

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

Complaint no.	:	1106 of 2022
Date of complaint	:	28.03.2022
Date of order	:	20.09.2023

1. Shashi Saha, W/o Nilendu Indu Saha,
R/o: - Flat 2C, Block 22, Diamond City North,
66 Jessore Road, Kolkata, West Bengal-700055.
2. Nilendu Indu Saha, S/o Saha Indu Vikash,
R/o Flat 2C, Block 22, Diamond City North,
66 Jessore Road, Kolkata, West Bengal-700055.

Complainants**Versus**

Manglam Multiplex Private Limited, Through its Directors,
Office at: Cabin 1, LGF, F-22, Sushant Shopping Arcade,
Sushant Lok Phase-1, Gurugram, Haryana-122102.

Respondent**CORAM:**

Ashok Sangwan

Member**APPEARANCE:**

Anshul Gupta (Advocate)
Shriya Takkar (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the

Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	M3M Heights, Sector- 65, Gurugram
2.	Project area	14.4125 acres
3.	Nature of the project	Mix land used colony
4.	DTCP license no. and validity status	15 of 2017 dated 02.05.2017 valid up to 01.05.2022
5.	RERA registration	01 of 2017 dated 14.06.2017 valid up to 01.05.2024
6.	Name of licensee	Manglam Multiplex Pvt. Ltd.
7.	Unit no.	MH TW-06/2103, Tower-6 (page 17 of complaint)
8.	Unit area admeasuring	776.73 sq. ft. (page 17 of complaint)
9.	Allotment letter	08.05.2018 (page 17 of complaint)
10.	Date of execution of apartment buyer's agreement	13.06.2019 (page 71 of reply)
11.	Possession clause mentioned in application form on page 23 of reply	<i>"The company shall, subject to force majeure conditions, proposes to complete the Project and handover possession of the Apartment on or before 30th June, 2022..."</i>
12.	Due date of possession	30.06.2022 (page 23 of reply)
13.	Total sale consideration	Rs.1,69,41,698/- (page 17 of complaint) Basic sale price- Rs.1,51,26,514/- (page 98 of complaint)

14.	Amount paid by the complainant	Rs. 75,51,437/- (page 99 of complaint)
15.	Occupation certificate	Not yet obtained
16.	Offer of possession	Not offered
17.	Withdrawal request	04.10.2021 (page 106 of complaint)
18.	Reminders	09.11.2020, 18.10.2021, 17.11.2021, 28.02.2022
19.	Pre-cancellation letter	16.03.2022
22.	Cancellation notice	31.03.2022

B. Facts of the complaint:

- I. The Complainants booked a residential unit in the project named "M3M Heights" at Sector 65, Gurgaon. Accordingly, a unit bearing no. MH TW-06/2103, 21st floor, Tower 6 having 1433sq.ft super area was allotted to them by the respondent vide allotment letter dated 08.05.2018. Thereafter, a builder buyer agreement dated 01.06.2018 was executed between the parties for a total sale consideration of Rs.1,69,41,698/- and they have paid an amount of Rs.75,51,467/- against the same in all.
- II. That the parties entered into a tripartite agreement dated 28.05.2019 with ICICI Bank Limited for sanction of a loan amounting Rs.1,15,00,000/- for the purpose of financing the purchase of the said residential unit.
- III. The complainants sent a notice dated 04.10.2021 to the respondent intimating the cancellation of the booked unit in accordance with clause 7.9 of the buyer's agreement and made a request to communicate the details of the deductions and to refund the amount deposited after deductibles, but the same was not acknowledged by the respondent.

IV. That the complainants further sent notices dated 14.10.2021 and 22.10.2021 and multiple emails seeking refund, but till date no action has been taken by the respondent in this regard. Therefore, the complainants have approached the authority seeking refund of the payments made to the respondent along with interest for the delay.

C. Relief sought by the complainants:

3. The complainants have sought following relief(s):

- I. Direct the respondent to refund paid-up amount along with interest.

D. Reply by respondent:

4. The respondent vide reply dated 01.02.2023 contested the complaint on the following grounds:

- i. That the complainants approached the respondent company, for booking of a residential unit in its ongoing project named 'M3M Heights' at Sector 65 Gurugram.
- ii. That in consideration of the booking amount paid by the complainants and their commitments to comply with the terms of the booking/allotment and making of timely payments, the respondent allotted an apartment bearing no. MH TW-06/2103 admeasuring 1433 sq. ft. in the said project vide allotment letter dated 08.05.2018 for an agreed cost of Rs.1,69,41,698/- plus other charges.
- iii. That in furtherance of the allotment, the respondent company on 01.06.2018 sent three copies of the buyer's agreement to the complainants for execution at their end. However, the complainants for the reasons best known to them did not come forward to execute the same and clear their outstanding dues.
- iv. That the complainants are chronic defaulters as they failed to make the payment to the demands raised by the respondent company at



various occasions even after the issuance of reminder dated 23.10.2018, which were raised as per the payment plan opted by them.

