

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

Complaint no. : 2305 of 2018
First date of hearing: 30.04.2019
Date of decision : 30.04.2019

Shri Birender Singh
R/o 9304, Belle Terre Way, Potomac, MD
20854, USA **Complainant**

Versus

M/s M3M India Ltd.
M3M India Ltd., 6th floor, 'M3M Tee Point', 65,
Gurugram Manesar Urban Complex, Gurugram
122101 **Respondent**

CORAM:

Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE

Shri Ramanand and Shri Advocate for complainant
Manish Yadav
Smt. Shriya Takkar Advocate for respondent

ORDER

1. A complaint dated **17.12.2018** was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Shri Birender Singh, against the promoter M3M India Private Limited, on

account of violation of provisions of Real Estate (Regulation and Development) Act, 2016.

2. Since, the apartment buyer's agreement has been executed on 16.02.2012 i.e. prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the allottees in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"M3M Golf Estate-Fairway East", Sector-65, Gurugram
2.	Nature of the project	Group housing colony
3.	Current status of project	Occupation certificate received on 25.07.2017 and possession offered on 12.12.2017
4.	RERA Registration status.	Not registered
5.	DTCP License no.	234 of 2007 52 of 2009 35 of 2010
6.	Unit no.	MGE-2 TW-04/10 a,

7.	Unit area	3898 sq. ft. (as per notice of possession)
8.	Date of execution of apartment buyer's agreement-	16.02.2012
9.	Date of addendum to apartment buyer's agreement	25.06.2014
10.	Payment plan	Deferred payment plan (as per recital B-1 in addendum dated 25.06.2014)
11.	Total sale consideration	Rs 5,01,12,833/- (as per clause 1.5 of addendum to agreement)
12.	Total amount paid by allottees	Rs 173,22,549/- (as alleged by complainant)
13.	Date of delivery of possession (as per clause 14.1 of apartment buyer's agreement : within 36 months from the date of commencement of construction which shall mean the date of laying of the first plain cement concrete/mudmat slab of the tower or the date of execution of agreement which ever is later plus 180 days grace period)	19.05.2016

	(As per admission by the complainants in the present complaint, the construction was started on 19.11.2012)	
14.	Delay in handing over possession till offer of possession i.e. 12.12.2017	1 years 6 months 23 days
15.	Penalty (as per clause 14.7 of the said apartment buyer's agreement)	Rs.10/- per sq. ft. per month calculated on the super area for every month of delay

4. Details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondents. An apartment buyer's agreement dated 16.02.2012 and an addendum to apartment buyer's agreement dated 25.06.2014 is available on record.
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The reply filed by the respondents has been perused.

Facts of the Complaint

6. The complainant submitted that the applicant is purchaser of the apartment being unit no. MGE - 2, TW04/10 in the project of the respondent i.e. M3M Golf Estate Fairway East, Sector-65,

Gurgaon, Haryana and the respondent is a company incorporated and registered under Companies Act 1956 and the respondent claim themselves as reputed builders and developers and big real estate player

7. The complainant submitted that on 17.08.2011 Ms. Somya Saxena, Assistant Manager, M3M informed complainant in writing via email dated 17.08.2011 that M3M has joined hands with L&T for construction of golf estate, and confirmed that complainant's apartment would be delivered to complainant in a timely fashion within 33 months of the date complainant booked the apartment, December 8, 2010, irrespective of which tower in the group housing colony was built first.
8. The complainant submitted that on 16.02.2012 the complainants were presented with a buyer's agreement, and the same was got signed by the complainants, despite specific objections being raised by the complainants in this regard. Yet, for the convenience of this court, the complainant states the broad terms of the agreement as under:

Date of agreement: 16.02.2012

Apartment details: MGE-2, TW 04/10, admeasuring 3655 Sq. Ft. alongwith two car parks

Total sale consideration: 3,92,73,042/-

Possession in terms of clause 14, was to be delivered within a period of 36 months from the date of commencement of construction, along with a grace period of 6 months, i.e. effectively, the possession of the apartment was to be delivered on or before December 2014.

