

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 269 OF 2018**

1. VAIBHAV GARG

S/O SH YOGINDER KUMAR, R/O 1125- A, SATYA SADAN,  
RAILWAY ROAD, TIMBER MARKET,

KARNAL

HARYANA

.....Complainant(s)

Versus

1. M3M INDIA LTD.

THROUGH THEIR AUTHORITY REPRESENTATIVES,  
REGD OFFICR AT: PARAS TWIN TOWER-B, 6TH  
FLOOR,GOLD COURSE ROAD, SECTOR 54

GURGAON

HARYANA

.....Opp.Party(s)

**CONSUMER CASE NO. 2171 OF 2018**

1. ATUL KUMAR VERMA & ANR.

.....Complainant(s)

Versus

1. M3M INDIA PRIVATE LIMITED

Through their Managing Directors, Paras Twin Towers, Tower  
B, 6th floor, Gold Course Road, Sector-54

GURGAON

HARYANA

.....Opp.Party(s)

**CONSUMER CASE NO. 2172 OF 2018**

1. ASHISH AGRAWAL & ANR.

.....Complainant(s)

Versus

1. M3M INDIA PRIVATE LIMITED

Through their managing Director, Paras Twin Twoers, Tower B,  
6th Floor, Gold Course Road,

SECTOR-54,

GURGAON, HARYANA

2. M/S PRECISION REALTORS PVT. LTD.

THROUGH ITS REGD OFFICE AT HAVING ITS REGD  
OFFICE AT 305,3RD FLOOR,KANCHAN  
HOUSE,KARAMPURA COMMERCIAL COMPLEX,NEW  
DELHI-15

.....Opp.Party(s)

**CONSUMER CASE NO. 2295 OF 2018**

1. OM SHANKER SHARMA

(Through Sh Vijendra Singh) R/o 11/48, H I/A, Rajeev Market,  
Naraych Road,

AGRA

UTTAR PRADESH

.....Complainant(s)

Versus

1. M3M INDIA PVT. LTD.

.....Opp.Party(s)

(Through their Managing Directors) R/o Paras Twings Towers,  
Tower-B, 6th Floor, Gold Course Road, Sector-54,  
GURGAON - 122011  
HARYANA

**CONSUMER CASE NO. 275 OF 2018**

1. VIVEK JOON & ANR.

S/O SH RAJENDER SINGH R/O H NO. 498, BLOCK 13,  
LODHI COLONY,  
NEW DELHI-110003

2. MONIKA JOON

W/O SH PRADEEP SINGH R/O H NO. 498, BLOCK 13,  
LODHI COLONY,  
NEW DELHI-110003

.....Complainant(s)

Versus

1. M3M INDIA LTD.

THROUGH THEIR AUTHORIZED REPRESENTATIVES.  
REGD. OFFICE AT: PARAS TWIN TOWERS, TOWER B,  
6TH FLOOR, GOLD COURSE ROAD, SECTOR 54,  
GURGAON  
HARYANA

.....Opp.Party(s)

**CONSUMER CASE NO. 276 OF 2018**

1. REKHA BAGGA & ANR.

.....Complainant(s)

Versus

1. M3M INDIA LTD.

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. BINOY KUMAR, PRESIDING MEMBER**

FOR THE COMPLAINANT : APPEARED AT THE TIME OF ARGUMENTS:

FOR COMPLAINANTS : MS. ISHITA SINGH, ADVOCATE  
MR. PRANJAL MISHRA, ADVOCATE  
(CC/269/2018, CC/275/2018, CC/276/2018)

: MR. SUSHIL KAUSHIK, ADVOCATE  
MR. KARAN S. NEGI, ADVOCATE  
(CC/2171/2018, CC/2172/2018, CC/2295/2018)

FOR THE OPP. PARTY :

APPEARED AT THE TIME OF ARGUMENTS:  
MR. JATIN SEHGAL, ADVOCATE  
MS. RAYMON SINGH, ADVOCATE  
MS. MOLLY SHARMA, ADVOCATE

