

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

**Complaint no. : 1509 of 2024**  
**Date of decision : 14.11.2025**

Ram Kishan,  
R/o: - 1997, Sector 4, Opp. Old Age  
Home, Gurugram, Haryana-122001

**Complainants**

**Versus**

M/s M Three M India Limited  
**Regd. Office at:** M3M India Private Limited  
Office at Paras Twins Tower, Tower-B,  
6th Floor, Golf Course Road, Sector -54,  
Gurugram, Haryana-12200

**Respondent 1**

Manisha khatana  
**R/o at:** 320/21, Gali No. 5,  
Madanpuri, Gurugram, Haryana-122001

**Respondent 2**

**CORAM:**  
Shri Arun Kumar

**Chairman**

**APPEARANCE:**  
Sh. Sunil Kumar (Advocate)  
Sh. Shriya Takkar (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint has been filed by the complainants 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 allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	M3M Woodshire, Sector 107, Dwarka Expressway, Gurugram, Haryana
2.	Area of the project	18.88125 acres
3.	Nature of the project	Residential group housing project
4.	DTCP Licence	Licence no. 33 of 2012 dated 12.04.2012 Valid up to 11.04.2018 Licensed area- 18.88 acres
5.	RERA Registered/not registered	Not registered
6.	Provisional Allotment letter dated	28.02.2013 [Page 16 of complaint]
7.	Unit no.	MW TW-A02/0003, ground floor, Tower A2 [Page 53 of complaint]
8.	Unit area admeasuring	2746 sq. ft. [Page 53 of complaint]

9.	Date of execution of apartment buyer's agreement	31.08.2013 [Page 48 of the complaint]
10.	Possession clause	<p><b>16. Possession Clause</b></p> <p>16.1 The company, based on its present plans and estimates, and subject to all exceptions, proposes to handover possession of the Apartment within a period of <b>Thirty Six (36) months from the date of commencement of construction</b> which shall mean the date of laying of the first plain cement concrete/mud slab of the Tower <b>or</b> the date of execution of this Agreement, whichever is later ("<b>Commitment Period</b>"). Should the possession of the Apartment not be given within the Commitment Period due to any reason (except delays mentioned in clause 16.4 below), the Allottee agrees to an extension of One Hundred and Eighty (180) days ("<b>Grace Period</b>") after expiry of the Commitment Period for handing over the possession of the Apartment...</p> <p>[Page 63 of complaint]</p>
11.	PCC Certificate on	01.10.2013 [Page 121 of reply]
12.	Due date of possession	01.04.2017 (Due date of possession is calculated from the date of commencement of construction including 180 days grace period)
13.	Payment plan	Construction linked payment plan

		[Page 72 of complaint]
14.	Tri-partite Agreement	27.08.2013 [Page 77 of complaint]
15.	Home Loan Agreement	[Page 84-117 of the complaint]
16.	<b>No Objection Certificate issued by the bank on</b>	12.07.2018 [Page 82 of complaint]
17.	Total sale consideration	Rs.1,55,46,478/- (Page 72 of the complaint)
18.	Amount paid by the complainant	Rs.1,29,18,521/- (As alleged by the complainants at page no. 9 of the complaint)
19.	Pre-cancellation letter was issued on	15.06.2015 [Page 149 of reply]
20.	Legal Notice dated	12.12.2015 and 19.03.2016 [Page 152-154 of reply]
21.	Last and Final Opportunity letter dated	18.04.2016 [Page 156 of reply]
22.	Occupation certificate	24.07.2017 (Page 163 of the reply)
23.	Offer of possession to the complainant	10.11.2017 [Page 170 of reply]
24.	Reminder-1 dated	30.01.2018 [Page 176 of reply]
25.	Pre-cancellation notice	20.04.2018 [Page 178 of reply]

26.	Request for surrender of two units in M3M Woodshire and transfer of funds to another unit in project M3M Broadway	03.11.2019 [Page 179 of reply]
27.	Complainant requested to pay Rs.1,05,58,624/- in favour of Mrs. Indra Devi in respect of their Unit no. R3 UG 24 in the project M3M Broadway.	26.12.2019 [Page 181 of reply]
28.	Indemnity signed by the complainant regarding transfer of funds	Page 181 of reply
29.	Receipts issued to Ms. Indira devi	To the tune of Rs.81,69,048/- and Rs.23,89,576/- Page 183 and 184 of reply

**B. Facts of the complaint**

3. The complainant has made the following submissions: -
- I. The complainant booked a apartment in group housing colony in project M3M Woodshire situated at Sector 107, Gurugram, Haryana vide allotment letter dated 28.02.2013 construction linked payment plan by paying his hard earned money a sum of Rs.97,59,143/- from a period between 2012 to 2015. As the Respondent Allotted Unit No. MW-TW-A02/0003. B.B.A Executed vide dated 31.08.2013. 2746 sq. ft. super area, ground floor, , tower a2 + 1 car parking total consideration Of Rs. 1,52,71,878/- Vide B.B.A Page No. 13 Clause 3.1 Under Heading Consideration.
  - II. BSP was 1,22,52,652/- and possession of said unit as per agreement under clause 16 heading "possession of the apartment" was with in a period of 36 months from the commencement of construction which

shall mean the date of laying of the first piling cement concrete/mud-mat slab of the tower or the date of the execution of this agreement, whichever is later". Hence as per knowledge of the complainant B.B.A was executed 31.08.2013 and possession due date was 31.08.2016. But unfortunately construction was delayed much more and hence, the complainant is looking for refund of his hard earned money with interest as per RERA Act, 2016. This complaint is based on cheating made by the personals of respondent No. 1 along with respondent no. 2.

