the complainants on 01.11.2024 i.e. after a period of 4 years, 11 months, 19 days from the date of cancellation dated 14.11.2019 of the allotment. The allotment of the aforesaid unit was cancelled vide cancellation letter dated 14.11.2019 due to non-payment of outstanding dues despite issuance of various reminders, pre-cancellation letters and last and final opportunity letter.
- e. It is further submitted that as far as the allotments of two apartments M3M Golf Estate, is concerned the same were cancelled way back in the year 2014 on account of the complainant's default in making timely payments. Post discussion, negotiations between the parties, it was settled that post deduction of Rs.26,77,365/- from the amount paid towards the apartments in M3M Golf Estate, an amount of Rs.59,30,050/- in total would be transferred towards:
- I. two commercial units in M3M Urbana and
 - II. two apartments in M3M Marina
- f. The aforesaid amount was duly transferred as per the agreement and understanding between the parties herein. That no issues qua the deductions can be raised at this belated stage after a period of 10.5 years. That the respondent being a customer-oriented company and taking a liberal view only deducted an amount of Rs.26,77,365/-, though the respondent was entitled to deduct a larger sum as per the terms of allotment and as per the law of the land.

- g. That the present complaint is time barred, the present complaint filed by the complainants is filed beyond three years' time period as prescribed Article 113 and 137 of the Limitation Act, 1963. The complainants have raised the claims which are hopelessly time barred and it is settled law that the limitation for filing of the complaint shall start from the day they accrued. Admittedly the present complaint had been filed before this Authority on November 2024 i.e. after expiry of prescribed period of limitation for filing the present complaint, hence the same is liable to be dismissed on this ground alone. Section 3 and Article 113 of the Limitation Act, 1963.
- h. That it is settled law that when a special Act or local law do not prescribe the period of limitation, the limitation period prescribed under the Limitation Act, 1963 shall be applicable. Accordingly, the period of limitation as prescribed under Article 113 of the Limitation Act is applicable to the present complaint. Admittedly, the present complaint is hopelessly barred by limitation and is liable to be dismissed on this ground alone. That section 88 of the Act, 2016 provides that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. That since the complainants had been left with no remedy under civil law, the complainants have filed the present complaint to abuse the process of law and indulge in forum hunting. Further, it is well settled that the correspondences, representations and legal notice do not extend the time of limitation. Thus, the present complaint is barred by limitation.
- i. That the complainants being seasoned investors had made multiple bookings with the respondent. The complainants had earlier booked two units in M3M Golf Estate-Fairway East, a phase/component of M3M

Golf Estate, Group Housing Colony being developed in a planned and phased manner over a period of time in Sector 65 Gurugram.

S. No.	Apartment No.	Total sale consideration
1.	apartment no. MGE-2/TW-01/14A	Rs. 60,07,415/-
2.	apartment no. MGE-2/TW-07/10B	Rs. 21,00,000/-

- j. That the complainant No.1 paid an amount of Rs.81,07,415/- in total towards the two apartments. That the respondent company as per the payment plan agreed between the parties raised the demands on vide payment request letters dated 22.10.2012, 09.10.2013 and 27.12.2013 followed by various reminders and pre-cancellations. Since the complainants failed to clear their dues therefore, the respondent was constrained to terminate the allotment of the complainant for both the apartments in M3M Golf Estate vide cancellation letter dated 21.05.2014 and 17.07.2014. Thereafter, the complainants approached the respondent company and vide letter dated 24.12.2014 requested the respondent herein that the amounts paid towards the two apartments in M3M Golf Estate post necessary deductions be transferred to;
- two commercial units M3M Urbana and
 - two apartments in M3M Marina
- k. Post discussion, it was settled between the parties that the funds would be transferred in the manner stated therein under post necessary deductions. Reliance in this regard is placed on email dated 20.01.2015, copy whereof is already annexed with the complaint at page no. 25. The complainant also executed indemnity bond dated 27.01.2015 in this regard agreeing to the deductions and transfer of amounts. Thus, it is absolutely clear that the complainants themselves agreed to the deductions of the amounts. Thereafter the complainants were duly

informed vide email dated 07.09.2015 that the funds are being transferred in the manner stated thereinunder.

