



HARERA
GURUGRAM

**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. : 1086/2018

Date of Decision : 06.03.2020

**Gian Chand Goyal & Smt Raj Bala
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. Shriya 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.48,52,394/-** deposited with the respondent for booking of a flat/unit No.ME-TW-02/1503 in its project known as M3M Escala , Sector-70, Gurugram on account of violation

of obligations of the promoter under section 11(4)(a) of Real

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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:

Project related details	
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)
Unit related details	
IV.	Unit No. / Plot No. No.METW-02/1503
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 03.11.2017
XIII	Delay in handing over possession till date More than 02 years
XIV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA As per clause 16(1) of BBA

Payment details

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XV	Total sale consideration	Rs.1,70,83,350/-
XVI	Total amount paid by the complainants till date	Rs.48,52,394/-

2. Admitted facts of the case are that the Smt Pushpa Devi (since deceased and now being represented her husband and legal heir Gian Chand Goyal) alongwith Smt. Raj Bala, complainant booked a flat bearing No. ME-TW-02/1503 in the project of the respondent known as M3M, Escala situated in Sector 70A, Gurugram on 22.08.2014 for a sum of **Rs.1,70,83,350/-** inclusive of the taxes. An Apartment Buyer Agreement was executed between the allottees and the respondent on 03.11.2014 and vide which the possession of the allotted unit was agreed to be delivered to them 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.48,52,394/-** upto date. Smt Pushpa Devi, one of the allottee of the unit expired. So, on a request made her legal heirs, her husband Gian Chand Goyal i.e. the complainant became a co-allottee alongwith Smt. Raj Bala and that fact was approved by the respondent and conveyed vide letter dated 13.10.2015. It is also a fact that in April/May-2017, the complainants transferred 1/3rd their share in the allotted unit to one Navdeep Sardana and who paid a part of the sale consideration amounting to Rs.16,17,464/- on 23.03.2017 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. Initially, a request for postponing the payment of the remaining amount was made and lastly requested for refund of the amount received by the respondent.

However, the request made in this regard did not produce the desired

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results. So ultimately, a complaint seeking refund of a sum of **Rs.48,52,394/-** from the respondent was filed.

3. The case of the respondent as set up in the written reply is that though the wife of the complainant alongwith Smt. Raj Bala booked a unit in its project and deposited amount on different dates but with their consent, it transferred 1/3rd of their share in favour of Navdeep Sardana S/o Shri Jai Prakash in April/May-2017 and which was approved by it. So, the same led to issuance of provisional allotment letter dated 05.05.2017 in favour of the complainants besides Navdeep Sardana. It was also pleaded that the complainants and other allottee failed to adhere to the schedule of payment and committed default in the same. A request dated **23.08.2016(Annex -L)** for deferment of amount payment due and the future instalments was received and the same was accepted and replied vide letter dated 08.09.2016(Annexure-M). But despite that they failed to pay the amount due and which led to issuance of reminders (Annexure-I, Annexure-J, Annex -K) respectively. It was further pleaded that the project in which the unit of the allottees is situated is complete and its occupation certificate was received on 02.08.2018 vide Annexure-F and the same led to offering of possession vide letter dated 04.08.2018(Annexure-H) to the complainants. Lastly, it was pleaded that the allotment of the unit was made in the name of three persons on the basis of request dated nil(Page-118) and the same was approved by the respondent on 05.05.2017(Page 120). Since, one of the allottee namely Navdeep Sardana 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 rejected.

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

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5. Admittedly, the unit in question was initially allotted in favour of two persons namely Smt Pushpa Devi W/o Gian Chand Goyal complainant and Smt Raj Bala and who deposited some amount with the respondent. Smt Pushpa Devi expired. So on a request made by her legal heirs, Gian Chand Goyal was substituted as one of the allottee vide letter dated 13.10.2015. Later on, both the complainants transferred 1/3rd their share in that unit in favour of Navdeep Sardana as evident from request dated 14.02.2017 (Page 118) and that request was allowed by the respondent on 05.05.2017 vide letter (Page 120). There were a number of requests on behalf of the complainants for deferment of the remaining amount due to financial constraints and ultimately requesting for cancellation. It is a fact on record that after completion of the project, the complainants have been offered the possession of the allotted unit in 04.08.2018. It is proved that despite issuance of various remainders detailed above, the claimants and other allottee failed to pay the amount due and which ultimately led to issuance of pre-cancellation notice qua their unit vide letter dated 04.10.2018. Despite issuance of that letter, the complainants failed to pay the amount due. So, the same admittedly led to issuance of termination letter dated 14.12.2018. It is not evident that the letter issued in this regard to the complainants by the respondent was 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 complainants 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 Navdeep Sardana, an alleged allottee as a party in the complaint as he was man of respondent and who was introduced by it and

cheated them.

