

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

Complaint no. : 1340 of 2019
First date of hearing: 02.07.2019
Date of decision : 05.09.2019

1. M3M India Private Limited,
Registered office: Unit no
SB/C/5L/Office/008, M3M Urbana, Sector 67,
Gurugram-122102
2. Cogent Realtors Private Limited
Registered office: LGF, F-22, Sushant
Shopping Arcade. Sushant Lok, Phase-1,
Gurugram- 122002, Haryana, India

Complainants

Mr. Wrigh Sharma
R/o: 972, Sector-29, Arun Vihar, Noida Uttar
Pradesh-201303

Versus

सत्यमेव जयते

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE

Ms Shriya Takkar and Ms Unnti Anand Advocates for complainants
Shri Pranav and Mrs. Nazoo Sharma Advocates for the respondent

ORDER

1. A complaint dated 01.04.2019 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 complainants M3M India Private Limited and Cogent Realtors Private Limited, against the respondent allottee Mr. Wrigh Sharma, in respect of the apartment buyer's agreement executed on 03.04.2013 for apartment no. MWTW-B04/0902, tower B4, 9th floor admeasuring super area of 1534 sq. ft. in the project "M3M Woodshire", located in sector-107, Gurugram in favour of the respondent for not taking possession of the said unit and for non- payment of due instalments by the allottee which is in violation of section 19 of the Act ibid.

2. Since the apartment buyer's agreement was executed on 03.04.2013 i.e. prior to the commencement of the Act ibid, therefore, penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligations on the part of the allottee 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 Woodshire", Sector-107, Gurugram
2.	Nature of the project	Group housing colony
3.	Project Area	18.88125 acres



4.	Current status of project	Occupation certificate received on 20.04.2017 (page no. 111) and possession offered on 28.04.2017 (Annexure F) pg. 113
5.	RERA Registration status.	Not registered
6.	DTCP License no.	33 of 2012 dated 12.04.2012
7.	Unit no.	MW TW B04/0902, 9 th floor, tower B4
8.	Unit area	1534 sq. ft.
9.	Date of execution of apartment buyer's agreement-(Annexure C) page no. 49	03.04.2013
10.	Payment plan	Construction linked plan
11.	Total sale consideration	Rs 97,04,504/- (as per SOA Annexure A page no 115 of the complaint)
12.	Total amount paid by allottees	Rs 84,60,796/- (as stipulated in SOA page no. 115)
13.	Date of delivery of possession (as per clause 16.1 of apartment buyer's agreement: within 36 months from the date of commencement of construction which shall mean the date of	05.12.2016

	<p>laying of the first plain cement concrete/mudmat slab of the tower or the date of execution of agreement whichever is later plus 180 days grace period)</p> <p>(As per admission by the complainants in the present complaint, the first mud slab was laid on 05.06.2013)</p>	
14.	<p>Delay in handing over possession till date of offer of possession i.e. 28.04.2017</p>	4 months and 23 days
15.	<p>Penalty (as per clause 16.6 of the said apartment buyer's agreement)</p>	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 respondent. An apartment buyer's agreement dated 03.04.2013 is available on record. As per clause 16.1 of the said agreement, the possession was to be handed over to the respondent on 05.12.2016 and the same was offered on 28.04.2017. In the present case, respondent

allottee has failed to take possession of the said unit upon notice of offer of possession and has failed to pay outstanding dues which is in violation of obligation of respondent allottee under section 19 of the Act *ibid*.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The case came up for hearing on 05.09.2019. The reply filed by the respondent on 27.06.2019 has been perused by the authority.

