

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 282 of 2020
Date of Decision: 18.11.2022

1. Anurag Sharma, S/o Dr. Raj Kumar, Resident of 2/501, Sagavi CGHS GH-85, Sector-55, Gurugram,122011.
2. Seema Sharma W/o Shri Anurag Sharma, Resident of 2/501, Sagavi CGHS GH-85, Sector-55, Gurugram,122011.

...Appellants-Allottees

Versus

1. M3M India Pvt. Ltd., 6th Floor, M3M Tee Point, Sector 65, Gurugram Manesar Urban Complex, Gurugram-122101, Haryana, India.
2. Rajan Kapoor (Authorised Signatory)
3. Roop Kumar Bansal (Director)
4. Vivek Ranjan (Director)
5. Pankaj Bansal (Director)
6. Vijay Kumar Aggarwal (Director)

Respondents no. 2 to 6 Addresses:

6th Floor, M3M Tee Point, Sector 65, Gurugram Manesar
Urban Complex, Gurugram-122101, Haryana, India.

...Respondents

CORAM:

**Shri Inderjeet Mehta,
Shri Anil Kumar Gupta,**

**Member (Judicial)
Member (Technical)**

Argued by: Shri A.K. Mishra, Advocate,
Ld. counsel for appellants.

Shri Aman Arora, Advocate,
Ld. counsel for respondents.

ORDER:**Anil Kumar Gupta, Member (Technical):**

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called the Act) against order dated 09.01.2020 passed by the Ld. Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority'), whereby complaint No. 2060 of 2019 filed by the Appellants was disposed of by the following order:

“8. As such the complainants are entitled for delayed possession charges at prescribed rate of interest @ 10.20% p.a. w.e.f. 01.01.2017 till offer of possession i.e. 29.05.2017 as per provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 read with rule 15 of the rules.

9. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession.

10. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The respondents shall not charge anything from the complainants which is not part of BBA.

11. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest@ 10.20% by the promoter which is the same as is being granted

to the complainants in case of delayed possession charges.

2. As per the averments in the complaint, the appellants had booked a “food-Court Kiosk” No. SB/FOOD Court/2L/04/010, 2nd floor, Block-4, admeasuring 646.9 sq. ft. including exclusive use of one car parking space in the respondents-promoter’s project M3M URBANA, Sector-67, Urban Estate, Gurugram. The Buyer’s agreement between the parties was signed on 01.07.2015. The total sale consideration was Rs.67,25,765.6. The due date of delivery of possession as per clause 15.1 of the agreement is twelve months from the date of execution of the agreement + grace period of 180 days which comes out 01.01.2017. The possession of the unit was offered vide respondent’s letter dated 29.05.2017 though received by the appellants on 07.07.2017 along with a demand of Rs. 13,84,458/-.

3. It was pleaded in the complaint that on visit of the appellants to the site on 13.07.2017, it was found that the shop which they have purchased has not been completed as per the specification as promised by the respondents. The shop was without covered (i.e. no roof) & AC dining hall, and certain other work were also in unfinished condition. Since, the food court/restaurant without AC dining hall was going to adversely affect the food business, therefore, the appellants immediately lodged their protest to respondents and requested

to complete the work as per specifications as enumerated in the agreement. It was further pleaded that the appellants made various request to the respondents to provide kiosk as per the specifications and with AC dining hall and when their requests were not resolved the appellants sought refund of their paid amount along with interest on 26.12.2017 from the respondents, however, the appellants filed the complaint with the Id. Authority for the following relief: -

“Direct the respondents to handover the possession of the food kiosk with AC covered dining hall bearing no. SB/Food court/2L/04/010, admeasuring approximately 646.9 sq. ft. (60.1 sq. mtrs.) including exclusive use of 1 car parking spaces situated at M3M Urbana, Sector 67. Gurugram, Haryana.”

4. The complaint was resisted by the respondents on certain technical grounds. It was also pleaded that the construction of the project is complete and the occupation certificate has been issued on 23.02.2017. The notice for offer of possession to appellants was sent on 29.05.2017. It was submitted that the kiosk is covered and air conditioning system has been duly provided. All other pleas raised by the appellants were controverted and it was pleaded that the complaint filed by the appellants is without any merits and deserves to be dismissed.

5. After hearing the parties, the Id. Authority passed the order dated 09.01.2020 which is already brought out in the upper part of this appeal.

6. We have heard Shri A.K. Mishra, Advocate, Ld. counsel for the appellants and Shri Aman Arora, Advocate, Id. counsel for the respondents and have carefully gone through the record of the case.

7. Ld. counsel for the appellants contended that the appellants purchased the food court Kiosk SB/FOOD Court/2L/04/010, admeasuring approximately 646.9 sq. ft. including use of one car parking space for a total consideration of Rs. 67,25,765/-. As per the agreement, the respondents were to provide covered kiosk and AC dining hall. The appellants on 07.07.2017 received a letter from the respondents intimating that the project has been completed and were asked to make final payment and take possession of the unit. The appellants visited the site on 13.08.2017 and found that kiosk/shop allotted to them was not constructed as per specification and is incomplete. The kiosk was without covered (i.e. no roof) and the dining hall is without air conditioning system and certain others works were also incomplete. Therefore, the appellants sent an email dated 23.08.2017 about the project being incomplete.

8. He further contended that the respondents vide email dated 27.09.2017 intimated that all the kiosks are covered and are in air-conditioned space.

