

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

Complaint no. : 1820 of 2019
Date of filing of complaint: 28.11.2019
Order reserved on : 31.01.2023
Date of pronouncement: 28.03.2023

Mr. Dinesh Tyagi
R/o: - B-702, The Palm Springs
Sec-53, Golf Course Road, Gurugram-122002

Complainant

Versus

M3M INDIA PVT LIMITED,
Office at: M3M India Pvt. Ltd. 6th Floor,
'M3m Tee Point', North Block,
Sector 65, Gurugram 122101,
Haryana, India

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Complainant in person with Sh. Garvit Gupta
Advocate
Ms. Shriya Takkar Advocate

Complainant

Respondent

ORDER

1. This complaint has been filed by the complainant/allottee 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 provision 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	M3M Latitude, Sector-65
2.	Nature of the project	Residential
3.	Unit no.	ML TW-01/1003
4.	Unit area	2875 sq. ft.
5.	Application form	07.02.2015 [page 72 of the reply]
6.	Date of allotment	16.02.2015 [annexureA-1, page 38 of the complaint]
7.	Date of builder buyer agreement	Not executed
8.	Possession clause [as per the application form]	<i>Clause 46.</i> <i>Subject to Force Majeure conditions and subject to the Applicant having complied with all obligations under this application, including but not limited to the timely payment of each and every</i>

		<p>installment of the Total Consideration and other dues and charges and also subject to the Applicant having complied with all documentation as may be required by the Company including but not limited to execution of the maintenance agreement, possession of the Apartment may be offered within a period of forty eight (48) 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 Project or the date of execution of the Agreement, whichever is later ("Commitment Period"). In case the Company is unable to offer possession within such time due to any reason, the Applicant agrees that the Company shall be entitled to an extension of One Hundred and Eighty (180) days ("Grace Period") after the expiry of the Commitment Period. If the Company is still unable to offer possession by the end of such Grace Period, subject to compliance of conditions herein above mentioned, the Company shall be liable to pay compensation at the rate of Rs. 10/- (Rupees Ten Only) per sq. ft. of the Super Area ("Delay Compensation" of the Apartment for every month of delay thereafter until the date of notice of possession.</p>
9.	Date of commencement of the project	<p>26.12.2016</p> <p>[first plan cement concrete /mud slab of the tower was laid on 26.12.2016]</p>

10	Due date of possession	26.12.2020 [as per the date of commencement of construction dated 26.12.2016]
11	Total sale consideration	Rs. 3,86,15,047/- [as per the SOA, page 14 of the additional documents submitted by the respondent]
12	Total amount paid by the complainant	Rs. 1,04,01,279/- [as per the SOA, page 14 of the additional documents submitted by the respondent]
13	OC received on	21.01.2021 [page 4 of the promoter information]
14	Offer of possession on	12.02.2021 [page 11 pf the of the additional documents submitted by the respondent]
15	1. Pre-cancellation letter issued on	17.05.2019
	2. Second payment request reminder dated	20.03.2021
16	3. Cancellation letter dated	23.03.2022
17	Grace period utilization	Not allowed

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:-

- I. That the complainant was allotted apartment no. ML TW-01/1003 having super area 2875 sq. ft. approx. vide the allotment letter dated 16.02.2015. That the total consideration to be paid for the villa was Rs. 3,37,06,750.00, whereas, the complainant has paid a total of Rs 1,04,01,280.00 towards the installments of the said apartment. As per the application form for the project, it was promised and assured by the builder that possession would be delivered in 48 months but very cleverly induced the words "From the date of commencement of the construction" in place of "From the date of receiving the booking amount" Thereby, the respondent was required to hand over the possession of the apartment till February 2019.
- II. That the respondent very cleverly evaded showing the apartment to the complainant at various instances. Neither the completion of (48 months, which is illegal and unjust. Thus, the demand for instalment is null and void. The complainant has suffered an unnecessary delay. Therefore, the complainant has filed the present complaint before this authority.
- III. There is no second thought to the fact that the complainant has paid approximately 33% of the total consideration price of the unit. The complainant has paid an amount of Rs. 1,04,01,280/- prior to the signing of any BBA. This is a clear contravention to the provision under section 13 of the Act, 2016. The Project M3M LATITUDE is registered under RERA.

