

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

Complaint no. : 1153 of 2019
First date of hearing : 28.08.2019
Date of decision : 28.08.2019

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

Versus

1. Mrs. Sangeeta Verma,
R/o EG-54, Inderpuri,
New Delhi - 110012.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE

Ms. Shriya Takkar and Ms. Unnati Anand Advocates for complainants
Shri Manoj Kumar Advocate for respondent

ORDER

1. A complaint dated 18.03.2019 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 allottee Mrs. Sangeeta Verma, on account of violation of the apartment buyer's agreement executed on 26.09.2013 for apartment no. MWTW-B01/0301, admeasuring super area of 1943 sq. ft. in the project "M3M Woodshire" in favour of the respondents 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 has been executed on 26.09.2013 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 statutory obligation on 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 117 of complaint)
5.	Offer of possession	28.04.2017 (119 of complaint)



6.	RERA registration status	Not registered
7.	DTCP license no.	33 of 2012 dated 12.04.2012
8.	Unit no.	MW TW-B01/0301, 3 rd floor, tower B1
9.	Unit area	1943 sq. ft.
10.	Date of execution of apartment buyer's agreement	26.09.2013
11.	Payment plan	Construction linked plan
12.	Total sale consideration (as per statement of account, page no. 121 of the complaint)	Rs. 1,18,96,735/-
13.	Total amount paid by allottee (as per statement of account-cum-invoice, page no. 121 of the complaint)	Rs. 1,10,87,729/-
14.	Due 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 laying of the first plain cement concrete/mud mat slab of the tower i.e. 18.05.2013 or the date of execution of agreement i.e. 26.09.2013 whichever is later plus 180 days grace period)	26.03.2017 (Note: -The due of possession has been calculated from the date of execution of agreement i.e. 26.09.2013)
15.	Delay in handing over possession till date of offer of possession	1 month 2 days
16.	Penalty as per clause 16.6 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 respondent. An apartment buyer's agreement dated 26.09.2013 is available on record. As per



clause 16.1 of the said agreement, the possession was to be handed over to the respondents on 26.03.2017 and the same was offered to them 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 obligations of respondent allottee under section 19(6), (7) and 19(10) of the Act *ibid*.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The case came up for hearing on 28.08.2019. The reply filed by the respondent on 14.05.2019 has been perused by the authority.

FACTS OF THE COMPLAINT

6. The complainants submitted that complainant 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 and the rules made thereunder for using the land for the construction and development of the group housing colony thereon in a planned and phased manner over a period of time and in this process has obtained and shall be obtaining further necessary sanctions, permissions and approvals from the concerned

authorities for the development of the group housing colony. 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 for all activities and functions in relation thereto vide definitive agreements.

7. The complainants submitted that the respondent vide application dated 03.12.2012 applied for booking of an apartment in the project of the complainant. In due consideration of the commitment by the respondent to make timely payment, the complainant developer allotted the apartment in favour of the respondent vide the allotment letter dated 13.02.2013.
8. The complainants submitted that the copies of the apartment buyer's agreement were sent to the respondent on 22.03.2013. The apartment buyer agreement dated 26.09.2013 was executed between the complainant and the respondent after a reminder for the same was issued. 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 as illustrated therein.
9. The complainants submitted that as per clause 16.1, the complainant no. 1 proposed to handover the possession of the



apartment within 36 months from the date of laying of the first plain cement concrete/mud slab of the tower or the date of this agreement, whichever is later is only a proposed period based on estimates, and is not a period which is absolute, fixed or cast in stone (commitment period). It is pertinent to mention here that the first mud slab was laid on 18.05.2013 and the apartment buyers' agreement was executed between the parties on 26.09.2013. Further, a grace period of 180 days is also provided over and above the proposed/estimated "commitment period".

10. The complainants submitted that the delay was due to force majeure. In such a case, allottees according to clause 16.6 are entitled to compensation at Rs.10/- per sq. ft. per month, which is to be adjusted at the time of handing over of possession/execution of conveyance deed.
11. The complainants submitted that the construction of the project was affected on account of unforeseen circumstances beyond the control of the complainant developer. In the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession rules. Reference in this regard may be had to the judgment of "Deepak Kumar v. State of Haryana, (2012) 4 SCC 629". The competent authorities took substantial time in framing the rules and in the process the



availability of building materials including sand which was an important raw material for development of the said project became scarce. Further, developer was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide order dated 02.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna river bed. These orders inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed in the para aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the

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construction continued. However, it is pertinent to state that the increased price was never passed on to the customers.

