



**HARYANA REAL ESTATE REGULATORY  
AUTHORITY GURUGRAM**

New PWD Rest House, Civil Lines, Gurugram, Haryana नया

पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

**Complaint No. : 1085/2018**

**Date of Decision : 06.03.2020**

**Neetu Goyal & Bindula  
both r/o Hisar(Haryana)**

**Complainants**

**V/s**

**M/s M3M India Pvt Limited  
Paras Twin Towers, Tower B,  
Sector 54, Gurugram(Haryana)**

**Respondent**

**Argued by:**

**For Complainants**

**Mr. Gurmish Bishnoi, Advocate**

**For Respondent**

**Ms. Shreya Takkar, Advocate**

**ORDER**

This is a complaint under section 31 of the Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017(hereinafter referred as the Rules of 2017) filed by the complainants seeking refund of an amount of Rs.46,75,427/- deposited with the respondent for booking of a flat/unit No.METW-02/0703 in its project known as M3M Escala , Sector-70, Gurugram on

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account of violation of obligations of the promoter under section 11(4)(a) of Real Estate (Regulation and Development) Act, 2016. Before taking up the case of the complainants, the reproduction of the following details is must and which are as under:

<b>Project related details</b>	
I.	Name of the project M3M Escala , Sector-70A
II.	Location of the project Sector-70A, Gurugram, Haryana
III.	Nature of the project Residential (construction link plan)
<b>Unit related details</b>	
IV.	Unit No. / Plot No. No.METW-02/0703
V.	Tower No. / Block No.
VI	Size of the unit (super area) 2100 Sq ft.
VII	Size of the unit (carpet area) -DO-
VIII	Ratio of carpet area and super area -DO-
IX	Category of the unit/ plot Residential
X	Date of booking 22.08.2014
XI	Date of execution of BBA (copy of BBA be enclosed as annexure 1) 03.11.2014
XII	Due date of possession as per BBA <b>36 months+180 days grace period from the date of commencement of construction</b>
XIII	Delay in handing over possession till date <b>More than 04 years</b>
XIV	Penalty to be paid by the respondent in case of delay of As per clause 16(1) of BBA

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	handing over possession as per the said BBA	
<b>Payment details</b>		
XV	Total sale consideration	Rs.1,67,68,350/-
XVI	Total amount paid by the complainants till date	Rs.46,75,427/-

2. Admitted facts of the case are that the complainants namely Neetu Goyal and Bindula booked a flat bearing No. .METW-02/0703 in the project of the respondent known as M3M, Escala situated in Sector 70A, Gurugram on 22.08.2014 for a sum of Rs.1,67,68,350/- inclusive of the taxes. An Apartment Buyer Agreement was executed between the parties on 03.11.2014 and vide which the possession of the allotted unit was agreed to be delivered <sup>to them</sup> within a period of 36 months from the date of commencement of construction or from the date of execution of agreement with a grace period of 180 days. The complainants admittedly paid a sum of Rs.46,75,427/- upto date. It is also a fact that in April/May-2017, the complainants transferred 1/3<sup>rd</sup> their share of the allotted unit to one Manoj Kumar, S/o Shri Rishi Lal and who paid a part of the sale consideration to them. It is the case of the complainants that due to financial constraints and cheating of the respondent, they could not continue with the allotted unit and earlier requested for postponing the payment of the remaining amount and lastly, requested for refund of the amount received by the respondent. However, their request did not produce the desired results. So ultimately, a complaint seeking refund of a sum of Rs.46,75,427/- from the respondent was filed.