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6. The plea raised on behalf of respondent is otherwise and it has been argued that since one of the allottee namely Navdeep Sardana has not been made a party in the complaint, so in his absence, the complaint is not maintainable and is liable to be rejected. Secondly, the complainants and other allottee were chronic defaulters in paying the amount due. 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 by it. 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**. Thus, it has been argued that the complainants be directed to deposit the remaining amount with interest and take possession of the allotted unit from the respondent

7. It is not disputed that initially, the allotment of the unit was made in favour of two persons namely Smt. Pushpa Devi W/o Gian Chand Goyal, complainant and Smt. Raj Bala. Even an Apartment Buyer Agreement dated 03.11.2014 was executed between Smt. Pushpa Devi(now deceased) W/o Gian Chand Goyal complainant and Smt. Raj Bala and the respondent. However, later on, on a request dated 14.02.2017 made by the complainants to include the name of Navdeep Sardana as a co-allottee, an endorsement was made in the Apartment Buyer Agreement and the subsequent allottee was added besides the names of Gian Chand Goyal and Smt. Raj Bala. Later on, an offer of possession for allotted unit was made on 04.08.2018 to the complainants alongwith co-allottee Navdeep Sardana. It has come on record that the claimants made Navdeep Sardana, as a co- allottee alongwith them. So, the plea of the complainants that he was a man of the respondent is untenable. No documentary evidence in this regard has been produced to prove that fact except advancing an oral plea. No doubt, he was a necessary

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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 and other allottee 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 letter dated 02.08.2018, the respondent offered possession of the allotted unit to the claimants and other allottee vide letter dated 04.08.2018. However, they 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 dated 04.10.2018 of pre-cancellation of the unit vide letter bearing No.2837 and the same ultimately led to cancellation of unit vide letter dated 14.12.2018. It is not proved that after forfeiting 10% of the total sale consideration as earnest money any amount alongwith that letter as refund was ever send by the respondent and was received by the claimants. Even keeping in view such type of 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 could have been forfeited as earnest money in the event of default on the part of the complainants/purchasers. 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

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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 earlier taken by the Hon'ble Apex Court of the land in cases of **Maula Bux Vs Union of India & Ors**, 1970 AIR(SC), 1955, **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 and **Indian Oil Corporation Limited Vs Nilofer Siddiqui and Ors**, Civil Appeal No.7266 of 2009 decided on 01.12.2015, and So, the act of respondent in forfeiting a sum of **Rs.48,52,394/-** of the claimants being allottees of the allotted unit is in violation of regulations framed by the Authority and is not legally justified.

9. The complainants deposited a sum of **Rs.48,52,394/-** with the respondent on different dates. It is proved that on a joint request made by the complainants, one Navdeep Sardana was added as one of the co- 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 the tune of **Rs.48,52,394/-** is liable to be returned to the claimants including co-allottee Navdeep Sardana after deducting 10% of the total sale consideration of **Rs.1,70,83,350/-** being the earnest money from that amount while cancelling the allotted unit vide letter dated 14.12.2018. Since that was not done, so the respondent is bound to return in equal shares to all the three allottees a sum of **Rs.31,44,059/-** besides interest from the date of cancellation i.e. 14.12.2018.

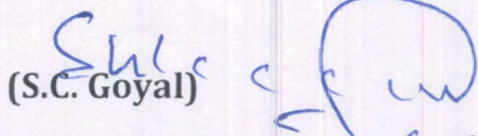
10. Thus, in view of above discussion and taking into consideration all the material facts adduced by the parties, the following directions are hereby

ordered to be issued:

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- i) The respondent is directed to refund a sum of **Rs.31,44,059/-** (after deducting 10% of the total sale consideration towards earnest money) to the claimants including Navdeep Sardana, 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.31,44,059/-** from the date of cancellation i.e. 14.12.2018 till the date of actual payment.
11. This order be complied with by the respondent within a period of 90 days and failing which legal consequences would follow.
 12. File be consigned to the Registry.

06 .03.2020


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram

6.3.2020

JUDGEMENT UPLOAD ON 18.06.2020.