12. Complainants submitted that despite the aforementioned circumstances, the complainant developer completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the allottees. 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. This delay of the competent authorities in giving OC cannot be attributed in considering the delay in delivering the possession of the apartment, since on the day the complainant applied for OC, the apartment was complete in all respect. It is pertinent to state that the occupation certificate with respect to the tower where the apartment is situated was only granted after inspections by the relevant authorities and after ascertaining that the construction was completed in all respect in accordance with the approved plans and that the apartment was in a habitable and liveable condition.
13. The complainants submitted that the complainant no. 1 company vide letter dated 28.04.2017 offered the possession



of the said apartment to the respondents and requested the respondents to take possession of the said apartment after clearing the outstanding dues in terms of the apartment buyer's agreement.

14. The complainants submitted that the respondents intentionally breached the terms of the agreement without any just cause and with malafide intentions to wriggle out of their contractual obligations.
15. The complainants submitted that the respondent was not taking the possession of the apartment after clearing the outstanding dues, the complainant sent reminder 1 dated 15.06.2017. Since even after issuance of reminder 1 the respondent neither approached the complainant to take the possession of the apartment nor cleared the outstanding dues, the complainant was forced to send pre-cancellation notice dated 29.09.2017 to the respondent. The respondent however continued to default in making payments and the complainant developer was compelled to issue a last and final opportunity dated 08.02.2019 and a demand for holding charges dated 15.02.2019. However, the respondent has till date not cleared the outstanding dues and taken possession.
16. The complainants submitted that it has completed the construction and development of the various blocks / segments / constituents / parts / phases of the group housing colony of which occupation certificate(s) have been granted

and more particularly 'M3M Woodhsire' and including the tower in which the apartment of the respondent-allottee is situated.

17. The complainants fall under the definition of promoter as defined under the said Act. The complainants cited case of the Hon'ble High Court of Bombay in the matter titled as **Neelkamal Realtors Suburban Pvt. Ltd. and Anr. vs. Union of India** wherein it has already held that RERA strikes the balance between the promoter and allottees.
18. Considering the above facts, the respondent has defaulted in the obligation casted upon them and thus, the complainants are entitled to seek the remedy as provided under the said Act. 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:

19. The complainants have raised the following issues:
 1. Whether the respondent-allottee has violated the terms and conditions of apartment buyer's agreement?
 2. 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?
 3. Whether the respondents-allottee has violated their 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?

4. Whether the respondent is liable to pay holding charges as per the terms and conditions of the apartment buyer's agreement?
5. Whether the respondent is liable to pay maintenance charges to the maintenance agency?
6. Whether the respondent is liable to be directed by this hon'ble 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

20. 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 respondents 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 Act *ibid*.
- iii. The respondent also be directed to pay holding charges as per the terms and conditions of the apartment buyer's agreement.

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iv. The respondent also be directed to pay the outstanding maintenance dues of the maintenance agency.

REPLY ON BEHALF OF RESPONDENT

22. The respondent submitted that the present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this hon'ble authority. The complainants have filed the present complaint seeking interest and compensation for not taking possession of the apartment. It is respectfully submitted that complaints pertaining to compensation and interest are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act' for short) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as 'the rules') and not by this hon'ble authority. The present complaint is liable to be dismissed on this ground alone.
23. The respondent submitted that the complainants have no locus-standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the apartment buyer's agreement, as shall evident from the submissions made in the following paragraphs of the present reply.

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24. The respondent submitted that without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent had not received the possession from the complainant within time. The reasons for delay submitted in the complaint i.e. force majeure conditions, unforeseen circumstances, court's orders etc. were false and mislead, as submitted in the following paragraph of reply.
25. The respondent submitted that the complaint is not maintainable or tenable under the eyes of law as the complainants have not approached to this hon'ble authority with unclean hands and has not disclosed the true and material facts related to this case of complaint. The complainants thus have approached the hon'ble authority with unclean hands and has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been discloser of these material facts and proceedings, the question of entertaining the present complaint would have not arising in view of the case law titled as S.P. Chalgalvaraya Naidu vs. Jagan Nath reported in 1994 (1) SCC page 1 in which the Hon'ble Apex Court opined that non-discloser of material facts and documents amounts to a fraud on not only the opposite party, but also upon the hon'ble authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as Tata Motors vs. Baba



Huzoor Maharaj bearing RP NO. 2562 of 2012 decided on 25.09.2013.