- IV. That it is evident that the respondent is involved in unethical/unfair practices to extract money from the complainant although the project has not been completed and the respondent company capriciously involved in demanding money illegally from the complainant.
- V. The complainant should have received the offer of possession of the unit on date February 2019 but was delayed possession by almost 3 years approx. by the respondent and the possession letter was not received to date. It is pertinent to mention that the construction is currently stalled, and there is no clear picture as to the when the project shall be ready for possession as the construction is completely abandoned and the pace of the work on site coupled the photos of the existing structure, the possibility of the handing over of the possession, even, by the end of 2021, are non-existent and by then the delay would be above 3 years.
- VI. That the respondent has to date have not provided the complainant any BBA, the respondent collected more than 10% of the consideration amount and yet has miserably failed to hand over the possession of the said unit. The respondent is liable to pay an amount of Rs. 1,04,01,280/- already paid by the complainant with an interest of MCLR+2% (Per Annum) till date, on the total amount paid by the complainant from the date of receipt of each payment.

- VII. That by having intentionally and knowingly induced and falsely misrepresented to the complainant on the construction activity at the site and by giving false delivery schedules and thereby making the complainant act under its misrepresentations and owing to all the deliberate lapses/delays on the respondent's part, the respondent is liable to pay the entire amount collected by the respondent with interest from the date of receipt of the individual payments, to the complainant.
- VIII. The complainant feels that they were being subjected to unethical/unfair trade practice. The above said acts of the respondent clearly show that the respondent have been indulging in unfair trade practices and have also been providing gross deficient services and misrepresenting facts to the complainant. All such acts and omissions on the part of the respondent caused an immeasurable mental stress and agony to the complainant.
- IX. This deceptive practice of claiming the completion of the superstructure by the respondent amounts to deficiency in service, and further, the said is expected to delay the receipt of the final occupation certificate for the project which is an additional reason why the complainant seeks to get the refund of the amount paid to the respondent along with interest.
- X. That the respondents are guilty of deficiency in service within the purview of provisions of the Act, 2016 and the provisions of

Rules, 2017. The complainant has suffered on account of deficiency in service by the respondents and as such the respondents are fully liable to cure the deficiency as per the provisions of the Act, 2016 and the provisions of Rules, 2017.

- XI. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondents in sale of their units and the provisions allied to it. The modus operandi adopted by the respondents, from the respondents' point of view may be unique and innovative but from the consumers point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the consumers, be it either through not implementing the services/utilities as promised in the brochure or through not executing the project in time.
- XII. That the complainants after losing all the hope from the respondent company, after being mentally tortured and also losing considerable amount, are constrained to approach this authority for redressal of their grievance.
- XIII. It is stated that the project of the respondent is situated in Gurgaon, Haryana, hence the said complaint is amenable to the territorial jurisdiction of this authority. The demand for a refund for the consideration paid under the builder buyer's agreement hence falls within the pecuniary jurisdiction of this court.

XIV. That the complainant has not filed any other complaint before any other forum against the erring respondent and no other case is pending in any other court of law. The complainant after losing all the hope from the respondent company, after being mentally tortured and also losing considerable amount, are constrained to approach this authority for redressal of their grievance. Hence this petition.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. Direct the respondent to refund the total amount paid to him amounting to Rs. 1,04,01,280/- along with interest calculated at the rate of Highest MCLR of SBI+ 2% p.a. at the earliest.
 - ii. Direct the respondent to pay compensation for harassment / injury both mental on account of mental agony, hardship and trauma and physical to the tune of Rs. 15,00,000/-.
 - iii. Litigation cost of Rs. 1,00,000/-.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds: -
 - a) That the respondent i.e., M/s M3M India Private Limited is engaged in the business of construction and development of real

estate projects and has carved a niche for itself in the real estate sector. The present reply for and on behalf of the respondent is being filed by Mr. Prachet Kumar Jaisingh, who has been duly authorized by the board of directors of the respondent.

- b) At the outset, the respondent denies each and every statement, submission and contention set forth in the complaint to the extent the same are contrary to and/or inconsistent with the true and complete facts of the case and/or the submissions made on behalf of the respondent in the present reply. The respondent further humbly submits that the averments and contentions, as stated in the complaint under reply, may not be taken to be deemed to have been admitted by the respondent, save and except what are expressly and specifically admitted, and the rest may be read as travesty of facts.
- c) 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, 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.