3. The case of the respondent as set up in the written reply is that though the complainants booked a unit in its project and deposited amount on

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different dates but with their consent, it transferred 1/3<sup>rd</sup> of their share in favour of Manoj Kumar S/o Shri Rishi Lal in April/May-2017 and which was approved. ~~So~~ the same led to issuance of provisional allotment letter dated 05.05.2017 in favour of the complainants besides Manoj Kumar S/o Shri Rishi Lal. It was also pleaded that the complainants failed to adhere to the schedule of payment and committed default in the same. A request dated 23.08.2016 for deferment of amount payment due and the future instalments was received and the same was accepted and replied vide letter dated 05.09.2016(Annexure R/12). But despite that the claimants failed to pay the amount due and which led to issuance of reminders (Annexure R/9 to Annexure R/10) respectively. It was further pleaded that the project in which the unit of the claimants is situated is complete and its occupation certificate was received on 02.08.2018 vide Annexure R/6 and the same led to offering of possession vide letter dated 04.08.2018(Annexure R/8) to the claimants. Lastly, it was pleaded that the allotment of the unit was made in the name of three persons on the basis of request dated 07.02.2017(Annexure R/4) and the same was approved by the respondent vide Annexure R/13 dated 05.05.2017. Since that person/allottee namely, Manoj Kumar has not added as a party either as claimant or respondent, so the complaint filed seeking refund of the amount with the respondent is not maintainable and is liable to be rejected.

4. I have heard the learned counsel for both the parties and who reiterated their position as stated above.

5. Admittedly, the unit in question was initially allotted in favour of two persons namely Neetu Goyal and Ms Bindula complainants and who deposited some amount with the respondent. Later on, they transferred 1/3<sup>rd</sup> their share in that unit in favour of Manoj Kumar S/o Shri Rishi Lal

R/o Village Baltana as evident from request dated 07.02.2017(Annexure

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R/4) and that request was allowed on 05.05.2017 vide letter( Annexure R/13.). There were a number of requests on behalf of the complainants for deferment of the amount due due to financial constraints and ultimately requesting for cancellation. It is a fact on record that after completion of the project, the claimants have been offered the possession of the allotted unit in 2018. It is proved that despite issuance of various reminders, the claimants failed to pay the amount due and which ultimately led to cancellation of their unit vide letter dated 15.12.2018 but without accompanied by any amount after deducting 10% of the total sale consideration as required under the regulations of 2018 made under the RERA, 2016. It is contended on behalf of claimants that despite their pleas to refund the amount deposited after cancellation of the unit, the respondent failed to act. So, they are entitled for refund of the deposited amount from the respondent. Secondly, they did not join Manoj Kumar, an alleged allottee as a party in the complaint as he was man of respondent and who was introduced by them and cheated them.

6. However, the plea raised on behalf of respondent is otherwise and argued that since one of the allottee, namely, Manoj Kumar has not been made a party in the complaint so in his absence, the same is not maintainable and is liable to be rejected. Secondly, the complainants were chronic defaulters in paying the due amount. A number of reminders as detailed above were sent to them. So, the same led to cancellation of their unit and forfeiture of the entire amount received. Though there was some delay in completion of the project but in such type of cases, the same is condonable in view of ratio of law laid down in case of Vineet Kumar & Anr Vs DLF Universal Limited & Anr, 2019 SCC Online NCDRC, 9. So, it has been argued that the complainants be directed to deposit the remaining amount with interest and take possession of the allotted unit.

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7. It is not disputed that initially, the allotment of the unit was made in favour of the complainants. Even an Apartment Buyer Agreement dated 03.11.2014 was executed between the parties. However, later on, on a request dated 07.02.2017(Annex R/4) made by the complainants including Manoj Kumar to the respondent, a new allotment letter dated 05.05.2017 was issued in their favour of the allotted unit on the same terms and conditions as embodied in Apartment Buyer Agreement dated 03.11.2014. It has come on record that the claimants made Manoj Kumar as an allottee alongwith them. So, their plea that he was a man of the respondent is untenable. No documentary evidence in this regard has been led to prove that fact except advancing an oral plea. No doubt, he was a necessary party in the complaint being one of the allottee but in view of provisions of Order 1 Rule 4 of Code of Civil Procedure, this forum can proceed to pronounce order in his absence and there is no legal bar. So, on this score, the complaint is not liable to be dismissed.

