



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

Complaint no. : 4927 of 2021
Date of complaint : 28.12.2021
Date of decision : 04.10.2023

1. Naveen Kumar Konda,
2. Sandhya Konda,
Both R/o: - Bhartiya City, Nikoo Homes 1,
Flat no. 40501, Tower 4, Thanasindra Main Road,
Bangalore-560064.

Complainants

Versus

M3M India Private Limited
Regd. Office At: SB/C/5L/Office/008,
M3M Urbana, Sector-67,
Gurugram Manesar Urban Complex,
Gurugram, Haryana-122101.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Sujit Kumar Singh (Advocate)
Shriya Takkar (Advocate)

**Complainants
Respondent**

ORDER

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



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

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	M3M Natura, Sector- 68, Gurgaon
2.	Project area	13.2118 acres
2.	Unit no.	NA N2/1103
3.	Unit area	703.44 sq. ft.
4.	Date of allotment	09.05.2019 (Page 36 of the complaint)
5.	Tripartite agreement executed on	11.06.2019 (Page 17 of the complaint)
6.	Date of builder buyer agreement	18.07.2019 (Page 43 of the complaint)
7.	Possession clause	Definition clause 12. "Committed period" Shall mean 30.11.2022 as notified by the promoter to the authority at the time of registration of the group housing colony under the act, for compliance of the group housing colony including ' M3M Natura, or as may be further revised/approved by the authorities.
8.	Due date of possession	30.11.2022
9.	Total sale consideration	Rs. 82,16,265.45/- (As per payment plan, page 85 of the reply)
10.	Amount paid by the complainants	Rs. 63,56,867.24/- (page 20 of reply)
11.	Occupation certificate	14.09.2020 (Page 102 of the reply)



12.	Notice of offer of possession	17.10.2020 [page 105 of complaint]
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B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- I. That the complainants were allotted an apartment bearing no. NA N2/1103 in the project named "M3M Natura" at Sector-68, Gurugram vide allotment letter dated 01.05.2019 for a total sale consideration of Rs.82,16,265.17/- and the complainants have paid a sum of Rs.63,56,867.24/- against the same in all.
- II. That the booking of the said unit was made under the respondent's subvention scheme for which a tripartite agreement dated 24.06.2019 was entered between the parties and Piramal Capital and Housing Finance Limited vide which it was agreed that the respondent would be paying the pre EMIs till offer of possession. However, the respondent has failed to pay the pre-EMI after November 2020, which is in violation of the provisions of the Act of 2016.
- III. That the respondent had illegally sent an offer of possession letter dated 17.10.2020 to the complainants to escape the liability of paying the pre-EMIs.
- IV. That while the complainants were requesting for an extension of time to take the possession of the unit, oblivious to the fact that the unit is not complete and necessary OC has not been obtained by the respondent. Despite repeated requests and correspondence with the respondent, it has forced the complainants to pay the EMIs and unilaterally and illegally cancelled the allotment and not returned



the money that must have been returned to them or the lender bank.

- V. That notwithstanding the express assurance of the respondent, the complainants are constrained to pay the EMI's without the same being reimbursed by the respondent. Further, due to delay in possession as against the promise of the respondent to deliver the unit by 31.03.2020, the complainants were restricted and compelled to move to Bengaluru as the complainant no.1 lost his job and had no option than to leave for his hometown.
- VI. That the project is nowhere near completion and only the super structure has been constructed. Therefore, the respondent is in breach of the MOU and the complainants are liable to be compensated for the EMIs paid but not reimbursed by the respondent and the delay in possession along with interest.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- I. Direct the respondent to withdraw the cancellation letter and to pay delay possession charges.
- II. Direct the respondent to remit the total amount paid by the complainants towards pre-EMI's from November 2020 till date along with interest and to pay pre-EMI's as per subvention scheme.
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 has contested the complaint vide its reply dated 01.04.2022 on the following grounds: -



- i. That the complainants approached the respondent for booking of an apartment in the project named "M3M NATURA" at Sector-68, Gurugram. Thereafter, a unit bearing no. NA N2/1103, 11th floor in Tower-N2, admeasuring 1217 sq.ft was provisionally allotted in their favor vide provisional allotment letter dated 09.05.2019 under subvention scheme payment plan. The builder buyer agreement was executed between the parties regarding the said allotment on 18.07.2019 for a total sale consideration of Rs.82,16,265.45/- and the complainants have paid a sum of Rs. 63,56,867.24/- against the same in all.
- ii. That the complainants wanted to avail a loan facility from the Piramal Capital and Housing Finance Limited against the purchase of the said apartment, for which a tripartite agreement dated 24.06.2019 was executed between the parties and Piramal Capital and Housing Finance Limited and a permission to mortgage was issued by the respondent.
- iii. That as per the tripartite agreement executed between the parties that the developer will bear the pre-EMI's till the subvention period. The subvention period as per the tripartite agreement was till 31.03.2020. Further, the respondent being a customer-oriented company agreed to pay the pre-EMI till the offer of possession.
- iv. That the respondent company completed the construction and development of the project well within time and applied to the competent authority for the grant of occupancy certificate on 13.11.2019 after complying with all the requisite formalities and after due verification and inspection, OC was granted to it on 14.09.2020. Thereafter, the possession of the apartment was offered to the complainants vide notice of offer of possession dated 17.10.2020.