FACTS OF THE COMPLAINT

6. The complainants submitted that they have developed and planned in a phased manner over a period of time, on the land situated in village Dharampur, Gurugram, Sector 65, Haryana, India a group housing colony under the name and style as "M3M Woodshire" comprising of various buildings and units therein, with suitable infrastructural facilities including multi-level basement parking. The said development has been carried out in planned and phased manner in accordance with the licenses and the building plans as approved by DGTCP from time to time.
7. The complainants submitted that complainants no. 2 herein is the absolute owner of the project land, which is situated in the revenue estate of village Dharampur, Sector 107, Gurugram,

Manesar Urban Complex, Haryana, India and has obtained License no. 33 of 2012 dated 12.04.2012 from the DGTCP/DTCP under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975. Complainant no. 1 has been vested by complainant no. 2 with complete authority and all appropriate and requisite rights and powers, inter alia, for undertaking the construction and development of the group housing colony on the land and every part or portion thereof and for all activities and functions in relation thereto, vide definitive agreements.

8. The complainants submitted that the respondent approached the complainant's developer for booking of an apartment in the project of the complainants and accordingly signed and submitted a booking application dated 13.12.2012. In due consideration of the commitment by the respondent to make timely payments, the developer allotted the apartment in favour of the respondent vide the allotment letter dated 25.01.2013.
9. The complainants submitted that the complainant's developer vide letter dated 21.03.2013 sent copies of the agreement for execution. Subsequently, the apartment buyer agreement dated 03.04.2013 was executed between the complainants and the respondent. It is pertinent to mention here that while



executing the apartment buyer agreement, it was agreed by the complainants and the respondent that they would be bound by the terms and conditions of the apartment buyer agreement.

10. The complainants submitted that the respondent had committed defaults in making payment of the instalments, various demand letters, reminders and pre-cancellation notices were issued to him.
11. The complainants submitted that upon completion of the construction of the apartment in terms of the apartment buyer agreement an application for the receipt of the occupation certificate was applied for on 12.09.2016 with respect to the tower in which the apartment is situated with the statutory authorities and the same was granted by the authorities only on 20.04.2017 i.e. after a period of almost 7 months.
12. The complainants submitted that the complainant no. 1 company, vide letter dated 28.04.2017 offered the possession of the said apartment to the respondent and requested the respondent to take possession of the said apartment buyer agreement after clearing the outstanding dues in terms of the apartment buyer agreement.

13. The complainants submitted that the respondent did not pay any heed to the requests of complainant no. 1 company and pertinently did not even respond to the above communication by the respondent. The respondent intentionally breached the terms of the agreement without any just cause and with malafide intentions to wriggle out of his contractual obligations.
14. The complainants submitted that the respondent did not take possession of the apartment clearing the outstanding dues, the complainants sent reminder 1 dated 15.06.2017. Even after issuance of reminder 1 the respondent neither approached the complainants to take the possession of the apartment nor cleared the outstanding dues. The complainants were forced to send pre -cancellation notice dated 29.09.2017 to the respondent. On 08.02.2019 a last and final opportunity notice was also issued to the respondent. Thereafter, holding charges intimation dated 16.02.2019 was issued to the respondent.
15. The complainants submitted that the respondent has severely committed defaults in making payment of the consideration amount in accordance with the agreed payment plan. Therefore, it is the complainants developer who after having spent enormous sums of money and has been unable to realize the proceeds of the apartment from the respondent-allottee

and the legitimate dues of the complainants developer have been withheld by the respondent-allottee and therefore, on account of such breaches and defaults of the respondent-allottee it is the complainants developer who are entitled to claim compensation from the respondent-allottee.

16. The complainants submitted that the project "M3M Woodshire" consists of total 995 apartments out of which 754 apartments have already been sold and possession has been offered to the eligible allottees. The project is very much habitable and already the possession of approx. 465 apartments have been taken over by the respective allottees and approx. 200 families are already staying in the project as of now and the said figure is increasing day by day with more possessions being taken over and more families moving into the project and enjoying the various facilities and amenities therein. Further, the respective allottees are enjoying and making use of the various facilities and amenities as provisioned for their comfort.

17. Complainants submitted that the Hon'ble High Court of Bombay in the matter titled **Neelkamal Realtors Suburban Pvt. Ltd. and Anr vs. Union of India** has already held that RERA strikes the balance between the promoter and allottees.