The complainants have chosen a construction linked payment plan

In terms of Annexure B, Super area to carpet area ratio was to remain between 72(Carpet):28(Super).

9. The complainant submitted that on 10.10.2012 complainant received a notice from M3M informing that the super area of my apartment was revised from 3655 sq. ft. to 3799 sq. ft., which increased my financial burden for the apartment by Rs. 3,93,040.00/- (Rupees Three Lacs Ninety-Three Lacs Forty Only). The notice also mentioned that L&T commenced construction of complainant apartment. That the said notice, did not mention as to how the area of the apartment had increased and no basis for the same was ever provided.
10. The complainant submitted that on 28.10.2012 complainant wrote to M3M asking how the terms of the agreement between M3M and complainant could be unilaterally changed, and if apartment would still be delivered within 33 months of date of

booking (December 8, 2010) in view of the fact that M3M's October 10, 2012 letter to complainant indicted that construction had commenced, 21 months late. While no explanation was provided for the delay, despite the fact that the complainants had paid a sum of Rs. 99,78,000/- approximately up to this date.

11. The complainant submitted that on 22.11.2012 complainant wrote to M3M requesting a reply to complainant's letter from October 28, 2012 as complainant had not heard back.
12. The complainant submitted that on 10.12.2012 complainant received a letter from M3M stating would be given possession of the apartment within a period of 36 months from the date of commencement of construction, which is very different from what M3M had assured complainant on December 8, 2010, and again on August 17, 2011. The letter cites clause 16.1 of the agreement; however, there is no language in the clause to substantiate the same.
13. The complainant submitted that on 19.12.2012 Complainant wrote to M3M asking if the terms of the agreement can be changed unilaterally by M3M, and what the criteria was for selecting which buyers would bear the financial burden of the increased super area. Complainant also alerted M3M about the

unexplained and unacceptable change in the delivery date and clause 16.1 of the agreement, which doesn't mention anything related to the delivery date nor time of construction.

14. The complainant submitted that on 14.02.2013 complainant received a letter from M3M informing complainant that M3M had received complainant's letter from December 19, 2012 but need more time to reply.
15. The complainant submitted that on 26.04.2013 complainant wrote to M3M informing them that complainant had not heard back and requested them to reply as soon as possible.
16. The complainant submitted that on 14.08.2013 complainant wrote to M3M informing them that complainant has still had not heard back and was growing increasingly wary about their lack of communication and unexplained and unacceptable business practices.
17. The complainant submitted that on 26.08.2013 complainant received a letter from M3M informing that the super area was increased to include a second staircase in the building core (per fire norms, M3M claims), structure and MEP services design and coordination, and modification balconies. This letter despite being utterly vague and un-substantiated by any document or a certificate of the architect, contained no

information about complainant's other questions and concerns.

18. The complainant submitted that on 09.09.2013 Complainant wrote to M3M informing them that their August 26, 2013 letter did not answer satisfactorily any of the queries of the complainant, and complainant was greatly concerned about foul play by M3M regarding the price increase of Rs. 3,93,040.00/- on account of increased area by 144 Sq Ft., Complainant further asked whether or not the same super area changes were also needed in other towers in the group housing colony. Complainant also alerted M3M that the apartment delivery date, as promised on December 8, 2010 and on August 17, 2011, had already arrived.
19. The complainant submitted that on 16.09.2013 complainant received a letter from M3M informing complainant that M3M had received September 9, 2013 letter but need more time to reply.
20. The complainant submitted that on 07.02.2014 Complainant received a reply from M3M informing complainant that the apartment would be delivered within a period of 36 months from the date of commencement of construction, which is again, different from what complainant was told on December

8, 2010 and again on August 17, 2011. M3M also wrote that the calculation of 36 months would begin from November 2012, which is 23 months later than what complainant was originally told would be the calculation start date. It is pertinent to mention herein that even if the date of November 2012, is taken to be the date of delivery of the possession of the apartment, then also the apartment was to be delivered on or before August 2015, when calculated with 33 months.