- v. That the complainants were well aware about their duty under the agreement to make timely payments. Despite being aware that they are duty bound to make timely payments, they defaulted in making payments and the respondent was to issue reminder letter dated 31.08.2020 and pre-cancellation notice dated 08.01.2021.
- vi. That on account of wilful breach of the terms of allotment and the buyer's agreement by failing to clear the outstanding dues despite repeated requests, the respondent company was constrained to terminate the allotment of the said flat vide cancellation letter dated 28.01.2021.
- vii. That the complainants, post receipt of the cancellation letter sent a legal notice dated 10.08.2021 stating that there was an inordinate delay in offering possession of the apartment and the respondent has sent illegal demands of money before obtaining necessary certificates and sanctions.
- viii. That the complainants are not consumers and an end user since they had booked the apartment in question purely for commercial purpose as a speculative investor and to make profits and gains. Therefore, the complainants cannot be treated as consumers and hence the captioned complaint is liable to be dismissed at threshold. Further, the complainants are in default on their contractual obligations and have filed the present complaint to unjustly enrich themselves. So, the complainants are not entitled to any relief whatsoever.
5. 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

6. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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

8. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11.....

(4) The promoter shall-

(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.

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



F. Findings on the objections raised by the respondent.

F.I Objection regarding the complainant being investor.

10. The respondent has taken a stand that the complainants are investors and not consumers, therefore, they are not entitled to the protection of the Act and entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if it contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and paid total price of Rs.63,56,867.24/- to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

11. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainants are allottees as the subject unit was



allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And Anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to withdraw the cancellation letter and to pay delay possession charges.

12. The complainants was allotted a unit bearing no. NA N2/1103 in the project named "M3M Natura" at Sector-68, Gurugram vide allotment letter dated 01.05.2019. Thereafter, a buyer's agreement dated 18.07.2019 was executed between the parties regarding the said allotment for a total sale consideration of Rs.82,16,265.17/- and the complainants have paid a sum of Rs.63,56,867.24/- against the same in all. The booking of the said unit was made under the respondent's subvention scheme for which a tripartite agreement dated 24.06.2019 was entered between the parties and Piramal Capital and Housing Finance Limited vide which it was agreed that the respondent would be paying the pre EMIs till offer of possession. The respondent company completed the construction and development of the project and got the OC on 14.09.2020. Thereafter, the possession of the apartment was offered to the complainants vide notice of offer of possession dated 17.10.2020. However, the complainants defaulted in making payments



and the respondent was to issue reminder letter dated 31.08.2020 and pre-cancellation notice dated 08.01.2021 requesting the complainants to comply with their obligation. However, despite repeated follow ups and communications and even after the issuance of the pre-cancellation letter the complainant failed to act further and comply with their contractual obligations and therefore the allotment of the complainants was finally terminated vide letter dated 28.01.2021. Now the question before the authority is whether the cancellation issued vide letter dated 28.01.2021 is valid or not.

13. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainants have paid Rs.63,56,867.24/- against the total sale consideration of Rs.82,16,265.17/-. The respondent/builder sent a demand letter dated 31.08.2020, before issuing a pre-cancellation letter dated 08.01.2021 asking the allottees to make payment of the amount due but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 28.01.2021. Further, section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 18.07.2019 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. However, the deductions made from the paid up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux vs Union of India 1969(2) SCC 554*** and where in it was held that a reasonable amount by way of earnest money be deducted on ✓



cancellation and the amount so deducted should not be by way of damages to attract the provisions of section 74 of the Indian Contract Act, 1972. The same view was followed later on in a number of cases by the various courts. Even keeping in view, the principles laid down those cases, a regulation in the year 2018 was framed known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, providing as under:

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

14. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondent is directed to refund the deposited amount of Rs.63,56,867.24/- after deducting 10% of the basic sale price being earnest money along with an interest @10.75% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 28.01.2021 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
15. Out of total amount so assessed, the amount paid by the bank/payee be refunded in the account of bank and the balance amount along with interest will be refunded to the complainants.



G.II Direct the respondent to remit the total amount paid by the complainants towards pre-EMI's from November 2020 till date along with interest and to pay pre-EMI's as per subvention scheme.

16. The complainants stated that the booking of the said unit was made under the respondent's subvention scheme for which a tripartite agreement dated 24.06.2019 was entered between the parties and Piramal Capital and Housing Finance Limited vide which it was agreed that the respondent would be paying the pre EMIs till offer of possession. However, the respondent has failed to pay the pre-EMI after November 2020. The respondent contended that it has completed the construction and development of the project well within time and applied to the competent authority for the grant of occupancy certificate on 13.11.2019. Further, after complying with all the requisite formalities, due verification and inspection of the project, OC was granted to it on 14.09.2020. Thereafter, the possession of the apartment was offered to the complainants vide notice of offer of possession dated 17.10.2020. However, as per the tri-partite agreement dated 24.06.2019, it was specifically agreed between the parties that the respondent will pay pre-EMI's till offer of possession and therefore, after offering possession in October 2020, respondent gets free from its obligation and liability to pay any further pre-EMI as per the terms of the tri-partite agreement. Thus, no direction to the same.

H. Directions of the Authority:

17. 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/builder is directed to refund the deposited amount of Rs.63,56,867.24/- after deducting 10% of the basic sale



price being earnest money along with an interest @10.75% on the refundable amount, from the date of cancellation i.e., 28.01.2021 till the date of realization of payment.

- ii. Out of total amount so assessed, the amount paid by the bank /payee be refunded in the account of bank and the balance amount along with interest will be refunded to the complainants.
 - iii. 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.
18. Complaint stands disposed of.
19. File be consigned to the registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.10.2023