18. The complainants submitted that this hon'ble authority has jurisdiction to entertain the present complaint since the project is situated in Gurugram within the jurisdiction of this hon'ble authority.
19. The complainants submitted that they have not filed any other complaint or suit of similar nature in any court of law.

ISSUES TO BE DECIDED:

20. The complainants have raised the following issues:
- i. Whether the respondent-allottee has violated the terms and conditions of apartment buyer's agreement?
 - ii. Whether the respondent-allottee has violated his duty under section 19(6) read with section 19(7) of the Real Estate (Regulation and Development) Act, 2016?
 - iii. Whether the respondent-allottee has violated his duty to take the physical possession of the apartment within a period of two months of the issuance of the occupancy certificate for the said building, apartment under Section 19(10) of the Real Estate (Regulation and Development) Act, 2016?
 - iv. Whether the respondent is liable to pay holding charges as per the terms and conditions of the apartment buyers' agreement?

- v. Whether the respondent is liable to pay maintenance charges to the maintenance agency?
- vi. Whether the respondent is liable to be directed by this Hon'ble Real Estate Regulatory Authority to forthwith take possession of the allotted apartment after clearing all dues pending qua the same with delayed interest in the interest of justice and fair play?

RELIEFS SOUGHT BY THE COMPLAINANTS:

21. The complainants are seeking the following reliefs:
 - I. Direct the respondent to take the possession of the said apartment which is ready and in the state of being occupied after the completion of the requisite formalities by the respondent including payment of all the outstanding dues;
 - II. Direct the respondent to pay the balance consideration and delayed interest as per section 19 of the Real Estate (Regulation and Development) Act, 2016;
 - III. The respondent also be directed to pay holding charges as per the terms and conditions of the apartment buyers' agreement;

- IV. The respondent also be directed to pay the outstanding maintenance dues of the maintenance agency;
- V. Any other relief/direction which the Hon'ble Authority deem fit and proper in the facts and circumstances of the present complaint.

REPLY ON BEHALF OF RESPONDENT

22. The respondent submitted that the complainants represented that said project shall be completed within a period of 36 months and shall be one of its kind having all luxuries and amenities required for a residential complex and will have excellent connectivity with the rest of the city.
23. The respondent submitted that he applied for purchase of a residential flat in the aforesaid project by an allotment letter which was later culminated into one sided adhesive format called apartment buyer's agreement dated 03.04.2013.
24. The respondent submitted that the total sale consideration for the said residential flat/dwelling unit was fixed at Rs. 88,61,357/- and as on date the payment to the tune of Rs. 84,60,796/- except the balance sum of Rs. 4,00,561/- has been

made by him against the demands raised upon him by the complainants towards the subject flat.

25. The respondent further submitted that the complainants failed to take necessary steps in handing over the possession to him the stipulated time period. Since he received no positive response from the complainants despite the lapse of the 42 month period including 6 months towards grace period during which the possession was to be handed over to him, he personally visited the site on 21.08.2016 only to find that what to talk of handing over of the possession, the building was still under construction.
26. The respondent submitted that he is being charged for development and maintenance charges also but even the said club facility and other facilities as found mentioned in the agreement and assured by complainants were not at all ready at the time of offering of possession by him.
27. The respondent submitted that swimming pool being the most important facility amongst all have been provided by the complainants only recently.

28. The respondent submitted that the basement parking is still not functional despite offer of possession issued in favour of him more than a year ago.
29. The respondent submitted that all payments qua demands raised from time to time by the complainants have duly been paid by him and that is the reason why the respondent got TPR i.e. timely payment rebates a number of times from the complainants and thus delay in completing the project as alleged by complainants in their petitions, cannot be attributable to him.
30. The respondent submitted that in view of the deficiencies as pointed hereinbefore including delay in offering the possession of the flat in question to the respondent, the complainants are liable to make payment towards penalty charges also mentioned in clause 16 of the said agreement.
31. The respondent submitted that he reserves its right to initiate appropriate legal proceedings against the complainants for the recovery of the payments already made by him alongwith damages not limited to the penalty charges as mentioned in clause 16 of the agreement.