8. Secondly, it is fact on record that despite a number of reminders detailed above, the complainants failed to pay the amount due to the respondent against the allotted unit. So, in such a situation, the respondent would have cancelled their unit and offered remaining amount after deducting the earnest money. But that was not done earlier. Rather, after receipt of occupation certificate vide Annexure R/6 dated 02.08.2018, the respondent offered possession of the allotted unit to the claimants vide letter dated 04.08.2018(Annexure R/8). However, the claimants failed to take possession of the allotted unit and which led to levy of holding charges for default as evident from letter dated 29.11.2018. In between, the respondent send a notice of cancellation of the unit vide letter bearing No.2812 dated 06.10.2018 and the same ultimately led to cancellation of unit vide letter dated 15.12.2018. Though a perusal of the last letter shows the amount to be

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refunded to the claimants as Rs.12,808/- after forfeiting a sum of Rs.46,62,619/- but it is not proved that any amount with that letter as refund was ever send by the respondent and received by the claimants. Keeping in view these situations, the Haryana Real Estate Regulatory Authority, Gurugram framed Regulations in the year 2018 for refund of earnest money. So, keeping in view the provisions of regulations above, only a reasonable amount can be forfeited as earnest money in the event of default on the part of the complainant/purchaser. It is not permissible under law to forfeit any amount beyond a reasonable limit unless, it is shown and proved that the person forfeiting the said amount had actually suffered a loss to the extent of amount forfeited by him. This view was taken by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi in case **M/s DLF Vs Bhagwati Narula**, Revision Petition No.3860 of 2014 decided on 06.01.2015. A similar view was also taken by the Hon'ble Apex Court of the land in cases of **Maula Bux Vs Union of India & Ors**, 1970 AIR(SC), 1955 **Indian Oil Corporation Limited Vs Nilofer Siddiqui and Ors**, Civil Appeal No.7266 of 2009 decided on 01.12.2015 and **Balmer Lawrie and Co. and Ors Vs Partha Sarathi Sen Roy and Ors**. Civil Appeal No.419-426 of 2004 decided on 20.02.2013. So, the act of respondent in forfeiting a sum of Rs.46,62,619/- of the allottees of the allotted unit in violation of the regulations of the Authority is not legally justified.

9. The complainants deposited a sum of Rs.46,75,427/- with the respondent on different dates. It is proved that on a joint request made by them alongwith one Manoj Kumar So/ Shri Rishi Lal, he was added as one of the allottee and the same led to issuance of letter of allotment of the unit vide letter dated 05.05.2017. It is not proved that after that date any amount was deposited by the claimants including the new allottee against the allotted unit. So, the amount received by the respondent against the allotted unit to

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the tune of Rs.46,75,427/- was to be returned to all the three allottees after deducting 10% of the total sale consideration of Rs.1,67,68,350/- being the earnest money from that amount while cancelling the allotted unit vide letter dated 15.12.2018. Since that was not done, so the respondent is bound to return in equal shares to all the three allottees a sum of Rs.29,98,592/- besides interest from the date of cancellation i.e. 15.12.2018.

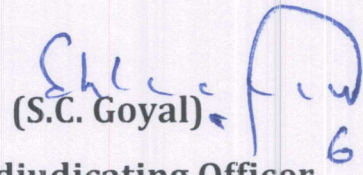
10. Thus, in view of above discussion and taking into consideration all the material facts adduced by the parties, the following directions are hereby ordered to be issued:

- i) The respondent is directed to refund a sum of Rs.29,98,592/- (after deducting 10% of the total sale consideration towards earnest money) to the claimants including Manoj Kumar, a co-allottee in equal shares.
- ii) The respondent shall also be liable to pay interest at the prescribed rate i.e. 10.20% p.a. on the said amount of Rs.29,98,592/- from the date of cancellation i.e. 15.12.2018 till the date of actual payment.

11. This order be complied with by the respondent within a period of 90days and failing which legal consequences would follow.

12. File be consigned to the Registry.

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**Adjudicating Officer,  
Haryana Real Estate Regulatory Authority  
Gurugram**

JUDGEMENT UPLOAD ON 18.06.2020.