- III. As complainant, while made this booking being a retired person dependent on ill health and one incident was made as the complainant can tell before this Hon'ble Court HRERA Gurugram stated as "what happened when complainant was going through hospitals admitted and financial crunches were happening due to health issues, then M3M Official transfer this unit in name of respondent no. 2, and when the complainant feel some recovery from bad health issues asked status about his booked unit, then the complainant came to know that this unit were transferred by name of respondent no. 2. Respondent no. 2 made forged sign on behalf of complainant and made M3M Flat in his name.
- IV. The complainant came in office of respondent no. 1 and aware about this matter then made complainant about this illegal transfer of his allotted unit to the officials of respondent no. 1, then the respondent no. 1 asked time to investigate this matter for a week. Later, when the complainant visit in office of respondent no. 1 then the respondent officials accept and agreed about this cheating and forged signed made by respondent no. 2 by way matching with original documents signed and agreed to illegal transfer of unit in favour of respondent no. 2.

- V. Further, the respondent no. 1 seeking pardon on their knees and asked the complainant to bring all original documents of both unit bearing no. MW/TW-A02/0003 and Mw/TW-A04/0202 after a week time and made promises to transfer both units in name of complainants only, on this statement the complainant was agreed. Before this one week time respondent no. 2 called the complainant and requested to come in m3m office and further given Rs. 5,00,000/- and made video and took signed by saying this is compensation against all these mistakes and request to forgive on his knees and said all wrong things made correct in this way.
- VI. Further, then the complainant again visited in the office of respondent no. 1, then found that respondent no. 2 was already sit there in office and for or in lieu of forgiveness a sum of Rs. 5,00,000/- handover to the Complainant by saying it is your compensation for our mistakes and kept all original of both units retained by the respondent no. 1 officials and respondent no. 2.
- VII. As my health was very ill and being a senior citizen I were not in condition to fight, realize that it would be fine if all things goes in right way and right direction and step back for home. One more thing respondent no. 1 said to the complainant that after made correction in documents name change in favour of complainant will send again all documents to the complainant original.
- VIII. Further, again same health issues and being a senior citizen, the complainant got hospitalized and take around hospitals and admitted and discharged at that tenure period of life. now, even today the complainant is not able to speak property and depends upon his soul mate.

- IX. At this moment of life and being both complainant and his soul mate are senior citizen with folded hand and request to investigate this cheating and common intention planning by both respondent no. 1 and respondent no. 2 – to investigate this issues with the help of Crime Branch of India.
- X. The complainant booked a apartment in group housing colony in project M3M Woodshire situated at Sector 107, Gurugram, Haryana vide allotment letter dated 28.02.2013 construction linked payment plan vide B.B.A Annexure A page 45/52. by paying his hard earned money a sum of Rs.97,59,143/- from a period between 2012 to 2015. As the respondent allotted unit no. MW-TW-A02/0003. BSP was 1,22,52,652/-Vide Page 14 of B.B.A. and possession of said unit as per agreement under clause 16 heading “possession of the apartment” was with in a period of 36 months from the commencement of construction which shall mean the date of lying of the first paling cement concrete/mud-mat slab of the tower or the date of the execution of this B.B.A, whichever is later” Hence as per knowledge of the complainant B.B.A was executed 31.08.2013 and possession due date was 31.08.2016. But unfortunately construction was delayed much more and hence, the complainant is looking for refund of his hard earned money with interest as per RERA Act, 2016. This complaint is based on cheating made by the personals of respondent no. 1 along with respondent no. 2.
- XI. The M3M Official transfer this unit in name of respondent no. 2, and when the complainant feel some recovery from bad health issues asked status about his booked unit, then the complainant came to know that this unit were transferred by name of respondent no. 2. Respondent No.

- 2 made forged sign on behalf of complainant and made M3M flat in his name.
- XII. The complainant came in office of respondent no. 1 and aware about this matter then made complainant about this illegal transfer of his allotted unit to the officials of respondent no. 1, then the respondent no. 1 asked time to investigate this matter for a week. Later, when the complainant visit in office of respondent no. 1 then the respondent officials accept and agreed about this cheating and forged signed made by respondent no. 2 by way matching with original documents signed and agreed to illegal transfer of unit in favour of respondent no. 2.
- XIII. Further, the respondent no. 1 seeking pardon on their knees and asked the complainant to bring all original documents of both unit bearing No. MW/TW-A02/0003 and Mw/TW-A04/0202 after a week time and made promises to transfer both units in name of complainants only, on this statement the complainant was agreed. Before this one week time respondent no. 2 Called the complainant and requested to came in M3M Office and further given Rs. 5,00,000/- and made video and took signed by saying this is compensation against all these mistakes and request to forgive on his knees and said all wrong things made correct in this way.
- XIV. Further, then the complainant again visited in the office of respondent no. 1, then found that respondent no. 2 was there in office and for or in lieu of forgiveness a sum of Rs. 5,00,000/- handover to the complainant by saying it is your compensation for our mistakes and kept all original of both units retained by the respondent no. 1 officials and respondent no. 2.
- XV. As I was very ill and being a senior citizen I was not in condition to fight, realize that it would be fine if all things goes in right way and right

direction and step back for home. Respondent No. 1 said to the Complainant that after making correction in documents name change in favour of complainant will send again all documents to the complainant original.