9. Ld. counsel for the appellants further contended that the appellants wrote an email on 14.08.2017 intimating the respondents that the work of installation of Air conditioning system for covered dining hall has not yet started. A generic estimate is that this work needs at least two more months.

10. He further contended that the appellants wrote a letter dated 26.12.2017 intimating the respondents that the allotted unit is not provided with covered air-conditioned dining hall and appellants are not getting food court unit as per the agreement, therefore, the appellants would like to withdraw from the project and requested for refund of all their considerations, paid till date, with interest as per RBI guidelines.

11. He further contended that another email dated 04.02.2019 was sent to the respondents intimating that the work is not as per the committed specifications and dining hall for food court kiosks is without centralized AC, and, therefore they want to withdraw from the project and sought refund along with interest.

12. He contended that vide application dated 14.03.2022, the appellants have provided 11 photographs to show that the project of the respondents and the said kiosk

was not complete on the date of offer of possession and the construction has been subsequently completed after the offer of possession.

13. With these pleas, the appellants sought following reliefs in the appeal:-

“(a) That the order dated 09.01.2020 passed by the adjudicating authority may kindly be set aside.

(b) Direct the respondents to handover the possession of the food kiosk with AC covered dining hall bearing no. SB/Food court/2L/04/010, admeasuring approximately 646.9 sq. ft. (60.1 sq. mtrs.) including exclusive use of 1 car parking space situated at M3M URBANA, Sector 67. Gurugram, Haryana.

(c) That the respondents be directed to compensate the appellants for delay in handing over of the possession of the Kiosk, and the Appellants be given an option either to accept the possession or to reject the respondents offer and request for refund of their money with interest.

(d) The cost of proceedings be also awarded in favor of the appellants and against the respondents.”

14. Per contra, ld. counsel for the respondents contended that the construction of the project is complete

and AC dining hall has been provided as per the agreement. He further contended that the occupation certificate has been received on 23.02.2017. The possession was offered to the appellants on 29.05.2017. He further contended that as per the statement of accounts-cum-in-invoice attached with the officer of possession, the appellants are to pay Rs. 9,76,458.00 plus Stamp Duty charges of Rs. 4,08,000 (Total payment of Rs. 13,84,458/-). But till date, they have not paid the said amount. He further contended that a reminder to deposit the aforesaid amount was sent on 18.07.2017. He contended that the last reminder to pay the above said amount was sent to the appellants on 20.07.2018. He contended that vide application dated 20.09.2021, the respondents have placed on record certain photographs to show that the project and the kiosk allotted to the appellants is complete in all respect. With these pleas, it was contended that the appeal has no merit and the same may be dismissed.

15. We have duly considered the aforesaid contentions of the parties.

16. The Appellants booked a "food - Court Kiosk" No. SB/Food-Court/2L/04/010, 2nd floor, Block-4 admeasuring ring 646.9 ft.² (super area revised from 646.9 ft.² to 691.21 ft.² as per the notice of possession dated 29.05.2017) in the respondents – promoter's project M3M URBANA, Sector – 67, Urban Estate, Gurugram. The buyer's agreement between the parties was signed 01.07.2015. The total sale consideration

was Rs.75,27,104/- (as per statement of accounts come invoice). The due date of delivery of possession as per clause 15.1 of the agreement is 12 months from the date of execution of the agreement plus grace period of 180 days which comes out to 01.01.2017. The occupation certificate was issued on 23.01.2017. The possession of the unit was offered by the appellants vide its letter dated 29.05.2017.

17. The main contention of the appellants is that the construction of the project of the appellants was not complete at the time of handing over of the possession and the respondents were to provide the Kiosk with air-conditioned dining hall, whereas the dining hall is without Air Conditioning system. To support his contention, he has relied upon his email dated 14.08.2017, vide which the appellants have written to the respondents intimating that the dining hall being provided with the kiosk is not air-conditioned. Further vide letter dated 26.12.2017 and email dated 04.02.2019, the appellants intimated the respondents that since the dining hall is not provided with air conditioning system, therefore, they are withdrawing from the project and sought refund of the amount along with interest. On the other hand, the respondents are relying upon the fact that on completion of the work in all respect the valid occupation certificate has already been issued on 23.01.2017 and the dining hall is provided with air conditioning system as per the agreement. The offer of possession letter was issued on

29.05.2017 along with a demand of Rs 13,84,458/- which has not been paid by the appellants till date. The respondents have sent two reminders dated 18.07.2017 and 20.07.2018 to the appellants to clear the outstanding amount and further intimating therein that failure to pay the balance amount, the unit allotted to the appellants would be cancelled.

18. Both parties have supplied photographs to support their contentions. These photographs do not have any legal credence and therefore cannot be relied upon.

19. The appellants have not provided any evidence which is sufficient to establish that the project is not complete and the dining hall is not provided with air conditioning system.

20. The appellants have filed the complaint for possession of the Kiosk along delayed possession interest which has been granted by the Ld. authority. The appellants have not been able to establish anything wrong in the impugned order.

21. No other point was argued before us.

22. Consequently, the appeal filed by the appellants is dismissed being without any merit.

23. No order to cost.

24. Copy of this order be sent to the parties/Ld. counsel for the parties and Ld. Haryana Real Estate

Regulatory Authority, Gurugram.

25. File be consigned to the record.

Announced:
November 18 ,2022

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal
Chandigarh

Anil Kumar Gupta
Member (Technical)

Rajni Thakur

Judgment-HREAT