21. The complainant submitted that on 25.06.2014 With the year after year delays in delivering the apartment, complainant's wife fell ill and passed away, and circumstances changed. Complainant could no longer afford to make payments on the apartment. The said fact was intimated to the respondent, in which to take further advantage of the complainant's situation, M3M suggested complainant pay them an additional finance fee of Rs. 2450 per sq. ft. plus taxes i.e. Rs. 93,07,550/- (Rupees Ninety Three Lacs Seven Thousands Five Hundred Fifty Only) to defer the payment of the balance until the time of apartment delivery, which complainant reluctantly did in order to save complainant's deposit on account of change in the payment plan from Construction-Linked to possession-linked. In terms of the said new schedule, the apartment was in total valued at Rs. 5,01,12,833/- (Rupees Five Crore One Lac Twelve

Thousands Eight Hundred Thirty Three Only). That however, the complainant was yet assured that the apartment delivery is on schedule and there would not be any delay In delivery of the apartment, from the committed date of August 2015.

22. The complainant submitted that M3M processed the change in payment structure on 27.06.2014 and got the said addendums signed by the complainants. It is important to point out that in the said addendum, the clause 14 relating to the delivery of possession of the apartment remained entirely unchanged, and therefore, even going by the respondent agreement, the apartment was to be delivered within August 2015.
23. The complainant submitted that the possession of the apartment was not handed over to the complainants, neither the project was completed. In addition, the respondents failed to update the complainants regarding the date of delivery of the apartment or status of the construction of the apartment. That despite continuous follow up from the complainant ever since 2015, the respondents failed to acknowledge as to when the apartment of the complainant would be ready.
24. The complainant submitted that on 09.01.2018 complainant received a letter from M3M, which was backdated to December 12, 2017, as evidenced by the date of courier

informing that construction of apartment had been completed. The letter also advised complainant to clear dues by January 12, 2018. It is evident from the courier receipt that the letter was backdated to the extent that the letter was dispatched by the respondent only on 8th January 2018.

25. The complainant submitted that on 23.05.2018 complainant wrote to Mr. Basant Bansal, Chairman of M3M informing him of my aforementioned concerns and alerting him about the unreasonable and unwarranted business practices undertaken by his company.
26. The complainant submitted that on 06.06.2018 The complainants counsel sends a legal notice to the respondent for abatement of fees and buyback of the apartment by M3M to set off mutual damages on account of mutual non-performance. That however, the complainants, seek to re-tract from the said notice, on account of the fact, that as the property is governed by the laws of India, and abatement of fee and mutual set-off of damages, doctrines are not recognized in Indian law.
27. The complainant submitted that 13.07.2018 however, the respondent did not reply to the said notice, and instead the Complainant was slapped with a “pre-cancellation notice”

from M3M asking for Rs. 45,62,631/- of interest over and above the pre-condition for deferment of balance, the heavy interest already paid by complainants, and the unreasonable price increase under the pretext of increased super area, illegally and unlawfully.

28. The complainant submitted that the cause of action to file this present complaint firstly arose at the time of booking of the apartment, thereafter it arose on each subsequent payments so made to the respondents, thereafter it again arose when the respondent increase the area, it further arose at the time of signing of the addendum agreement, it further arose at the time of not handing over the possession of the apartment in August 2015, it further arose in December 2017 when the respondents raised illegal demands, it further arose on 13.07.2018 when the respondent sent pre-cancellation notice. The cause of action is continuous, and the present complaint is filed as expeditiously as possible.

29. The complainant submitted that this Hon'ble forum has jurisdiction to entertain and to adjudicate this present complaint for the very reason that the project of the respondent is situated within the jurisdiction of district Gurugram and the project was allegedly completed in December 2017, this authority has powers relegated under the

act to decide and adjudicate the present complaint in its present form.

Issues to be Decided:

29. The complainants have raised the following issues:
- i. Whether the complainant is entitled to delay penalty as prescribed under RERA for the delay w.e.f December 2014 upto the date of delivery of apartment?
 - ii. Whether the respondent is liable to Hand over the physical possession of office space?