- d) That in exercise of the powers conferred by sub-section (1) read with sub-section (2) of section 84 of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016), an amendment was made and called as the Haryana Real Estate (Regulation and Development) Amendment Rules, 2019, which effectively came into effect on 12.09.2019 i.e. the date of their publication in the official gazette.
- e) It is pertinent to mention here that competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction and any order passed would be null and void. That upon conjoint reading of Rule 28 and Rule 29 it become quite evident that post Haryana Real Estate (Regulation and Development) Amendment Rules, 2019, the Adjudicating officer has no power to decide the issue qua refund and interest. That the Adjudicating officer can only decide the issue of compensation subject to an enquiry made by the authority under Rule 28.
- f) That the complainant applied for booking of a residential apartment and submitted an application for the due allotment of a residential apartment in the project. The complainant also duly signed and understood the indicative terms and conditions of the allotment along with the application form and by signing the same agreed to remain bound by the said terms and conditions. All the terms and conditions including the cost of the apartment, size/super area of the apartment, timeline for possession etc. and

the exceptions thereto were clearly stated and mentioned in the said application along with indicative terms and conditions. In due consideration of the commitments made by the complainant to make timely payments and to remain bound by the various terms and conditions, the respondent company provisionally allotted a residential apartment bearing no. ML TW-01/1003 to the complainant vide allotment letter dated 16.02.2015 in the project 'M3M LATITUDE', Sector 65 Gurugram. It is submitted that two copies of the apartment buyer's agreement were dispatched to the complainant along with a cover letter dated 18.04.2015 for signing and execution at his end. It is submitted that the terms contained in the apartment buyer's agreement were similar and uniform to those contained in the application form dated 16.02.2015.

- g) That it is pertinent to mention here that in accordance with clause 46 of the application for allotment, the possession was to be handed over within 48 (Forty-Eight) months from the date of commencement of construction which shall mean the date of laying the first plain concrete/ mudmat slab of the tower or date of execution of the agreement whichever is later plus 6 (Six) months (180 days) grace period.
- h) That from the perusal of above it is clear that the date of delivery of possession has to be calculated from the date of commencement of construction which shall mean the date of laying of the first plain cement concrete/mud mat slab of the Tower or the date of execution of the agreement, whichever is later. It is submitted that two copies of the buyers agreement

were dispatched to the complainant along with a cover letter dated 18.04.2015 for signing and execution at his end. It is submitted that the terms contained in the buyers agreement were similar and uniform to those contained in the application form dated 16.02.2015 and whereas the complainant till date has not executed the buyers agreement at his end. It is submitted that the first plain cement concrete/mud mat slab of the tower was laid on 26.12.2016. The complainant, due to his refusal to execute the standard apartment buyer's agreement, is still bound by the terms of the application form wherein clause 46 of the application form states the timeline for possession. That the date of delivery of possession will be calculated from the date of the first plain cement concrete/mud mat slab of the tower and thus lies somewhere in the year 2021. Thus, the present complaint is premature and hence is liable to be dismissed.

- i) That the complainant had expressed his interest in September 2014, seeking priority in allotment of a residential apartment in the said project. That in the said expression of interest ("EOI") it was specifically agreed between the parties that the EOI just expresses the desire of the complainant to seek an allotment in any of the housing project of the respondent and the same does not create any right or interest whatsoever in favour of the complainant in any unit. That the complainant applied for the allotment rights in an apartment in the complex 'M3M Latitude' which is being developed at Sector-65, Gurugram, Haryana vide application form dated 07.02.2015. That thereafter the complainant was allotted an apartment bearing No. ML TW-

01/1003 admeasuring 2875 sq.ft. vide allotment letter dated 16.02.2015. It is submitted that the cost of the said unit for an area measuring 2875 sq. ft. was Rs.3,37,06,750/- plus taxes and other charges.