- l. That the respondent company, being a customer-oriented organization, initially deducted a sum of Rs.26,77,365/- from the total amount of Rs.81,07,415/- paid by the complainant towards two apartments in M3M Golf Estate- Fairway West. As a gesture of goodwill, the remaining amount of Rs.54,30,050 /- was transferred towards four other units.
- m. Thereafter, the respondent taking a liberal view and as a goodwill gesture further agreed to reduce the deductions by an amount of Rs.5,00,000/-. Consequently, the total deductions in respect of the two apartments in M3M Golf Estate – Fairway East stood at Rs.21,77,365/-, despite the respondent being contractually entitled to deduct a higher amount. It is respectfully submitted that the sum of Rs.21,77,365/- was significantly less than 10% of the total sale consideration for both units in M3M Golf Estate. Accordingly, an additional amount of Rs.5,00,000/- was transferred specifically towards Apartment No. MR TW-03/1501 in M3M Marina. Accordingly, receipt dated 20.05.2016 was issued by the respondent company. The final summary of deductions and transfers is provided below:

Amount paid by complainant towards M3M Golf Estate- Fairway East:

S. No.	Particulars	Total sale consideration	Amount paid by Complainant
1.	Apartment no. MGE-2/TW-01/14A		Rs. 60,07,415/-
2.	Apartment no. MGE-2/TW-07/10B	Rs.6,15,95,429/- plus other charges	Rs. 21,00,000/-
			Rs.81,07,415/-

Deductions from the amount deposited towards two apartments in M3M Golf Estate:

S. No.	Particulars	Amounts
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1.	Amount paid towards two units in M3M Golf Estate	Rs.81,07,415/-
2.	Total amount deducted for both the units - agreed by Complainant vide letter dated 24.12.2014 and indemnity bond dated 2015	Rs.21,77,365/- (much less than 10% of sale consideration value of each apartment)
	Balance	59,30,050/-

Transfer of Rs.59,30,050/- was done in the following manner:

S. No.	Particulars	Amount transferred
1.	Urbana 1 (Unit no. SB/R/1L/06/07)	Rs.31,15,140/-
2.	Urbana 2 (Unit no. SB/R/1L/06/08)	Rs.3,91,559/-
3.	Marina 1 (unit no. MR TW-03/1501)	Rs.8,62,436/- + Rs.5,00,000/- = Rs.13,62,436/-
4.	Marina 2 (unit no. MR TW-03/1504)	Rs.10,60,933/-

Thus, the total amount transferred towards two units in M3M Urbana was Rs.35,06,699/- and the amounts transferred towards M3M Marina was Rs.24,23,369/-

- n. That the respondent company provisionally allotted the unit bearing No. "MR TW-03/1501" in M3M Marina, an integral phase/component/ of Group Housing Colony situated at Sector-68, Gurugram, Haryana in favour of the complainants vide provisional allotment letter dated 23.05.2015. It is submitted that the cost of the said apartment for an area admeasuring 1304 sq. ft. was Rs.1,10,40,760/- plus other charges. The respondent as per the agreed terms transferred an amount of Rs.8,62,436/- towards the in the unit in question i.e. MR TW-03/1501 in M3M Marina from the apartments in M3M Golf Estate as agreed between the parties. The aforesaid adjustment is also reflected in the allotment letter. It is submitted that vide the said allotment letter, the respondent company after adjustment fund transfer amount (from the apartments in M3M Golf Estate as per agreement between the parties) requested the

complainant no. 1 to deposit an amount of Rs.30,117/- on or before 09.04.2015.