Reliefs Sought

30. The complainants are seeking the following reliefs:
- i. Delay Penalty as prescribed under RERA w.e.f from August 2015 upto the date of actual delivery of possession of the apartment
 - ii. Recall of all illegal demands w.r.t to the area increase of the apartment from 3655 Sq. Ft. or in the alternative, to appoint a local commissioner for measurement of the apartment to ascertain the actual area in existence in the apartment.

- iii. Recall of the demands related to Preferential location charges, Community Club Membership, interests accruing if any, FTTH charges, EDC, IDC, GST etc. i.e. to the extent of Rs. 62,99,306/-
- iv. To recall the pre-cancellation notice dated 13.07.2018
- v. To deliver the possession of the apartment complete in all respects
OR in the ALTERNATIVE
- vi. Refund the entire sum advanced to the respondents i.e. a sum of Rs. 1,73,22,549/- (Rupees One Crore Seventy Three Lacs Twenty Two Thousands Five Hundred Forty Nine Only) alongwith interest as prescribed under the RERA Act.
- vii. With any other order which this Hon'ble Court may deem fit and proper be also passed in the interest of Justice.

Reply on Behalf of Respondent

30. The respondent submitted that the Respondent i.e. M3M India Private Limited (formerly known as "M3M India Ltd.") is engaged in the business of construction and development of real estate projects and has carved a niche for itself in the real estate and infrastructure sector. The present reply for and on

behalf of the Respondent is being filed by Mr. Deepak Kapoor, who has been duly authorized by the Board of Directors of the Respondent vide Board Resolution dated 16.02.2019, to sign and verify the present reply and to do all such acts ancillary thereto. It is clarified that the name of the Respondent has been changed from “M3M India Limited” to “M3M India Private Limited”, with effect from 11.08.2014 and pursuant to the change in the status of the Company from ‘Public Limited Company’ to ‘Private Limited Company’. The Respondent is a Private Company limited by shares existing under the Companies Act, 2013.

31. The respondent submitted that the complaint is liable to be dismissed in view of the Preliminary Objections set out hereinafter. It is submitted that since the preliminary objections are of a jurisdictional nature which goes to the root of the matter, and as per the settled law, the same should be decided in the first instance. It is only after deciding the question relating to maintainability of the complaint that the matter is to be proceeded with further. The following preliminary and jurisdictional objections are being raised for dismissal of the complaint. Without prejudice to the contention that unless the question of maintainability is first decided, the respondent ought not to be called upon to file the

reply on merits to the complaint, this reply is being filed by way of abundant caution, with liberty to file such further reply as may be necessary, in case the complaint is held to be maintainable.

32. The respondent submitted that the present complaint is not maintainable before this Hon'ble Regulatory Authority since the present complaint belongs to the project, which is not required to be registered in terms of section 3 of the said Act. The Respondent has not registered the said project before HARERA, Gurugram under the said Act and the said Rules, since it does not fall within the purview and ambit of "registrable project" as defined under the said Act and thus, no complaints whatsoever can be entertained before the Hon'ble Regulatory Authority. The Hon'ble Bombay High Court in the matter of "Neelkamal Realtors Suburban Pvt. Ltd. vs Union of India and others" had categorically held that "the authority concerned would be dealing with the cases coming before it in respect of projects registered under RERA". Thus, there is a clear embargo upon the registry of this Hon'ble Regulatory Authority to entertain the complaints only related to the registered projects, which is not the case herein and thus, the present complaint is liable to be dismissed on this ground itself.