- XVI. Further, again same health issues and being a senior citizen, the complainant got hospitalized and take around hospitals and admitted and discharged at that tenure period of life. Now, even today the complainant is not able to speak property and depends upon his soul mate.
- XVII. Complainant being a senior citizen meet several times with the respondent office and demand his money back but all efforts goes in vain, the respondent not even address the senior citizen and his request made before the respondent helpless, hence at last, with folded hand prays refund of his hard earned money from the respondent with interest as per RERA Act. 2016.

**C. Relief sought by the complainant**

4. The complainant has sought following relief(s).
- Direct the respondent to refund the amount paid Rs. 1,29,18,521/-.
  - Direct the respondent to pay litigation cost to the tune of Rs. 40,000/-.
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.**

- The cause of action if any, against the respondent arose on 03.11.2019 wherein the complainant requested for surrender of the apartment in

question and another unit allotted in his name le., unit no. MW TWA04/0202 in the same project and subsequently requested for transfer of his funds of both the units into a unit booked by complainant's family friend Ms. Indira Devi in the project 'M3M Broadway' post acceptable deductions. The complainant has approached this Authority after a lapse of more than four years since the cause of action and is now seeking to reap benefits of his own defaults.

- ii. As per the schedule of the Limitation Act, 1963, the present case falls under the category 47, being 'for money paid upon an existing consideration which afterwards fails". For the said category, the period of limitation is 3 years and the time from which the period begins to run shall be calculated from the date of failure i.e. the date of termination.
- iii. That it is thus quite evident that the present complaint is barred by the law of limitation as the alleged cause of action arose, arose in November 2019, when the complainant requested for surrender of the apartment in question and another unit allotted in his name i.e. unit no. MW TWAD4/0202 in the same project and subsequently requested for transfer of its funds of both the units into a unit booked by complainant's family friend Ms. Indira Devi in the project 'M3M Broadway' post acceptable deductions and the complaint with any grievance should have been filed within 3 years i.e. till November, 2022, It is submitted that the complainant cannot be benefited after a lapse of more than four years as there is no just or reasonable ground for the delay in filing the complaint by the complainant.



- iv. Further, it is humbly submitted that the complainant had earlier filed complaint RERA-GRG-2219-2023 titled as "Ram Kishan vs. M3M India Private Limited on 09.05.2023. wherein the complainant was seeking refund of Rs. 79,91.627/- paid against a different unit having no. MW TW-A04/1203, which was allotted in the name of the complainant. The matter was amicably settled between the parties, on direction given by the Authority. It is pertinent to state that the complainant had received the full refund of the amount i.e. 79,91,627/-in view of the settlement arrived between the parties on 09.02.2024.
- v. It is pertinent to submit that the complainant, was well aware of the surrender and transfer of the funds paid against the unit no. MW TW-A02/003 and MW TW-A04/0202 but as an afterthought, has filed the present complaint to unjustly enrich himself. The conduct of the complainant in filing the present complaint shows that the complainant is taking un-due advantage of the Authority by filing complaints for different units with the intention of seeking refunds against the units wherein the funds have already been surrendered and transferred on the request of the complainant himself. The present complaint is nothing but an abuse of process of law.
- vi. It is submitted that the complainant after making independent enquiries, conducting requisite due diligence and only after being completely satisfied about the projects of respondent no.1 company, approached respondent no.1 through their broker ie. M/s. Mantra4Realty Consulting Pvt. Ltd. and submitted an expression of interest for booking of the unit in one of the projects of the respondent no.1 company and tendered an amount of Rs.7,00,000/- for the same vide cheque bearing number 252664 dated 13.05.2012 drawn on

- Indian Overseas Bank. The complainant further made the payment of Rs. 6,04,089/- on 13.09.2012 on his own free will and volition
- vii. That thereafter the complainant approached the respondent no.1 on 03.12.2012 to invest in one of the projects of respondent no.1 and after being completely satisfied qua the quality of projects undertaken by the respondent no.1, applied for the allotment of the an apartment vide application form in the project M3M Woodshire, Sector 107 Gurugram being developed in a planned and phased manner over a period of time. The complainant also requested that the amount paid towards the expression of interest be transferred fowards the apartment in question.
- viii. The first instalment to be paid by the complainant entailed a payment to the tune of 20% of the basic selling price after reducing amount paid as booking amount le... the aforementioned amounts of Rs. 7,00,000/- and Rs. 6.04.089/-. The respondent no.1 company vide payment request letter dated 04.12.2012 requested the complainant to pay a sum of Rs. 12.22,162/-, which was the balance amount of the first instalment to be to be paid by the complainant. The said demand was payable by 03.01.2013.
- ix. That in due consideration of the part booking amount paid by the complainant towards the unit and his commitments to comply with the booking formalities, the unit respondent no.1 allatted unit no. MW TW-A02/0003 in the project of the respondent company. The cost of the unit admeasuring 2746 sq. ft. super area was Rs. 1,55,46,478/- plus taxes and other charges. The complainant opted for the construction linked payment plan on his own free will and volition.