DETERMINATION OF ISSUES

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:

32. In respect of **first and second issue**, the authority has observed that the complainants have already received the occupancy certificate dated 20.04.2017 and offered possession of the booked unit to the respondents vide letter dated 28.04.2017. However, the respondent allottees have failed to make balance payment of the total agreed sale consideration and complete other formalities necessary for execution of conveyance deed of the apartment. Therefore, the respondent allottees have failed to perform its obligation under section 19 (6) (7) and (10) of the Act.
33. With respect to **third and fifth issue**, as per section 19(10) of the said Act, the allottees shall take physical possession of the unit within a period of two months of the issuance of occupation certificate of the unit in question. In the present case, the occupation certificate was received on 20.04.2017 and the possession was offered on 28.04.2017 as the due date of possession was 05.12.2016. Hence, there is delay on the part of complainants for handing over possession i.e. 4 months and



23 days. However, the respondent-allottee failed in taking possession thereby violating section 19(10) of the said Act.

Thus, keeping in view the circumstances of the case, the respondent-allottee is hereby directed to take possession of the allotted apartment after clearing all dues pending along with delayed interest at the prescribed rate of 10.45% per annum.

34. With respect to **fourth issue**, as the promoter/ complainants are levying the interest on delay payments at the prescribed rate of 10.45% per annum, so they cannot levy the holding charges. No party can be allowed to get unjustifiable riches as it will be against the principles of natural justice.

35. With respect to **sixth issue**, as per clause 18.1," the allottee undertakes to abide by the terms and conditions of such maintenance agreement as may be and to promptly pay all demands, bill, charges as may be raised by the maintenance agency." Thus, the respondent/allottees are under liability to pay such charges. However, as the maintenance agreement is not annexed with the paper book. This issue cannot be determined due to lack of documentary evidence.

FINDINGS OF THE AUTHORITY:

36. 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 complainants 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.

37. Arguments heard. Brief facts leading to this complaint are that they by virtue of clause 16.1 of the builder buyer agreement dated 03.04.2013 for unit no. MWTWB-04/0902, 9th floor, tower-B4 in project "M3M Woodshire" sector-107 Gurugram, possession was to be handed over to the respondent within period of 36 months from the date of commencement of construction which shall mean the date of laying of the first plain cement concrete/mud slab of the tower or the date of execution of agreement whichever is later plus 180 days grace

period. As per admission by the complainant the first mud slab was laid on 05.06.2013, as such, due date of delivery of possession comes out to be 05.12.2016. the complainant/promoter has offered the possession of the unit to the respondent on 28.04.2017 on receipt of occupation certificate on 20.04.2017. Respondent has already paid Rs. 84,60,796/- to the respondent against a total sale consideration of Rs. 97,04,504/-.

DIRECTIONS OF THE AUTHORITY:

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 issue direction to the respondent:


- i. The respondent is entitled for delayed possession charges at the prescribed rate of 10.45% per annum w.e.f. due date of possession i.e. 05.12.2016 till the date of offer of possession i.e. 28.04.2017 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

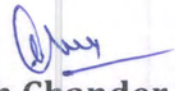
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
 - iii. Respondent is directed to pay the outstanding dues, if any, after adjustment of interest for the delayed period of possession.
 - iv. The promoter shall not charge anything from the complainant which is not a part of the agreement to sell. Complainant/promoter is directed to hand over the possession of the unit within two months to the respondent. As matter of good will gesture, the complainant/promoter shall not charge any holding charges.
 - v. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.45% by the promoter which is the same as being granted to the complainant in case of delayed possession.
38. As the project is registerable and has not been registered by the promoter, the authority has decided to take suo-moto cognizance for not getting the project registered and for that

separate proceeding will be initiated against the respondent.

A copy of this order be endorsed to registration branch for further action in the matter.

39. The order is pronounced.
40. Case file be consigned to the registry.
41. Copy of this order be endorsed to registration branch.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.09.2019

Judgement uploaded on 10.10.2019


HARERA
GURUGRAM

SANDEEP BHUCKAL

LEGAL ASSISTANT