33. The Complainant is not entitled to seek and get any relief of refund of the money from the Respondent for the following reasons:

a) The construction and development of the Complex i.e. 'M3M Golfestate- Fairway East' an integral block / segment / constituent / part / phase of the group housing colony was completed within the agreed time limit itself and the respondent applied to the competent authority for the grant of occupancy certificate on 23.12.2016 after complying with all the requisite formalities.

b) Occupancy Certificate for the complex being 'M3M golf estate fairway east' was granted by the competent authority on 25.07.2017.

c) it is relevant to note that the apartment measuring 3655 sq. ft. was booked by the complainant. However, upon the completion of the construction of the apartment the area of the apartment finally stood to 3898 sq. ft. It is submitted that the increase in area is as per Clause 13.1 of the apartment buyer's agreement.

d) Upon the completion of the apartment and consequent receipt of occupancy certificate, possession of the apartment was offered to the complainant vide notice of offer of

possession dated 12.12.2017 and the same is the matter of record.

34. The respondent submitted that in view of the above reasons, as per the agreed contract in between the parties (apartment buyer agreement), it was the contractual obligation of the Complainant to come forward and take possession of the Apartment after completing the possession related formalities including the payment of the balance dues. Instead of clearing the outstanding dues and other paper work to take the possession of the Apartment in terms of Notice of Offer of Possession dated 12.12.2017 and perform its contractual obligations, the Complainant had chosen to approach this Hon'ble Regulatory Authority with a frivolous Complaint only with a malafide intention to unjustly enrich himself and in one way or the other cover-up his own breaches and non-performance of his contractual obligations. Hence, the Complainant is not entitled to any relief whatsoever from this Hon'ble Regulatory Authority.

35. The respondent submitted it is pertinent to mention here that as per section 19 (10) of the said Act, it is the duty of the allottee to take physical possession of the unit being the residential apartment herein upon the receipt of the occupation certificate, however, in the present case the

complainant instead of performing his contractual obligations, has filed the present complaint and has not come forward to take physical possession of the apartment even after issuance of notice of offer of possession to him. Thus, the Complainant is not entitled to get any reliefs as sought for from this Hon'ble Regulatory Authority. Failure on the part of the complainant to perform his contractual obligations disentitles him from any relief.

36. It is further submitted that this Hon'ble Regulatory Authority has vide its order dated 13.09.2018 in 'M/s Sunil Paul v. Parsvnath Developers Ltd.', bearing Complaint No. 29 of 2018 expressly stated that the Complainant was not entitled to refund of the amounts paid but was merely entitled to delay compensation. It is stated that in the said case, the builder had completed the construction of majority towers and the tower of the complainant was under construction however substantial construction had been carried out.
37. It is submitted that the construction of the complex and more particularly the tower /phase in which the apartment is situated has already been completed and possession offered. The competent authority has already granted occupancy certificate(s) for the various developments undertaken in the group housing colony including 'M3M Golfestate Fairway East'

being an integral an integral block / segment / constituent / part / phase of the group housing colony being developed in a planned and phased manner over a period of time. The following facts are relevant in this regard:

7.1 As per the apartment buyer agreement (executed between parties on 16.02.2012) possession of the apartment was agreed to be handed over within a period of thirty six (36) months plus 6 months grace period, from the date of commencement of construction which mean the date of laying of the first plain cement concrete/ mud-mat slab of the tower.

38. The respondent submitted that the first plain cement concrete was laid on 19.11.2012, and the agreed period was subject to all just exceptions Within the agreed time period and subject to all just and fair exceptions, the construction has been undertaken and occupancy permission from the competent authority was duly applied for. The competent authority after due consideration and examination of every aspect granted the occupancy certificate on 25.07.2017. This very fact substantiates and proves that the construction of 'M3M Golfstate Fairway East' Complex and more particularly the apartment in question was undertaken and completed as per the specifications mentioned in the sanctioned plan and within the contractual commitments and the complex is/was ready

for occupancy. In the intervening period when the construction and development was under progress there were various instances and scenarios when the construction and development works had to be put on hold on account of non-availability of building material pursuant to the directions issued by the Hon'ble Punjab and Haryana High Court on mining activities and also on account of various environmental related directions issued by various judicial/quasi-judicial authorities. At certain instances owing to them prevailing environmental conditions in the National Capital Region the construction and development works had to be put to hold repeatedly.