- x. The complainant failed to make timely payment of the demand raised on 04.12.2012 and belatedly made the payment of the same only on 05.03.2013 that the complainant paid a sum of Rs. 12,25,000/- to the respondent No.1.
- xi. That vide payment request letter dated 15.03.2013 the Respondent No.1 raised the demand for an amount of Rs.12,60,289/- due on commencement of excavation payable on or before 05.04.2013. Copy of the payment request letter dated 15.03.2013 is marked and annexed herewith as Annexure-R/5.
- xii. It is submitted that the respondent no.1 herein dispatched copies of apartment buyers agreement to the complainant vide cover letter dated 25.03.2013 with a request to return the same after due execution at their end.
- xiii. Since the complainant failed to make the payment of the outstanding dues against the demand raised on 15.03.2013, the respondent no. 1 issued reminder letters dated 12.04.2013 and 30.04.2013 demanding payment of outstanding amount. Further, the complainant failed to send the duly executed copy of the buyers agreement, the respondent no.1 with bona fide intentions issued a reminder letter dated 07.05.2013 requesting the complainant to return the executed copy of the agreement.
- xiv. The respondent no.1 company again on 21.06.2013 issued a reminder to the complainant requesting to clear the outstanding amount against the demand raised on 15.03.2013.
- xv. Thereafter, the complainant wanted to avail loan facility from axis bank. accordingly, a tripartite agreement dated 27.08.2013 was entered into between the complainant, respondent and axis bank

wherein the bank agreed to sanction a loan amounting to Rs.90,00,000/- for the purpose of enabling the complainant to purchase the unit allotted to it. After the constant follows ups with the complainant, the apartment buyers agreement was executed between the parties on 31.08.2013. The apartment buyers agreement duly covers all the rights and liabilities for both the parties

- xvi. It is submitted that in accordance with clause 16.1 of the apartment buyers agreement dated 31.08.2013, the possession of the said apartment was proposed to be handed over within 36 months from the date of commencement of construction which shall mean the date of laying the first plain concrete/ mud mat slab of the tower or date of execution of the agreement whichever is later, plus 6 months grace period. The date of execution of the apartment buyers agreement is 31.08.2013 and the date of laying mud slab was on 01.10.2013 and hence, the possession date has to be reckoned from the date of laying the mud slab being the later date. Thus, the due date of possession comes out to be 01.04.2017. However, the said timeline subject to force majeure conditions and the complainant not being a defaulter.
- xvii. The respondent no.1 company vide final reminder letter dated 30.09.2013 requested the complainant to pay an amount of Rs. 14,49,345.60/-, which included the amount demanded by the respondent vide payment request dated 15.03.2013 and then by subsequent reminder letters dated 12.04.2013, 30.04.2013 and 21.06.2013. In lieu of the same, the complainant only made a part payment of Rs. 12,60,289/- on 24.10.2013 which was acknowledged by the respondent no. 1 company vide receipt dated 28.10.2013,

- xviii. Since the complainant failed to make the complete payment of the outstanding dues despite issuance of various reminders and constant follow ups, the respondent no.1 company was constrained to issue pre-cancellation notice dated 25.10.2013 requesting the complainant to make the payment of the outstanding dues within a period of next 15 days from the date of this letter, falling which the respondent no.1 shall be constrained to cancel the booking/allotment of the unit.
- xix. The respondent no.1 company as per the payment plan opted by the complainant, raised a demand vide payment request letter dated 10.01.2014/due on completion of basement roof slab for an amount of Rs. 22.75.392/- payable on or before 30.01.2014. In lieu of the same, the complainant made part payment of Rs. 22.54.024/- on 30.01.2014, which was duly acknowledged by the respondent no.1 company vide receipt dated 01.02.2014.
- xx. That vide payment request letter dated 01.03.2014 the respondent raised demand due on completion of 2nd floor slab for an amount of Rs. 22,96,761/- wherein an outstanding amount of Rs. 21,369/- was payable immediately and Rs. 22,75.392/- was payable on or before 21.03.2014. Thereafter the complainant made part payment of amount Rs. 22,54,025/- on 26.03.2014.
- xxi. That vide payment request letter dated 02.04.2014 the respondent no.1 raised fifth demand for an amount of Rs. 15,18,874/- due on completion of 4th floor slab wherein an amount of Rs. 42.737/- was payable immediately and Rs. 14,76,137/- was payable on or before 22.04.2014. Since, the complainant failed to make payment therefore, the respondent no.1 issued reminder letter dated 23.04.2014

requesting the complainant to make the payment of the outstanding dues.