- o. In furtherance of the allotment, the respondent company herein dispatched copies of buyer's agreement to the complainants vide letter dated 28.04.2015 for due execution at their end. The respondent company as per the payment plan opted by the complainant raised the demand vide demand letter dated 01.06.2015 due within 90 days of booking for an amount of Rs.9,26,904/- which included the previous outstanding dues of Rs.30,117/- wherein an amount of Rs.30,117/- was payable immediately and Rs.8,96,787/- was payable on or before 08.06.2015.
- p. Thereafter the buyer's agreement was executed between the parties on 21.07.2015. The buyer's agreement duly covers all the rights and liabilities for both the parties. Further, the mud mat slab was laid on 11.01.2017 and the apartment buyer's agreement was executed between the parties on 21.07.2015. Thus, the possession timeline has to be reckoned from date of laying the first mud slab i.e. 11.01.2017 being the later date. The due date of possession comes out to be 11.07.2021 (48 months + 6 months graced period).
- q. In accordance with the payment plan opted by the complainants, the respondent company raised the demand due within 6 months of booking vide demand letter dated 17.08.2015 for an amount of Rs.25,58,987/- which included previous outstanding dues of Rs.9,26,904/- wherein an amount of Rs.9,26,904/- was payable immediately and Rs. 16,32,083/- was payable on or before 06.09.2015. The complainants failed to make timely payments of the demand raised, as result of which the respondent company issued reminder letter dated

13.09.2015 requesting the complainants to clear their pending dues. Since the complainants failed to make good the payment of outstanding dues raised vide the demand note, the respondent company was left with no other alternative but to issue pre-cancellation notice dated 06.10.2015 requesting the complainants to come forward and make the payment of the dues within 15 days from the date of this letter, failing which the respondent company shall be constrained to cancel the booking/provisional allotment of the unit.

- r. That the complainant no.1 despite issuance of the aforesaid reminders and pre cancellation notices failed to make the payment of outstanding dues as a consequence of which the respondent company was constrained to terminate the allotment of the unit and forfeit the amount paid by the complainants. Post termination of the unit, the complainant approached the respondent company and requested the respondent company to reinstate the unit. The respondent company being a customer-oriented company agreed to request of the complainant no. 1 and agreed to reinstate the unit, subject to complainant no. 1 clearing their pending dues.
- s. On the request of the complainant no.1, the respondent being a customer centric company agreed to transfer an amount of Rs.5,00,000/- from the amounts deducted from the apartment in M3M Golf Estate. As a result, the total deductions qua the apartments in M3M Golf Estate at Rs.21,77,365/-, even though the Respondent was contractually entitled to deduct a larger sum. An additional amount of Rs.5,00,000/- was transferred specifically towards Apartment No. MR TW-03/1501 in M3M Marina and the respondent issued receipt dated 20.05.2016. Since the complainant no. 1 failed to make the payment of

the outstanding dues, the respondent company issued a demand cum pre-cancellation letter dated 19.08.2016 for an amount of Rs.38,14,036/- due within 18 months of booking wherein the said demand was payable on or before 05.09.2016. The complainant no. 1 for the reasons best known to them again failed to make good the payment of the dues as a result of which the respondent company issued a reminder letter dated 13.09.2016 requesting the complainant no.1 to remit the outstanding dues within a period of 15 days from the date of the reminder.

- t. That since the complainant no.1 failed to make the payment of the outstanding dues, therefore the respondent company issued a demand cum pre-cancellation letter dated 21.08.2017 for an amount of Rs.74,89,040/- which included the previous outstanding dues to the tune of Rs.32,04,736/- wherein an amount of Rs.32,04,738/- was payable immediately and Rs.42,84,302/- was payable on or before 10.09.2017.
- u. That the complainants continued to breach the terms of the buyer's agreement and failed to make the payment of the outstanding dues, the respondent company left with no other alternative but to cancel the allotment of the complainant no.1 vide cancellation notice dated 14.11.2019 and forfeit the amount deposited. The complainant no. 1 had deposited an amount of Rs.13,62,436/-towards the apartment bearing no. MR TW-03/1501 against the sale consideration of Rs.1,10,40,760/- plus other charges.
- v. That the respondent was constrained to cancel the unit on account of non-payment of demands raised by the complainant no. 1. The respondent company has incurred various losses/damages on account

of the breach of the terms of the buyer's agreement by the complainant no.1, which the complainant no.1 is liable to pay as per the terms of buyer's agreement. The losses suffered by the Respondent are as follows:

- Earnest Money - Rs.10,31,704/-. The complainant no.1 herein had agreed to the forfeiture of the earnest money, in the event of failure to comply with the terms of the buyer's agreement and perform their obligations.
- Loss of taxes deposited Rs.693,156/-. It is stated that the respondent company has already deposited the requisite amounts towards GST. These taxes are to be deposited by the respondent the moment the demands are raised and thus an amount of Rs.6,93,156/-towards GST has been paid by the respondent and a loss to the said amount is borne as the same is not refundable to the respondent.
- Interest - Sum of Rs.30,48,006/-was the interest payable by the complainant No.1 for the delayed payments.

w. Thus, the total loss calculated comes to Rs.47,72,866/- which includes earnest money deduction @10% to the tune of Rs.10,31,704/-, taxes to the tune of Rs.693,156/-, and further sum of was the interest payable by the complainants for the delayed payments. The complainant is not entitled to any relief whatsoever.

x. That the complainant no.1 is raising these issues as an afterthought in order to unjustly enrich themselves. The respondent company has complied with all its contractual obligations. The complainant no.1 is not entitled to any relief from this Authority whatsoever. In view of the aforementioned facts, that the captioned complaint is frivolous, vague and vexatious in nature. The captioned complaint has been made to injure and damages the interest and reputation of the respondent and complex and therefore, the instant complaint is liable to be dismissed.

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 observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

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

9. 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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee 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 of 2016 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.

11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** "SCC Online SC 1044 decided on **11.11.2021** and followed in ***M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020*** decided on **12.05.2022** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by them.

F. Findings on the objections raised by the respondent:

F.I Objection regarding mis-joinder of Kamal JS Ahluwalia as complainant no. 2.

13. The respondent raised an objection in its reply that the complainant no. 1 applied for booking of a unit in the project "M3M Marina", and the complainant no. 2 herein never applied for booking of the unit in the project "M3M Marina" being developed by the respondent company. The allotment letter and the buyer's agreement were solely issued in the name of the complainant no. 1 and complainant no. 2 herein has no privity to the understanding between the complainant no.1 and the respondent companies. Thus, the complaint is liable to be dismissed for misjoinder of parties.
14. On the documents and submission made by both the parties the Authority observes that the amount paid by the complainants in the unit in question is adjustment/transfer amount of another unit of the complainants which was booked by the complainants to other projects of the respondent. The paid-up amount of the subject unit has been paid by both the complainants and both the complainants are entitled to relief granted by the Authority. Hence, the objection raised by the respondent is hereby rejected.
- H. Findings regarding relief sought by the complainants.**
- H. I Direct the respondents to provide the statement of account for the two units of 'M3M THE MARINA'.**
- H. II Direct the respondents to refund the amount deposited by the complainants and adjusted by the respondents into unit no. 1501.**
- H. III Direct the respondents to give proper justification for charging hefty amount of miscellaneous fee. (Provide the money trail leading to Marina and where and how the money disappeared when it should have shown up in 1501, if the accounting was done properly then unit no. 1501 should have been paid up in 2015, and not been put up for cancellation).**
- H. IV Direct the respondents to pay interest on the deposited amounts by the complainants from the date of payment till the date of refund, i.e., on a pro-rata basis;**
- H. V To pass any other order against the respondents which the Authority deems fit.**