**Dated : 28 August 2024**

**ORDER**

1. The present batch of Consumer Complaints i.e., CC/269/2018, CC/275/2018, CC/276/2018, CC/2171/2018, CC/2172/2018 and CC/2295/2018 have been filed under Section 21(a) (i) of the Consumer Protection Act, 1986 (for short "the Act") by the Complainants, against M/S M3M India Ltd. (hereinafter referred to as the 'Opposite

- Party/Builder’) seeking refund of the entire amount collected from them along with compensation, and other reliefs on the ground of delay in construction of the project.
2. Since the facts and question of law involved in these Complaints are similar except for minor variations in the dates, events and the unit numbers, these Complaints are being disposed of by this common Order. However, for the sake of convenience, the Consumer Complaint No. 269 of 2018 is treated as the lead case and the facts enumerated hereinafter are taken from this Complaint.
  3. The facts leading to the present Complaint are that the Complainant/Mr. Vaibhav Garg booked a Unit in the Project “M3M Woodshire” of the Opposite Party situated in Sector 107, Gurgaon, Haryana. For the sake of convenience, the relevant details of the Unit are as under:

Sr. No.	Particulars	
1.	Booking Date	04.12.2012
2.	Allotment Letter	25.01.2013
3.	Booking Amount	Rs. 5,00,000/-
4.	Unit	0902, 9 <sup>th</sup> Floor, Tower- B3
5.	Builder Buyer’s Agreement (Agreement)	25.04.2013
6.	Committed date of possession as per Agreement (including grace period of 180 days)	22.10.2016
7.	Sale Consideration	Rs. 86,28,354/-
8.	Occupation Certificate (OC) received	20.04.2017
9.	Date of Offering Possession	28.04.2017
10.	Total Amount Paid	Rs. 89,25,986/-

4. The Complainant stated that the Agreement was largely non-negotiable, requiring the Complainant to sign pre-prepared documents with several unreasonable clauses benefiting only the Opposite Party. The Complainant averred that the delivery period of the said flat was 36 months from the date of the Agreement. The Complainant had made the payment of 95% of the total consideration.
5. The Complainant stated that, according to clause 16.2 of the Agreement, the Opposite Party must pay to the Complainant compensation of Rs. 10/- per sq. ft per month for any delays. Additionally, clause 8.5 allows the Opposite Party to charge 24% interest on any delayed payments by the allottees. Clause 16.5 stipulates that if the Opposite Party fails or neglects to offer possession of the premises within the stipulated time, they are liable to refund all amounts paid by the purchaser upon demand.
6. The Complainant stated that he has been victim of series of wrongful acts of the Opposite Party along with other allottees of the project, such as:

- i. The green area outside the towers had been drastically reduced and repurposed, contrary to what was advertised in the sales brochure.
  - ii. The promised 60-meter-wide road connecting to the expressway was not visible, and the Opposite Party provided no information on its completion timeline.
  - iii. The Opposite Party failed to construct the required two basements for parking as initially approved.
  - iv. The Opposite Party concealed a critical fact which is the passing of a gas pipeline of Gas Authority of India Limited (GAIL) through the project. This led to non-construction of the boundary wall.
  - v. The Opposite Party revised the building plan without the buyers' consent, increasing the number of dwelling units from 986 to 991. The changes also affected the layout, resulting in the EWS Tower being positioned directly in view of the swimming pool and other amenities, which were not part of the original plan.
  - vi. The Opposite Party did not disclose about the Najafgarh drain at the time of booking. The Complainant further averred that if he had been aware of this fact, they would not have booked the flat.
  - vii. The Opposite Party at the time of booking or sale of the apartment, did not mention any PLC Charges. However, they later arbitrarily imposed PLC Charges on all the apartments.
  - viii. The Opposite Party mentioned development charges would be Rs. 381/sq. ft, including EDC, IDC, and other charges, subject to future adjustments by government agencies. However, only Rs. 271/sq. ft for EDC and Rs. 26/sq. ft for IDC were paid to the Government. The Builder did not justify the remaining Rs. 84/sq. ft despite repeated inquiries from the Complainant.
  - ix. The Complainant discovered a revenue rasta, during a site visit, passing through the apartment area which was not mentioned in the sales brochure, the Agreement, or disclosed elsewhere. Instead, it was depicted as a green belt in the brochures, despite being a vehicular thoroughfare.
  - x. The Opposite Party did not have all the required sanctions and approvals to construct a Group Housing Colony.
  - xi. The Opposite Party contrary to the provisions laid down under the Haryana Apartment Ownership Act, 1983, has illegally charged Rs.4,50,000/- for the purpose of car parking.
  - xii. The Opposite Party has wrongly collected the Club Charges.
  - xiii. The Opposite Party started to take booking amounts before the relevant building plan was sanctioned.
7. The Complainant stated that the Opposite Party has caused significant and unusual delays in initiating and constructing the planned project milestones. Despite the passage of many months, the construction remains incomplete. The Complainant repeatedly attempted to contact the Opposite Party for updates on the construction status of their booked floors. However, the Opposite Party consistently failed to provide satisfactory responses, making false claims that construction would start soon and avoiding giving any plausible reasons for the ongoing delays.

8. Thus, aggrieved by the acts of Opposite Party, the Complainant has filed this Complaint with the following prayer to direct the Opposite Party to:

***a) Direct the O.P. to refund the entire amount collected from the Complainant along with interest @ 18% p.a. on the amount paid by them from the date of collection of the amounts till it is actually returned to the Complainants.***

***b) Direct the O.P to pay a sum of Rs 5,00,000/- (Rupees Five lakhs only) towards mental agony and harassment and towards cost of litigation to the Complainant.***

***c) Any other order(s) as may be deemed fit and appropriate may also kindly be passed.***

9. The Opposite Party resisted the Complaint by taking the main objections as under:

i. The Complainant has incorrectly calculated the start of the commitment period from the booking date, whereas it should be calculated from 14.05.2013, the date the first mud concrete cement slab was laid. The Complainant has failed to make timely instalment payments. Clause 16.6 of the Agreement specifies that in case of delay, the compensation is limited to Rs.10 per square foot per month, and no other relief is allowed. Even if there is a delay in handing over possession, it is not substantial, unreasonable, or beyond what was contemplated in the agreement.

ii. The Complaint is fundamentally flawed as it contradicts the binding agreement between the parties. The obligations of the Opposite Party are limited to what is stated in this Agreement. The Consumer Protection Act does not have the authority to modify or rewrite the terms of a binding agreement.

iii. The Complainant is not a consumer under the Act, as they had purchased the unit for investment purpose.

iv. This Commission has no jurisdiction or it is beyond the Jurisdiction of this Commission to deal with the allegations that are of contractual nature. The interpretation and implementation of the terms of the agreement can only be decided by a Civil Court.

v. The Complainant has not made any allegations of negligence. Compensation can only be awarded if the conditions of Section 14(1)(d) are met, which requires proof of negligence by the OP causing loss or injury.

vi. The Complainant has made allegations with respect to an agreement to sell an apartment. An agreement to sell does not relate to rendering of any service within the meaning of Section 2(1)(o) of the Act.

vii. The Complainant is seeking an exorbitant and baseless claim in the form of interest without any supporting material on record.