- xxii. The complainant failed to adhere to the terms of the agreed payment plan and did not make good the payment of the fifth instalment. The respondent as per the payment plan opted by the complainant vide demand letter dated 03.05.2014 raised sixth demand for an amount of Rs. 29,25,010/- due on completion of 6th Floor Slab wherein an amount of Rs. 15,18,873/- was payable immediately and Rs. 14,76,137/- was payable on or before 23.05.2014. In lieu of the same, the complainant made a part payment of Rs. 14,61,716/- on 08.05.2014 which was duly acknowledged by the respondent company vide receipt dated 12.05.2014.
- xxiii. The respondent no.1 as per the payment plan opted by the complainant raised a demand on 17.06.2014 for an amount of Rs. 21,68,643/- due on completion of 8th floor slab wherein an outstanding amount of Rs. 15,33,294/- was payable immediately and Rs. 6,35,349/- was payable on or before 07.07.2014. Since the complainant failed to make the payment of the outstanding dues raised against the aforesaid demand, the respondent no.1 company issued a reminder letter dated 14.07.2014 requesting the complainant to remit against the said dues.
- xxiv. Thereafter, the respondent no.1 issued the demand -cum- pre-cancellation notice, dated 30.07.2014 calling upon the complainant for clearing his outstanding dues to the tune of Rs. 31,25,754/- on or before 19.08.2014. That since the complainant failed to make the payment of the outstanding dues, the respondent no.1 issued

reminder letter dated 26.08.2014 demanding payment of outstanding amount.

- xxv. That since the complainant had failed to make timely payment of his dues as per the agreed payment plan annexed in the allotment letter as well as the apartment buyers agreement, the respondent herein issued a demand -cum- pre-cancellation notice dated 10.09.2014 calling upon complainant for clearing his outstanding dues to the tune of Rs. 38.27,054/- on or before 30.09.2014. The respondent no.1 vide emails dated 11.09.2014 and 16.09.2014 sent a reminder to the complainant requesting him to make the payment of the outstanding dues, but to no avail.
- xxvi. Thereafter, the respondent no.1 again issued the demand -cum- pre-cancellation notice dated 23.11.2014 calling upon the complainant for clearing his outstanding dues to the tune of Rs. 46,24,111/- on or before 13.12.2014. The respondent no.1 company vide email dated 02.12.2014 requested the complainant to come forward and make the payment of the outstanding dues, but to no avail.
- xxvii. Thereafter, the respondent again issued the demand -cum- pre-cancellation notice, dated 17.04.2015; 15.05.2015; and 01.06.2015 calling upon the complainant for clearing his outstanding dues to the tune of Rs. 56.39.251/- on or before 07.05.2015; Rs. 63.52,843/- on or before 04.06.2015; and Rs. 63.55,858/- on or before 04.06.2015 respectively.
- xxviii. That since the complainant had failed to make timely payment of his dues as per the agreed payment plan annexed in the allotment letter as well as the apartment buyers agreement, the respondent no.1 herein was constrained to issue a pre-cancellation notice dated

15.06.2015 calling upon complainant for clearing his outstanding dues to the tune of Rs. 64,55,983/- within 15 days from the date of the Letter. From the above chain of events, it is absolutely clear that the complainant is a chronic defaulter who on various occasions failed to pay his outstanding dues.

- xxix. The respondent no.1 on 12.12.2015 received a legal notice from axis bank which was addressed to complainant no.1 and one Ms. Raj Kumari The said legal notice requested the addresses to clear the amounts due and payable being an amount of Rs. 71.59,825/-to regularize the account, failing which legal proceedings will be initiated against them. On 19.03.2016. the Axis Bank sent another legal notice in the form of a demand-cum-recall notice informing the addresses thereo to pay a sum of Rs. 66,63,578/-within 8 days of receipt of notice.
- xxx. The respondent no.1, in reference to the notice dated 12.12.2015 and 19.03.2016 sent by Axis Bank, requested the complainant vide letter dated 28.03.2016 to remit the outstanding dues to the tune of Rs. 53,48,404/-along with delayed interest charges to the tune of Rs. 21.16,550/- within 7 days from the receipt of the letter, failing which the respondent no.1 company will be constrained to cancel the allotment of the unit.
- xxxi. That the complainant had miserably failed to make the payments as agreed despite repeated reminders, the respondent no.1 issued the last and final opportunity, dated 18.04.2016 calling upon the complainant for clearing the outstanding dues to the tune of Rs. 75,38,807/- within 15 days from the date of the Letter.

- xxxii. The Axis Bank sent a letter dated 27.09.2016 to the answering respondent requesting it to cancel the allotment of unit bearing no, A02/0003, which was allotted in favour of the complainant. The respondent herein sent a letter dated 22.11.2016 to Axis bank as well as the complainant informing them of the bank decision to cancel the allotment.
- xxxiii. That despite the complainant being a defaulter, the respondent no. 1 by their own funds completed the construction of the apartments in phase 2 of the group housing colony and applied for the grant of the occupation certificate on 23.12.2016 which is before the time period.
- xxxiv. That the occupation certificate was granted by the relevant authorities for the said phase on 24.07.2017 after due inspection and verification. That this time period of 7 months taken by the competent authorities in granting the OC cannot be considered as the delay in delivering the possession of the apartment, since on the day the respondent no.1 applied for OC, the apartment was complete in all respects. The delay in grant of OC falls under force majeure as it is beyond the control of the opposite party and is duly recorded in the apartment buyers agreement.
- xxxv. The respondent no.1 on 29.09.2017 again received a Legal Notice from Axis Bank which was addressed to complainant no.1 and Ms. Raj Kumari. The said legal notice requested the addresses to clear the amounts due and payable being an amount of Rs. 37,98,772/-to regularize the account.
- xxxvi. That even though the complainant was not making the payments as demanded by the respondent no.1 and as the respondent no.1 was under the impression that the complainant will make the due

payment, the possession was offered to the complainant vide notice of possession dated 10.11.2017 and vide the said offer of possession the complainant was requested to clear his dues and take possession of the apartment which is ready and complete.