39. The respondent submitted that after making sincere efforts despite the force majeure conditions as mentioned above, the respondent completed the construction and thereafter applied for the occupancy certificate (OC) for the said tower (wherein said apartment is situated) on 23.12.2016. That despite best efforts and regular follow ups, the respondent received the occupation certificate on 25.07.2017. That this delay of the competent authorities in granting occupation certificate cannot be attributed in considering the delay in delivering the possession of the apartment, since on the day the respondent

applied for occupation certificate, the unit i.e. the apartment in question was complete in all respect.

40. The respondent submitted in this regard it may be Clause 46 of the apartment buyers agreement dated 16.02.2012 was further amended vide addendum dated 25.06.2014 to the apartment buyer's agreement dated 16.02.2012 and it was agreed to that :

41. "The company shall not be responsible or liable for not performing any obligation if such performance is prevented, delayed or hindered by any act not within the reasonable control of the company. Such acts shall mean any event which by itself or in combination with other events or circumstances could not (i) by exercise of reasonable diligence, or (ii) despite adoption of reasonable precautions, have been prevented, and which impairs or otherwise adversely affects the company's ability and capacity to perform its obligations and which events and circumstances shall include but not limited to a) acts of God, such as fire (including fire resulting from explosion), lightning, drought, flood, typhoon, hurricane, tornado, cyclone, tempest, storm, inundation, earthquake (including earthquake's shock and fire), epidemics and other natural disasters; b) mischief, explosions (including fire resulting from explosion), aircraft impact damage; c) strikes or

lock outs, industrial disputes; d) non-availability of cement, steel, or other intermediaries or otherwise; e) war and hostilities of war (whether war be declared or not), riots or civil commotion; f) delay or imposition of any adverse condition or obligation in any approval from any Government Authority including but not limited to delay in issuance of occupation and completion certificate; g) promulgation or amendment of any law, rule or regulation or the issue of any injunction, court order or direction from any Government Authority that prevents or restricts the Company / Associate Companies from complying with the terms and conditions as contained in this application; h) economic recession and i) any event or circumstance similar or analogous to the foregoing or beyond the control of the Company. In case of a force majeure event, the company shall be entitled to reasonable extension of time for performance of its obligations or to put in abeyance or otherwise entirely abandon the Project.

42. The respondent submitted upon receipt of the occupancy certificate, the respondent issued notice for offer of possession to the complainant on 12.12.2017 along with statement of account of the complainant for the said apartment.
43. The respondent submitted even after the receipt of the notice of offer of possession dated 12.12.2017, the complainant was

not ready and willing to take the possession of the apartment and/or clear his overdue payments and complete the possession related formalities. Since the complainant failed to turn up and perform his contractual obligations by making the balance payment and also completing the possession related formalities and paper work, the respondent issued a reminder letter dated 24.01.2018 again calling the complainant and advising the complainant to clear the overdue.

44. The respondent submitted even after the lapse of months of receiving the above communications / notices and the repeated follow-ups, the complainant has failed to comply with his contractual obligations and is in breach and default of his contractual obligations and there has been delay and laches on the part of the complainant. Thus, the respondent was compelled to issue pre-cancellation notice dated 13.07.2018 advising the complainant to clear the overdue payments and complete the requisite possession related formalities.

45. The respondent submitted that instead of coming forward, performing his agreed contractual obligations by taking the possession of the apartment after clearing the overdue payments, the complainant has approached this Hon'ble Regulatory Authority with frivolous allegations. On the

contrary, respondent has already spent money towards the construction and development of the complex including the apartment and the apartment was made ready for occupation and the offer for possession was issued to the complainant thereby calling upon the complainant to pay the outstanding amount and complete the possession related formalities. Therefore, it is the respondent who after having spent huge sums of money has been unable to realise the proceeds of the apartment from the complainant and its legitimate dues have been withheld by the complainant and therefore on account of such breaches and defaults of the complainant, it is the respondent who is entitled to claim compensation from the complainant. It is submitted that as per settled law as held by the Hon'ble Supreme Court of India a defaulter is not entitled to any equitable relief.