10. The Complainant, in his rejoinder, denied the averments made by the Opposite Party and reiterated the contentions made in the Complaint. The Complainant stated that he has been living and working in Gurugram for the past six years. He has not booked or purchased any other residential property and took a home loan of Rs. 30 lakhs from SBI bank to make payments. The Complainant further stated that the authorities sanctioned 131,797.56 sq. meters (FAR) for the project, but the Opposite Party has sold approximately 171,766.32 sq. meters of super area to homebuyers, excluding nursery and primary school spaces. Despite requests, the O.P. has not provided any justification for selling over 50,000 sq. meters of super area beyond the sanctioned constructed area. The Opposite Party has violated FIRE NOC in the Project.
11. Heard learned Counsel for both parties and have gone through the material available on record.
12. The Learned Counsel for the Complainant argued that the present dispute is a covered case adjudicated by this Commission involving the same project and the same Opposite Party in ***Rajan Handa vs. M3M India Developers Limited and Anr., CC/2387/2017***, dated 15.09.2021, wherein the Opposite Party was directed to refund the amounts paid by the Complainant along with 9% interest as compensation, and observed as under:

***“The complainant has also filed various photographs showing that the construction was going on, even after issue of possession notice. If the construction was not complete and not in habitable condition, then issue was possession notice was not proper. As per ABA, the construction had to be completed within 36 months with grace period of 6 months from the date of commencement of the construction i.e. upto June, 2016, while possession notice was given on 28.04.2017. As such there was delay in offering possession. In such circumstances, the complainant was justified in not taking possession of the flat.”***

This Order was upheld by the Hon’ble Supreme Court in ***M3M India Developers Limited vs. Rajan Handa and Anr. [Civil Appeal No. 7777 of 2021, dated 06.05.2022]***.

13. The Learned Counsel for the Complainant further argued that the conveyance deed was not executed by the Opposite Party despite collecting Rs. 4,58,125/- towards Conveyance charges. So, the ownership of the Unit still lies with the Opposite Party. He cited the judgment of the Supreme Court in the case of ***Newtech Promoters & Developers (P) Ltd. vs. State of UP, Civil Appeal No. 6745-49 of 2021***, wherein the right to seek refund under Real Estate Regulations and Development Act, 2016 was highlighted.
14. Learned Counsel for the Opposite Party argued that each case is different. He further argued that the facts of the Rajan Handa case are totally different from the present case. The Complainants except Vivek Joon in CC No. 275 of 2018 have not made any protest against the offer of possession. The Complainants continued to make payments even after offer of possession. The Opposite Party has filed the Occupation Certificate along with sur-rejoinder. The Learned Counsel for the Opposite Party further argued that the Project is complete and the same can be seen from the photographs enclosed by the Opposite Party with its sur-rejoinder.
15. I am not going into the preliminary objections raised by the Builder as these have been adequately addressed in the Order of this Commission in ***Rajan Handa vs. M3M Indian Developers Ltd. and Anr. (supra)***.

16. The important issue raised by the Complainant is that the Opposite Party/ Builder has not completed the construction of the Project as per the Agreement/Brochure. In this regard, the Complainant, Vivek Joon in CC/275/2018, had written an email to the Builder vide dated 18.05.2017 pointing out all the incomplete work. After going through the documents on record, I notice that the Opposite Party has certainly committed deficiency in not completing the Project as the amenities like the club house, convenience shopping etc. provided in its Brochure on the date of offer of possession were not complete. The Opposite Party ought to complete the project as per its brochure, though it may have obtained the Occupation Certificate. When a project is advertised and sold on basis of certain amenities, these cannot be ignored and therefore the Complainants have a right to seek refund in their absence on the date of offer of possession.
17. In view of aforesaid, I am relying on the Order of this Commission in ***Rajan Handa vs. M3M India Developers Limited and Anr. (supra)*** affirmed by the Hon'ble Supreme Court. The Complainants have a right to seek refund with a reasonable rate of interest in case of a project having been not complete in all respect as on date of offer of possession.
18. In view of the discussion above, the Consumer Complaints i.e. CC/269/2018, CC/275/2018, CC/276/2018, CC/2171/2018, CC/2172/2018 and CC/2295/2018 are allowed and the Opposite Party/Builder is directed to refund the amount deposited by the Complainants with interest @ 9 % per annum from the respective date of deposits till realization, within a period of eight weeks of this Order, any delay beyond eight weeks will attract an interest rate of 12% per annum for the same period.

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**BINOY KUMAR**  
**PRESIDING MEMBER**