- j) The buyers agreement was sent to the complainant along with cover letter dated 18.04.2015 for execution at their end. It is submitted that the terms contained in the apartment buyer's agreement were similar and uniform to those contained in the application form dated 16.02.2015. That the complainant himself is a chronic defaulter as he has failed to make timely payments to the respondent company. It is submitted that all the demands were raised as per the payment plan opted by the complainant. That vide letter dated 10.04.2019 the respondent company raised the demand on the completion of the top floor slab that was payable on or before 30.04.2019. That since the complainant failed to make the payment the respondent company issued a reminder letter dated 02.05.2019. That since the complainant failed to make the payment the respondent company was constrained to issue a pre-cancellation notice dated 17.05.2019. That since the complainant again did not respond/reply to the pre-cancellation letter, the respondent was forced to issue a last & final opportunity letter dated 07.06.2019 for making payment of Rs. 1,07,20,795/-.
- k) That being totally aware about the payment plan, the complainant has still not made the payment and therefore is a chronic defaulter and is liable to pay interest to the respondent for the delay in payment as per section 19(6) and 19(7) of the Act. It is

pertinent to mention here that under section 19 (6) of the RERA Act, the complainant is responsible to make necessary payments in the manner and within time as specified in the agreement and in case of default the complainant is liable to pay interest for delay under Section 19(7) of the RERA Act.

- l) It is submitted here that the complainant failed to make timely payments and is a chronic defaulter. The complainant till date has an outstanding due of Rs. 1,10,49,436 (including interest for delay) that has to be paid by him to the respondents.
 - m) It is further submitted that if refund is allowed, other buyers/customers who have invested their hard earned money in the complex will suffer irreparable losses and the complex will never be made fully occupied if such an approach continues. Thus, to protect the interest of one person, the adjudicating officer can't jeopardize the interest of others who are genuine purchasers and are not mere speculators. It is further submitted that no illegal demands are being charged from by the respondent and thus, the said fact requires no indulgence of adjudicating officer.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.
- E. Jurisdiction of the authority**
8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees 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 promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. 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 complainant at a later stage.

F. Findings on the relief sought by the complainant.

F. I Direct the respondent to refund the total amount paid to him amounting to Rs. 1,04,01,280/- along with interest calculated at the rate of Highest MCLR of SBI+ 2% p.a. at the earliest.

12. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by it in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or***
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

13. In this case complainant-allottee already have to make their intention clear to withdraw from the project on 28.11.2019. It is evident from perusal of the case file that the allotment of the unit was made in



favour of the complainant on the basis of application form dated 16.02.2015 for a sum of Rs. 3,86,15,047/-. No builder buyer's agreement executed between the parties. The due date for completion of the project and offer of possession of the allotted unit was agreed upon as 26.12.2020. The possession of the subject unit was to be offered within 48 months 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 project or the date of execution of the agreement, whichever is later with a grace period of 6 months after expiry of the committed period. The due date of completion of project and offering possession of the unit comes out 26.12.2020. But the respondent failed to carry out the construction of the project and which led to their withdrawal from the project and seeking refund by filing of complaint. However, the complainant has approached the authority on 28.11.2019 i.e., before due date of handing over of possession.

14. The Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"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."

15. It is evident from the above mentions facts that the complainant paid a sum of Rs. 1,04,01,279/- against sale consideration of Rs.3,86,15,047 /- of the unit allotted on 16.02.2015. Though the amount paid by the complainant against the allotted unit is about 27% of the sale consideration.
16. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainant against the allotted unit and is directed to refund the same in view of the application form for allotment by forfeiting the earnest money which shall not exceed the 10% of the basic sale consideration of the said unit as per payment schedule and shall return the balance amount along with interest at the rate of 10.70% (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, from the date of surrender i.e., 28.11.2019 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
- F.II Direct the respondent to pay compensation for harassment / injury both mental on account of mental agony, hardship and trauma and physical to the tune of Rs. 15,00,000/-.

17. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (SLP(Civil) No(s). 3711-3715 OF 2021)*, held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

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):
- i. The respondent is directed to refund to the complainant the paid-up amount of Rs.1,04,01,279/- after deducting 10% of the basic sale consideration of Rs. 3,86,15,047/- and that amount should have been made on the date of surrender i.e., 28.11.2019. Accordingly, the interest at the prescribed rate i.e., 10.70% is

allowed on the balance amount if any, from the date of surrender till date of actual refund.

- 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. Complaint stands disposed of.

20. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.03.2023

HARERA
GURUGRAM