- xxxvii. The Axis Bank thereafter initiated recovery proceedings against the complainant before the Hon'ble Debt Recovery Tribunal II being Axis Bank Ltd. vs. Ram Kishan and Ors. Numbered as OA 1236/2017, the case was filed on 24.11.2017. The notice was issued in the same proceedings on 12.12.2017 against the complainant herein. However, it is pertinent to mention here that the same OA proceedings were disposed on 22.05.2018. The complainant with a mala fide intention has suppressed these facts.
- xxxviii. Thereafter when the complainant did not come forward to make the payment, the respondent no.1 was constrained to issue another reminder dated 30.01.2018 requesting him to remit the amounts due and payable and to take possession of the unit, vide said letter it was also informed to the complainant that, if he will not make the payments within due time, then holding charges will also apply. That despite constant reminders and notices the complainant failed to come forward to take over the possession and make payment of outstanding dues. Therefore, the respondent no.1 issued a pre-cancellation notice dated 20.04.2018 to the complainant and calling upon them for clearing the outstanding dues to the tune of Rs. 1,41,17,398/-within 15 days from the date of Notice. That the respondent no.1 gave ample opportunities to the complainant to pay his outstanding dues but of avail, as the complainant miserably failed to clear the outstanding dues.

- xxxix. Thereafter, the complainant approached the respondent no.1 company vide letter dated 03.11.2019 and informed the respondent that he was facing financial difficulty and requested for surrender of the apartment in question and another unit allotted in his name i.e., unit no. MW TWA04/0202 in the same project and subsequently requested for transfer of its funds of both the units into a unit booked by complainant's family friend Ms. Indira Devi in the project 'M3M Broadway' post acceptable deductions, Thereafter the complainant once again approached the respondent no.1 vide letter dated 26.12.2019 requesting for transfer of the funds against the unit in question and other unit having unit no. MW TW A04/0202 booked by him to another unit in 'M3M Broadway' allotted to complainant's family friend Ms. Indira Devi. Accordingly, the respondent no.1 company being a customer-oriented company acceded to the request of the complainant and transferred the amount post acceptable deductions being Rs. 1,05,58,624/-into the account of complainant's family friend one Ms. Indra Devi. Post transfer of funds on 01.07.2020 to the unit of Ms. Indira Devi, the complainant holds no interest/right/claim in the unit in question post the transfer of funds into another unit,
- xl. The complainant had also written letter dated 03.11.2020 to the respondent in this regard wherein he had acknowledged that he has no claims against the company. Further, the complainant, post the surrender and transfer of funds to the unit of Ms. Indira Devi on 01.07.2020, had signed an indemnity dated 21.11.2020 i.e. after 4 months of the transfer.



- xli. The complainant vide the said indemnity had duly accepted that vide letter dated 26.12.2019, the complainant had sought for surrendering of the units due to certain personal and financial constraints and further requested the transfer of funds unto the unit booked by Ms. Indira Devi, post acceptable deductions. In view thereof, the allegations in the present complaint holds no water as the complainant himself signed the indemnity after the transfer of the funds to the unit of his family friend. Thus the present complaint ought to be dismissed out rightly with a heavy cost on the complainant.
- xlii. Further, the complainant being cognizant of the above mentioned fact has filed the present complaint after a period of about 4.5 years with the sole motive to extract unlawful benefits from the answering respondent. It is submitted that the present complaint is sans any cause of action and merits dismissal. The complainant is not an allottee of the respondent company and has no locus standi to file the present complaint.
- xliii. It is submitted that the complainant does not have the locus standi to file the present complaint as they do not fall under the definition of 'allottee' as defined under Sec 2 (d) of the Act of 2016.
- xliv. The respondent company acceded to the request for transfer of funds made by the complainants vide letter dated 03.11.2019 and 26.12.2019 to transfer the funds against the unit in question and other unit booked by him being unit no. MW TW A04/0202 to another unit in 'M3M Broadway'. The respondent company being a customer oriented company transferred the amount deposited by the complainant, subject to acceptable deductions, being Rs. 1,05,58,624/- into the account of one Ms. Indra Devi.

- xliv. It is submitted that the issue if any, needs to be resolved by the complainant with one Ms. Indra Devi. The respondent is not privy to the understanding between the complainant, his family friend Ms. Indra Devi and Respondent No.2.
- xlvi. The complainant has now at this belated stage after 4.5 years from the date of transfer of funds has filed the present complaint against the answering respondent with the sole motive to unjustly enrich himself.
- xlvii. That the complainant has approached this this Authority by making incorrect and false averments and stating untrue and incomplete facts and, as such, is guilty of suppressio very suggestion falsi. The complainant has suppressed and misstated 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.
- xlviii. In the present complaint, the reliefs claimed are in the nature of recovery despite being well aware of the fact the complainant had himself requested for surrender of the unit in question and other unit booked by him being unit no. MW TW A04/0202 and transfer of amounts from the unit(s) to unit allotted to complainant's family friend in 'M3M Broadway'. It is submitted that respondent no.1 company on the specific request of the complainant had transferred the amount post acceptable deductions into the unit in M3M Broadway. The complainant on his own free will and volition further signed the Indemnity 21.11.2020 after the transfer of the amounts to the unit of Ms. Indira Devi, which is already annexed hereinabove. The complainant is thus estopped from raising any disputes qua the same and thus, the present complaint merits dismissal.