15. The above-mentioned relief sought by the complainants are taken together being inter connected and finding of one relief will definitely affect the other.
16. In brief, the case of the complainants is that relying on the representations, warranties, and assurances of respondent no. 2 about the timely delivery of possession the complainants booked two individual units in the name of complainant no.1 and 2 in the respondent no. 2's project **M3M 'Golf Estate-Fairway East'** [Unit Nos. **MGE-2 TW-01/14A and MGE-2 TW-07/10B**] and **M3M 'Urbana'** [Unit nos. **SB/R/1L/06/08 and SB/R/1L/06/07**]. Due to the untimely death of the complainant no. 2's father, the allottee vide email dated 17.02.2013 requested for transfer of the amount of Rs.81,07,415/- paid for two units in the 'golf estate-fairway east' and the same terminated by the respondent company. However, the request was partially considered by the management and the respondents offered to book two residential units in another project, i.e. 'M3M The Marina' and the same was informed to the applicants vide email dated 20.01.2015. Subsequently, two units were allotted in M3M **"The Marina"** vis. **MR/TW/03/1501 and MR/TW/03/1504** in the name of complainant no.1 i.e., Ms. Rupan Ahluwalia.
17. The complainants requested clarification of the transfer and disbursement of the amount earlier paid for the two units in M3M 'Golf Estate-Fairway East and M3M 'Urbana''. The unit no. MR/TW/03/1501 in M3M the Marina was allotted vide an allotment letter dated 25.03.2015. The total consideration amount as per the Buyer's Agreement dated 21.07.2015 was Rs.1,10,40,760/-. Thereafter, the complainants paid Rs.30,19,032/- on 10.01.2015 and Rs.14,59,388/- on 05.11.2015 to the respondents. Further, the complainant's sought clarifications regarding the heavy amount of

miscellaneous fees levied multiple times which was charged for the said transfer of the units.

18. The complainants due to financial situations could not make further payments and the subject unit was cancelled vide letter dated 14.11.2019. A booking amount of Rs.13,62,436/- was made towards the subject unit. The respondents not only unfairly charged miscellaneous fees amounting to Rs.23,00,000/- and delay payment interest but also charged more than 10% of the total cost of the unit being Rs.11,04,076/-.
19. That it is categorically highlighted by the complainants that they have sent several reminders to the respondents for providing the statement of account but same has not been provided by the respondent till date. Further, the respondents imposed a hefty amount on the complainants on account of miscellaneous fees amounting to Rs.28,00,000/- and interest on delayed payment which is illegal and unjustifiable. It is important to note that the respondents did not refund any money to the complainants after cancellation of the unit.
20. On the other hand, the respondent contended that the respondent has issued various reminder cum demand letters to the complainants and requested to pay the outstanding dues but the complainants have failed to pay the same. Due to non-payment of the outstanding dues, the respondent has cancelled the allotment of the complainants vide letter dated 14.11.2019. Further, the respondent has obtained the occupation certificate w.r.t. the unit in question on 14.09.2020.
Now, the question before the authority is whether the said cancellation is valid or not?
21. The Authority has gone through the payment plan, which was duly signed by both the parties, which is reproduced for ready reference: -

S. No.	Linked Stages	Description
1.	Within 30 days of Booking	10% of Basic
2.	Within 90 days of Booking	10% of Basic
3.	Within 6 months of Booking	10% of Basic + 30% of the EDC & IDC + 30% of Car Parking +30% Electricity Installation Charges + 30% of Community Club Membership + 30% of Power Back Up Charges + 30% of PLC
4.	Within 18 months of Booking	10% of Basic + 10% of the EDC & IDC + 10% of Car Parking +10% Electricity Installation Charges + 10% of Community Club Membership + 10% of Power Back Up Charges + 10% of PLC
5.	On Completion of Top Floor Roof Slab or 30 months from date of booking	35% of Basic + 35% of the EDC & IDC + 35% of Car Parking +35% Electricity Installation Charges + 35% of Community Club Membership + 35% of Power Back Up Charges + 35% of PLC
6.	On Filing of Application of Occupation Certificate	20% of Basic + 20% of the EDC & IDC + 20% of Car Parking +20% Electricity Installation Charges + 20% of Community Club Membership + 20% of Power Back Up Charges + 20% of PLC
7.	Within 30 days of Notice of Possession	5% of Basic + 5% of the EDC & IDC + 5% of Car Parking +5% Power Back Up Charges + 100% of Registration Charges + 100% Meter Connection Charges + 100 % Applicable Stump Duty + 5% of Community Club Membership + 5% Electricity Installation Charges + 100% IFMS + 5% of PLC.