26. The relief claimed in the complaint is beyond the purview and jurisdiction of this honourable authority. Hence the complaint is liable to be dismissed.
27. The project "M3M Woodshire" was not developed and carried out in planned and phased manner. The total period for offering the possession is more than five (5) years without completing the project with basic amenities i.e. water connections, taps, electric connections, switches, external unit of air conditioners, lifts, swimming pool, club etc.
28. The apartment buyer agreement is one sided and skewed in the favour of the complainant/developer. The stages of bookings, allotment, agreement, construction, possession, completion etc. has been stretched to 5 years i.e. April 2012 to April 2017, instead of the agreed commitment period of 3 years. The compensation for delay is not granted/adjusted by the complainant.
29. The respondent reserves its right to file additional reply and documents, if required, assisting the hon'ble authority in deciding the present complaint at the later stage.
30. The demands of holding charges, preferential charges, maintenance charges, interest etc. are false and frivolous, as the apartment was not completed as on the date of offer of possession.



31. The respondent is not a chronic defaulter, because all the demands were already paid. The last payment in the construction linked plan was not made for many reasons i.e. non-completion of project/apartment, of compensation for delay, deletion of preferential location charges etc.

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. With respect to **first, second, third and sixth issue** raised by the complainant, the authority has observed that the complainants have already received the occupancy certificate of the tower A1 where the respondent's allotted unit is located in the project on 20.04.2017 and offered possession of the booked unit to the respondent vide letter dated 28.04.2017. However, the respondent allottee has 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 **fourth and fifth issues** raised by the complainants, it is evident from perusal of records that as per clause 16.2 of the said agreement, the allottee shall pay holding

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charges @ Rs. 10 per sq. ft. per month of the super area of the apartment on account of failure in taking possession within stipulated time period of 60 days from notice of possession. However, as the promoter/ complainant is levying the interest on delay payments at the prescribed rate of 10.45% per annum, so he cannot levy the holding charges. No party can be allowed to get unjustifiable riches as it will be against the principles of natural justice.

FINDINGS OF THE AUTHORITY:

34. 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.
35. By virtue of clause 16.1 of the apartment buyer's agreement dated 26.09.2013 for unit no. MW-TW-B01/0301, tower B1, in

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project M3M Woodshire, Sector 107, Gurugram, possession was to be handed over to the respondent within a period of 36 months from the date of execution of agreement plus 6 months grace period which comes out to be 26.03.2017. The complainants have received occupation certificate on 20.04.2017 and has offered the possession of the unit to the complainant on 28.04.2017. As such the respondent is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.45% per annum w.e.f. 26.03.2017 till 28.04.2017 as per the provisions of section 18(1) of the Act ibid.

DIRECTIONS OF THE AUTHORITY:

36. After taking into consideration all the material facts adduced 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:
- i. The respondent is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.45% per annum w.e.f. 26.03.2017 till 28.04.2017 as per the provisions of section 18(1) of the Act ibid.
 - ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period of possession.
 - iii. The promoter shall not charge anything from the respondent which is not a part of the apartment buyer agreement.



- iv. Interest on due payments from the respondent shall be charged at the prescribed rate of interest i.e. 10.45% by the promoter which is the same as is being granted to the respondent in case of delayed possession.
 - v. Arrears of interest accrued so far shall be paid to the respondent within 90 days from the date of this order.
 - vi. The complainants are directed to complete the unit in all respects to enable the respondent to take over the possession.
 - vii. The respondent is directed to take over the possession of the offered unit within a period of one month from the date of issuance of this order.
 - viii. The complainants shall not charge holding charges from the respondent.
37. The order is pronounced.
38. Since the project is not registered, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent to show cause as to why a penalty of 10% of the total project cost may not be imposed. Registration branch is directed to do the needful.
39. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 28.08.2019
Judgement uploaded on 05.11.2019