- v. That thereafter, the complainants wanted to avail a loan facility from ICICI Bank Limited against the purchase of the said apartment, for which a tripartite agreement dated 28.05.2019 was executed between the parties and ICICI Bank Limited and a permission to mortgage was issued by the respondent.
 - vi. Thereafter, a builder buyer agreement was finally executed between the parties on 13.06.2019 which duly covers all the liabilities and rights of both the parties.
 - vii. That the complainants defaulted in making payments due to which the respondent was constrained to issue reminder letters dated 09.11.2020, 26.11.2020, 17.11.2021, 02.12.2021, 28.02.2022 and 16.03.2022. That despite the issuance of various reminder letters, the complainants failed to come forward to clear their dues. Therefore, the respondent vide cancellation notice dated 31.03.2022 cancelled the allotment of the unit.
 - viii. That the default of the complainants in making timely payments and complying with other obligations is duly covered under the buyer's agreement and the cancellation and forfeiture of the earnest money has been in accordance with the same.
5. 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:

6. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

7. 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

8. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.



F. Findings on the objections raised by the respondent.

F.I Objection regarding the delay in payments.

10. The objection raised by the respondent regarding delay in payments by the allottees is totally invalid as they have already paid an amount of Rs.75,51,467/- against the total sale consideration of Rs.1,69,41,698/- to it as per the construction linked payment plan and have cleared all their instalments before making a request for cancellation. The fact cannot be ignored that there might be certain group of allottees who defaulted in making payments. But upon perusal of documents on record, it is observed that no default has been made by him in the instant case. Hence, the plea advanced by the respondent is rejected.

G. Findings on the relief sought by the complainant:

G.I Direct to the respondent to refund the paid-up amount along with interest.

11. The complainants have booked a unit bearing no. MH TW-06/2103 in the project named "M3M Heights" at sector-65, Gurugram. The buyer's agreement was executed between the parties on 13.06.2019. However, as per terms mentioned in the application form, the due date of possession was agreed as 30.06.2022. The complainants vide letter dated 04.10.2021 requested the respondent to cancel the allotment of the unit in question and to refund the paid amount alongwith interest, but no response was received from the respondent. Thereafter, the complainants further sent notices dated 14.10.2021 and 22.10.2021 and multiple emails seeking refund, but the respondent despite refunding the amount paid by them cancelled the allotment and

forfeited the amount paid by them vide cancellation letter dated 31.03.2022.

12. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees are left with no option but to sign on the dotted lines
13. On consideration of the documents available on record and submissions made by both the parties, the authority is of the view that there has been a huge delay on the part of respondent in completing construction of the project in question. The complainants vide letter dated 04.10.2021 requested the respondent to cancel their allotment as the buyer's agreement does not contain any specific date for



possession of the unit. Therefore, the complainants vide letter dated 04.10.2021 made a request to cancel their allotment and to refund the amount paid alongwith interest in terms of clause 7.9 of the buyers's agreement. But on failure of the respondent to refund the same, they have filed the present complaint dated 28.03.2022 seeking refund. Subsequently, after filing of the complaint the unit in question was tactically cancelled by the respondent vide cancellation letter dated 31.03.2022. Therefore, the cancellation done by the respondent cannot be held valid in the eyes of the law.

14. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.**, civil appeal no. 5785 of 2019, decided on 11.01.2021. The relevant para is reproduced as under:

".....The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

15. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357 reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022, it was observed as under:



"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

15. The due date of possession as per clause mentioned in application form as mentioned in the table above was 30.06.2022 and the complainants have made a request for withdrawal from the project on 04.10.2021. Therefore, in this case the paid-up amount shall be refunded after deduction as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides 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"

16. Further, Clause 7.9 of the buyer's agreement also talks about the deduction of 10% of the basic sale price of the dwelling unit in case of



withdrawal of the allotment. Clause 7.9 of the said buyer's agreement reiterated as under: -

7.9 Cancellation by Allottee - The Allottee shall have the right to cancel/withdraw his allotment in the Project as provided in the Act.

"Provided that where the Allottee proposes to cancel/withdraw from the Project without any fault of the Promoter, the Promoter herein is entitled to forfeit the Booking Amount paid for the allotment (i.e. earnest money being 10% of the Total Consideration) and interest component on delayed payment (payable by the Allottee for breach and non-payment of any due payable to the Promoter in terms of Clause 1.14 herein before and brokerage and any rebates availed earlier/ margin/ incentive paid to a Channel Partner in case the booking is made through a Channel Partner. The balance amount of money paid by the Allottee shall be returned by the Promoter to the Allottee, without interest or compensation within 90 (ninety) days of such cancellation."

17. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.75,51,467/- after deducting 10% of the basic sale consideration of Rs.1,51,26,514/- being earnest money along with an interest @ 10.75% p.a. (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 on the refundable amount, from the date of withdrawal i.e., 04.10.2021 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the Authority:

18. Hence, the authority hereby passes this order and issues 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):
- The respondent/promoter is directed to refund the paid-up amount of Rs.75,51,467/- after deducting 10% of the basic sale consideration of Rs.1,51,26,514/- being earnest money along with



- an interest @10.75% as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of withdrawal i.e., 04.10.2021 till the date of refund of the deposited amount.
- 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.
19. The complaints stand disposed of.
20. Files be consigned to the registry.

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.09.2023

(Ashok Sangwan)
Member

HARERA
GURUGRAM