- xlix. The respondent company acted upon the specific request of the complainant and if the complainant has any issues, the same needs to be resolved between the complainant and his family friend Ms. Indra Devi. The respondent had acted in accordance with the request received by it from the complainant.
- i. The complainant has suppressed the fact in the complaint that the complainant approached the respondent no.1 company vide letter dated 03.11.2019 requesting the respondent no.1 to surrender of the unit in question and other unit having unit no. MW TW A04/0202 booked by him and transfer of funds subsequent to revocation into unit in the project 'M3M Broadway' of the complainant's family friends as the complainant was not in a position to hold and continue with the bookings of the unit in question due to financial constraints. Thereafter the complainant once again approached the respondent no.1 vide letter dated 26.12.2019 again requested for transfer of the amount paid against the apartment in question and other unit having unit no. MW TW A04/0202 booked by him to another unit allotted to the complainant's family friend in 'M3M Broadway'. Accordingly, the respondent no.1 company being a customer-oriented company acceded to the request of the complainant and transferred the amount to the tune of Rs. 1,05,58,624/-, after acceptable deductions. into the unit allotted to his family friend Ms. Indra Devi in the project M3M Broadway.
  - ii. in view of aforementioned facts, it is submitted that 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 respondent no.1 and the complex and therefore, the instant complaint is liable to be dismissed in limine.

6. 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**

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

**E.I Territorial jurisdiction**

8. 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**

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) 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 complainant at a later stage.

**F. Findings on the relief sought by the complainant.**

- F.I Order the respondent no.2 to give delay interest @18% on Rs. 91,12,813/- for every month of delay from 25.02.2021 till legally valid possession is finally given to complainants,**
- F.II Order the respondent no.2 to refund the excess amount paid by the complainants along with interest @18% from the date of payment till the date of realisation;**
- F.III Order the respondent no.2 to give physical possession of the unit with complete specifications to the complainants along with all the common areas and facilities;**
- F.IV Order the respondent no.2 to withdraw the illegal offer of possession dated 25.02.2021 and give a legally valid offer of possession to the complainants as per terms of the contract and law;**
- F.V Order the respondent no.2 to lease the food court to a food court operator as admitted by the respondent in a time bound manner;**
- F.VI Order the excessive and unjustified GST & other taxes, increase in super area charges and excessive and unjustified development charges demanded by the respondent no.2 in offer of possession dated 25.02.2021 as illegal and order the respondents to withdraw the same and not charge the same from the complainants;**
- F.VII Order the respondent no.2 to not charge any maintenance charges including IFMS and holding charges till the actual possession as per terms of bba and without any excessive charges;**
- F.VIII Order the respondent no.2 to pay loss of rent to complainants @Rs.50,000/- per month, alongwith interest @ 18% p.a. till the date of payment, from the due date of possession till the actual date of possession as per the terms of BBA;**

**F.IX Transfer all the common areas and facilities to the association of allottees as per section 17 of RERDA;**

**F.X Direct the respondent no.2 to form a rwa of allottees and also transfer the maintenance of common areas to the rwa of unit owners after making unit owners as member and conducting elections as per the provisions of RERA.**

**F.XI Order the respondent no.2 to pay damages of Rs.5,00,000/- arising due to downgrading of multiplex and Rs.1,00,000/- towards legal expenses; and complaint.**

11. On the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other reliefs.
12. The present complaint pertains to a residential unit bearing no. MW TW-A02/0003, situated on the ground floor in Tower A2 of the project M3M Woodshire, Sector-107, Gurugram. The record reflects that the complainant was allotted the said unit vide provisional allotment letter dated 28.02.2013, followed by execution of apartment buyer's agreement dated 31.08.2013. The total sale consideration of the unit was ₹1,55,46,478/-, against which the complainant has stated to have paid an amount of ₹1,29,18,521/-.
13. As per the agreed terms, possession of the unit was to be delivered within a period of 36 months from the date of commencement of construction, along with a grace period of 180 days. The construction having commenced on 01.10.2013, the due date of possession works out to 01.04.2017. It is also borne out from the record that the occupation certificate was obtained on 24.07.2017 and possession was thereafter offered to the complainant on 10.11.2017.
14. The complainant has approached this Authority seeking refund of the amount deposited along with interest, primarily on the ground that the possession of the unit was delayed and further alleging certain

irregularities in relation to the unit. The respondent, on the other hand, has contested the claim on the ground that the complainant had, at a subsequent stage, voluntarily sought surrender of the unit and transfer of the deposited amount to another unit in a different project.