22. It is a matter of record that the complainants paid a total amount of Rs.81,07,415/- towards two units in respondent no. 2's projects, namely M3M "**Golf Estate - Fairway East**" [Unit Nos. MGE-2 TW-01/14A and MGE-2 TW-07/10B] and "**M3M "Urbana"** [Unit Nos. SB/R/1L/06/08 and SB/R/1L/06/07].
23. Owing to the untimely demise of the father of complainant No. 2, the allottee, vide email dated 17.02.2013, requested termination of the agreement and transfer/refund of the amount of Rs.81,07,415/- paid towards the two units in the "**Golf Estate - Fairway East**" project. However, the said request was only partially considered by the respondents. Instead, the respondents offered the complainants the option to book two residential units in another project, namely M3M "**The Marina**", which was communicated to the complainants vide email dated 20.01.2015.

24. Subsequently, two another unit bearing nos. MR/TW/03/1501 and MR/TW/03/1504 were allotted in M3M "*The Marina*" in the name of complainant No. 1, Ms. Rupan Ahluwalia. The complainants repeatedly sought clarification regarding the adjustment, transfer, and disbursement of the amount earlier paid for the two units in M3M "*Golf Estate - Fairway East.*" Unit No. MR/TW/03/1501 was allotted vide allotment letter dated 25.03.2015, wherein the total sale consideration, as per the Buyer's Agreement, was fixed at Rs.1,10,40,760/-. Thereafter, the complainants paid an amount of Rs.30,19,032/- on 10.01.2015 and Rs.14,59,388/- on 05.11.2015 to the respondents. Due to non-payment of outstanding dues, the respondent has cancelled the subject unit vide cancellation letter dated 14.11.2019. Demands raised by the respondent were as per the agreed terms of the agreement. Hereby, the cancellation letter is valid. Further, the respondent has also obtained the occupation certificate in respect of the subject unit of the complainant on 14.09.2020.
25. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit as per agreement to sale dated 11.07.2014. The respondent after giving reminder letters dated 13.09.2016 and 06.10.2016, in addition to last and final opportunity letter dated 06.01.2017 for making payment for outstanding dues as per payment plan, has cancelled the subject unit. Thereafter, the respondent issue demand cum pre cancellation letter dated 21.08.2017 for clearing the outstanding dues. Despite issuance of aforesaid numerous reminders, the complainant has failed to clearing the outstanding dues. The respondent has given sufficient opportunity to the complainant before proceeding with cancellation of allotted unit. Thereafter, the respondent issued cancellation letter dated

14.11.2019, and the relevant proportion of the said notice is reproduced as under: -

*Thereafter, on Jan 06, 2017 the company served a Last and Final Opportunity Notice ("Notice") upon You requesting you to remit the overdue payments along with the applicable interest within 15 days of the date of Notice in respect of the said Unit. **Unfortunately, the company has till date not received any reply from you and neither you have made the payments of the outstanding amount as per the payment plan annexed with the allotment letter. As on date, a sum of Rs.1,05,37,046/- is due and payable in respect of the unit.***

As per clause 17 of the Application form, timely payment of installments was, inter alia, the essence of provisional allotment of the Unit and the Company is entitled to cancel the allotment in the event of non-payment of installments and/or non-compliance of other obligations mentioned in the Allotment Letter, and forfeit the earnest money (10% of the Cost of the unit) and interest component on delayed payment (payable by the Allottee for breach and non-payment of any due payable to the Company and any fee / brokerage / commission/ margin/ any rebates availed earlier that may have been paid by the Company to an Indian Property Associate / Channel Partner and taxes.