46. The respondent submitted the above events and documents unerringly proves that there was no delay in offering possession and it is the complainant who withheld the performance of his contractual obligations for no just cause and reason and is in default of his contractual obligations.
47. The respondent submitted that the apartment buyers agreement was entered into between the parties and, as such, the parties are bound by the terms and conditions mentioned

in the said agreement. The said Agreement was duly signed by the complainant after properly understanding each and every clause contained in the agreement. The complainant was neither forced nor influenced by the respondent to sign the said agreement. It was the complainant who after understanding the clauses signed the said agreement in his complete senses.

48. The respondent submitted That it is trite law that the terms of the agreement are binding between the parties. The Hon'ble Supreme Court of India in the case of "Bharti Knitting Co. vs. DHL Worldwide Courier (1996) 4 SCC 704" observed that a person who signs a document containing contractual terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect. It is seen that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract; it is for the party to establish exception in a suit. When a party to the contract disputes the binding nature of the signed document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents.

49. That the Hon'ble Supreme Court of India in the case of "Bihar State Electricity Board, Patna and Ors. Vs. Green Rubber

Industries and Ors, AIR (1990) SC 699” held that the contract, which frequently contains many conditions, is presented for acceptance and is not open to discussion. It is settled law that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect.

50. Since there is arbitration clause in the agreement, hon’ble regulatory authority should direct the complainant to resort to arbitration and so the present complaint is liable to be dismissed:- The relationship of the Complainant and the Respondent is defined and decided by the Apartment Buyer’s Agreement executed between both parties. It is submitted that a specific clause for referring disputes to Arbitration is included in the said Agreement vide Clause 56 of the Agreement which is extracted hereunder;

“56.1- That all or any dispute connected or arising out of this Agreement or touching upon or in relation to terms of this Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the Parties hereto shall be resolved through the process of arbitration.....”

51. The respondent submitted that which had been further amended vide addendum dated 25.06.2014 to the apartment buyer's agreement dated 16.02.2012.
52. The respondent submitted that, both the parties are contractually bound by the above condition. In view of clause 56.1 of the apartment buyer's agreement, the captioned complaint is barred. The complainant ought to have resorted to arbitration instead of having approached this hon'ble regulatory authority with the captioned complaint. It is respectfully submitted that in light of the arbitration clause in the agreement, this Hon'ble Regulatory Authority does not have the jurisdiction to adjudicate upon the instant complaint and ought to dismiss the same

Determination of Issues

53. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:
54. In respect of **first and second issue**, the authority has observed that the complainants have already received the occupancy certificate dated 25.07.2017 and offered possession of the booked unit to the respondents vide letter dated 12.12.2017. However, the respondent has failed to

deliver the possession of the said unit before or by the due date of possession i.e. 19.05.2016. Thus, the complainant is liable for delayed possession charges i.e prescribed rate of interest on the amount paid by the complainant from the due date of possession till the offer of possession.

Findings of The Authority:

55. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.

56. The authority is of the considered opinion that it has been held in a catena of judgments of the Hon'ble Supreme Court, particularly in National Seeds Corporation Limited v. M.

Madhusudhan Reddy & Anr. (2012) 2 SCC 506, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

57. Further, in Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer. This view has been upheld by the Supreme Court ---in civil appeal no.23512-23513 of 2017 and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.

Decision and Directions of the Authority:

58. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions in the interest of justice and fair play:

- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.70% per anum w.e.f. 19.05.2016 as per the provisions of proviso to section 18(1) of the real estate (Regulation and Development) Act, 2016 till offer of possession.
- ii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The promoter shall not charge anything from the complainant which is not part of apartment buyer's agreement.
- iv. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.70% by the promoter which is same as is being granted to the complainant in case of delayed possession.

v. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

vi. The order is pronounced.

59. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram



(Subhash Chander Kush)

Member

Dated: 30.04.2019

Judgement Uploaded on 30.05.2019

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