15. It is evident from the material placed on record that the complainant, vide communication dated 03.11.2019, expressed his intention to surrender the subject unit along with another unit held by him in the same project. This was followed by a further request dated 26.12.2019, whereby the complainant specifically sought transfer of the amounts deposited in respect of the said units to another unit booked in the name of a third party in a different project of the respondent. The said request was acted upon by the respondent, and the deposited amount, after adjustments, stood transferred accordingly.
16. At this stage, it becomes necessary to take note of the documents executed by the complainant in furtherance of the above transaction, including the request letters seeking surrender and transfer of funds, as well as the indemnity executed thereafter. Relevant portion of the surrender letter is reproduced hereunder:-

*1. Unit nos. MW TW A02/0003 AND MW TW A04/202 in the project M3M Woodshire located at Sector 107, Gurgaon, Haryana ("Woodshire Units) in the name of Mr. Ram Kishan, 5/o Late Sh. Yudhishtar Lal*

*2. Unit no. R3 UG 24 in the project M3M Broadway located at Sector 71, Gurgaon, Haryana ("Broadway Unit") in the name of signee 2 Le. Mrs. Indra Devi.*

*It is stated that the undersigned are Family Friends, and are thus making this request jointly.*

*Due to certain personal circumstances & financial constraints, Mr. Ram Kishan is not in a position to hold and continue with the bookings of the Woodshire Units. Hence it is requested by him that the booking of the Woodshire Units be revoked and the funds of Rs. 105,58,624/- (Rupees One Crore Five Lacs Fifty Eight Thousand Six Hundred Twenty four only) paid towards the Woodshire Units be transferred unto the account of signee 2 against the sale consideration for the Broadway*

*Unit and be adjusted as per the Schedule of Payment applicable and attached thereto.*

*The signee 1 & signee 2, absolutely understand that the Company's acceptance of such request shall be subject to clearance of all dues, accumulated till date and subject to deductions, if any, against the Urbana Unit provisionally allotted in favour of signee 2.*

*The effect of the aforesaid conduct cannot be overlooked. The act of surrender of the unit, followed by a specific request for transfer of funds and its subsequent execution, constitutes a conscious and voluntary exit by the complainant from the project. Upon such surrender and transfer, the jural relationship of allottee and promoter, insofar as the subject unit is concerned, stands extinguished.*

17. It is further pertinent to take note of the indemnity executed by the complainant. The relevant portion of the indemnity bond is reproduced hereunder:

AND WHEREAS the Indemnifier had booked two apartments in the Project and were accordingly allotted apartments numbered MW TW A02/0003 AND MW TW-A04/0202 in the Project M3M Woodshire "Unit One"). That the the Indemnifier's Family Friends, Ms. Indra Devi R/o 320/21 Madanpuri, Gurgaon had made a separate application for booking of a separate unit in a different project being developed by the Company and were accordingly allotted unit No. R3 UG 24 in the project M3M Broadway located at Sec 71, Gurugram, Haryana ("Unit Two") along with issuance of the corresponding Provisional Allotment Letters of the same date as well as related Schedule of Payments, and the Receipt(s) as mentioned hereunder.

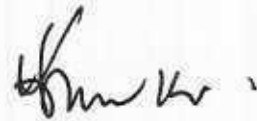
AND WHEREAS the Indemnifier along with his family friend (relation) Smt. Indra Devi vide their letter dated 26/12/2019 had sought for surrendering of the Indemnifier's booking of the Unit One due to certain personal and financial constraints and further requested the transfer of below mentioned Payments, credited to the Company towards Unit One, unto the account of the Unit Two booked by the Indemnifier's family friend Smt. Indra Devi, subject to deductions. This request had been made with the undertaking, promise and firm assurance that upon such surrender, in pursuance to the Indemnifier's request, the Company shall be lawfully entitled to allot the Unit One to any person/entity at its sole and absolute discretion and the Indemnifier hereby forfeits, surrenders and relinquishes all claims, rights and interest in the Unit One completely and forever in favour of the Company. The Indemnifier had accordingly, requested and authorized the Company to surrender his booking of the Unit One and transfer the Payments paid by him

towards the Unit One, unto the account of the Unit Two provisionally allotted to the Indemnifier's family friend (relation) Smt. Indra Devi, which the Company has duly transferred and the same is acknowledged.

18. Once the complainant has elected to withdraw from the project and has derived benefit of transfer of the deposited amount in the manner sought by him, he cannot subsequently turn around and seek refund of the same amount from the respondent. Such a claim would run contrary to the settled principle that a party cannot approbate and reprobate in respect of the same transaction.
19. The contention of the complainant seeking refund, therefore, does not arise out of a subsisting allotment or an existing contractual relationship, but is an attempt to reopen a concluded transaction which stood crystallized upon surrender and transfer of funds. The provisions of the Act do not envisage grant of refund in such circumstances where the allottee has, on his own volition, exited the project and settled his account in a particular manner.
20. Insofar as the allegations raised by the complainant regarding alleged irregularities and misconduct are concerned, the same are not supported by cogent material sufficient to displace the documentary record reflecting voluntary surrender and subsequent transfer of funds. In any case, such allegations would require detailed examination of evidence, which falls beyond the limited scope of adjudication in the present proceedings.
21. In view of the above discussion, this Authority is of the considered opinion that the complainant, having voluntarily surrendered the unit and having sought and obtained transfer of the deposited amount, does not retain any enforceable right to claim refund of the said amount from the respondent.

22. Consequently, the relief of refund as sought by the complainant is not maintainable and is liable to be rejected.
23. The complainant is also seeking compensation. Hon'ble Supreme Court of India in case titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 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 complaint in respect of compensation & legal expenses.
24. However, it is made clear that the complainant shall be at liberty to avail appropriate remedies before a competent court or forum of law, in accordance with law, with respect to the grievance raised in the present complaint.

Dated: 14.11.2025



**Arun Kumar**  
**Chairman**

Haryana Real Estate Regulatory  
Authority, Gurugram