*Therefore, in exercise of the rights vested in the Company under Clause 17 and other relevant provisions of the Application form, the Company hereby cancels the allotment of the Unit, i.e. **Unit No. MR TW-03/1501 in 'M3M Marina', situated at Sector 68, Gurugram, Haryana.** With effect from the date of issuance of this Cancellation Letter, the provisional allotment of the Unit stands cancelled in your favor and all your rights, title and interest in the Unit stand annulled forever. **The amount of Rs.13,62,436/- only paid by you to the Company on March, 10, 2015 & May 20, 2016 shall stand forfeited in favor of the Company paid towards Rs.13,11,583/- of BSP and Rs.50,853/- as Service Tax without any demur or protest by you. The Company is discharged of all its obligations towards you and all and any instruments) executed in pursuance of the Unit including but not limited to the Allotment Letter dated March 25, 2015.***

The Company would like to inform you that subsequent to the cancellation of the provisional allotment of the Unit, the Company is free to deal with the Unit in any manner whatsoever."

26. As per clause 8.2 of the buyer's agreement, the respondent/promoter has a right to cancel the unit in case the allottee has breached the agreement to sell executed between both the parties. Clause 8.2 of the agreement to sell is reproduced as under for a ready reference:



8. TIME IS THE ESSENCE

8.2 *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 the manner described hereunder:-*

- i. In case any breach is committed by the Allottee, the Company shall serve a notice calling upon the Allottee to rectify such breach within the time mentioned in such notice provided that the time mentioned shall not be less than fifteen (15) days.*
- ii. In case such breach is not rectified within the time period stipulated or is continuing or is otherwise repeated, then this Agreement may be cancelled by the Company at its sole option by serving a written notice ("**Notice of Termination**") to the Allottee of the same."*

27. That the above-mentioned clause provides that the promoter has right to terminate the allotment in respect of the unit upon default under the said agreement. Further, the respondent company has already obtained the occupation certificate for the project of the allotted unit on 14.09.2020, the complainant has failed to clear the outstanding dues. The respondent cancelled the unit of the complainant after giving adequate demands notices. Thus, the cancellation in respect of the subject unit is valid as the complainant-allottee has violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainant after certain deductions as prescribed under law.

28. Moreover, the respondent has raised a contention that the complainant has filed the present complaint on 22.11.2024 after a lapse of almost 5 years from the date of cancellation and the Authority has decided a plethora of complaints stating that a 3 years period is a considerable period to approach the competent forum to seek the relief arising out of continuing

cause of action. In the present case, the 3 years from the date of cancellation comes to an end on 14.11.2022 and the complaint is filed much after on 22.11.2024. Thus, the relief sought in the present complaint is not maintainable being barred by limitation. But the same doesn't shed off the liability of the respondent to refund the paid-up amount by the complainant after necessary deductions as per the provisions of the Act of 2016.

29. 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."

30. 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/builder is directed to refund the amount received from the complainants towards the subject unit after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 10.80% (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 termination/cancellation 14.11.2019 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

I. Directions of the Authority

31. Hence, the authority hereby passes this order and issue 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 respondent/promoter is directed to refund the amount received by it towards the allotted unit bearing no. MR/TW/03/1501 after deducting 10% of the sale consideration being earnest money along with interest at the rate of 10.80% (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 termination/cancellation 14.11.2019 till its actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

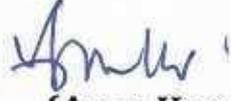
II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

32. Complaint as well as applications, if any, stand disposed off accordingly.
33. File be consigned to registry.


(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.12.2025


(Arun Kumar)
Chairman