

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

Complaint no. 2287/2019
Date of First hearing 13.11.2019
Date of decision 09.01.2020

- 1. Shri J. S. Yadav**
- 2. Ms. Rita Yadav**

Address: H.NO. 116, Jalvayu Tower,
Sector-56, Gurugram,
122003, Haryana

Complainants

Versus

1.M3M INDIA PRIVATE LIMITED

Address: PARAS Twin Towers,
Tower-B, 6th floor, Golf Course Road,
Sector 54, Gurugram-122002, Haryana

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE.

Shri Sanjeev Sharma
Ms. Shriya Takkar &
Ms. Syashu Pesswani

Advocate for the Complainants

Advocates for the respondent

ORDER

- The present complaint has been filed by the complainants against the respondent promoter 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.

2. The particulars of the project, the details of 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: -

| S.No. | Heads | Details |
|-------|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Project name and location | "M3M URBANA", Sector 67, Urban Estate, Gurugram |
| 2. | Project area | 8.2125 acres |
| 3. | Nature of project | Commercial Unit |
| 4. | RERA registered/ not registered | Registered (2.81875 acres) |
| 5. | RERA registration valid up to | 35 of 2019 valid up to 31.12.2021 |
| 6. | DTCP License No. & validity status | 100 of 2010 dated 26.11.2010, 101 of 2010 dated 26.11.2010 and 11 of 2011 dated 28.01.2011 |
| 7. | Name of licensee | Martial Buildcon Pvt. Ltd. (for l.no. 100 of 2010), Martial Buildcon Pvt. Ltd. (for l.no. 101 of 2010), Cogent Realtors Pvt. Ltd. (for l.no. 11 of 2011) |

| | | |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8. | Unit no., Block no. | SB/R/GL/08/02, Block No. 8 |
| 9. | Super area of the Unit | 633.55 sq. ft. (58.86 sq. mtrs.) approximately |
| 10. | Date of execution of agreement | 29.05.2013 |
| 11. | Payment plan | Construction linked payment plan |
| 12. | Total sale consideration | Rs. 83,42,677.01/- (as per Annexure-A-II, pg. 48) |
| 13. | Total amount paid by the complainants | Rs. 77,92,825/- (as per Annexure-A-II, pg. 48) |
| 14. | Due date of delivery of possession as per agreement (Clause 15.1: 36 months from the date of approvals of building Plans of the Commercial Complex or the date of execution of this Agreement, whichever is later + grace period of 180 days | 29.11.2016 (date of commencement of construction is not given. Hence, date of execution of agreement is taken for computation of the due date of possession. |
| 15. | Status of project (ongoing/complete) | On going |
| 16. | Date of offer of possession, if any | Possession has not been offered so far. |
| 17. | Specific relief sought (in specific terms) | To award delay possession interest |

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants.
4. Before filing the complaint before the Authority the complainants sent the copies of the complaint and the documents to the respondent through speed post as well as on its given E-mail address. Service reports have been filed on the record. On receipt of the complaint the Authority also issued notice to the respondent through speed post and also on given e-mail address. Notice has been served upon the respondent both ways. Reply to the complaint has been filed by the respondent.
5. Arguments heard.
6. As per clause 15 (1) of the Builder Buyer Agreement dated 29.05.2013 the possession of the booked unit was to be delivered within a period of 36 months plus 6 months' grace period from the date of execution of the agreement which comes out to be 29.11.2016.

7. Counsel for the respondent has stated at bar that they have applied for occupation certificate on 12.05.2017. However, on account of one pretext or the other, they could not get the occupation certificate, as a result of which they approached the Hon'ble High Court of Punjab and Haryana at Chandigarh by filing CWP No.6801 of 2019 (O&M) in case titled as Virender Pal Singh and others versus State of Haryana and others, CWP No. 4197 of 2019 (O&M) titled as M/s Marconi Infratech Pvt. Ltd. versus State of Haryana and others, CWP No. 29239 of 2018 (O&M) case titled as Martial Buildcon Pvt. Ltd. versus State of Haryana and others and CWP No.6773 of 2019 (O&M) titled as Raghav Sehgal and other versus State of Haryana and another. The Hon'ble High Court vide its order dated 29.05.2019 passed the following directions:-

"We, therefore, dispose of these petitions in view of the observations made by the Hon'ble Supreme Court and direct the State authorities to release the occupancy certificates as expeditiously as possible, preferably within a period of six weeks from the date of receipt of a certified copy of this order".

Sd/-
Mahesh Grover,
Judge,


Sd/-
Lalit Batra,
Judge,

But there are provisions in the Haryana Building Code, 2017. The relevant portion is as under:-

4.10 (5) "If no communication is received from the Competent Authority within 60 days of submitting the application for occupation certificate, the owner is permitted to occupy building, considering deemed issuance of occupation certificate and the application Form BR-IV (A) or BR-IV (B) shall act as "Occupation Certificate". However, the competent authority may check the violations made by the owner and take suitable action".

8. Considering the provisions of above narrated section of Haryana Building Code, 2017, occupancy certificate is deemed granted even after lapse of 60 days and it will be considered as a deemed occupation certificate. In view of the Hon'ble High Court judgment as well as provisions of law as stated above, the deemed occupation certificate is being considered as on date. However, since no possession has been delivered to the complainants, as such the complainants are entitled for delayed possession charges. The builder/respondent is at liberty to offer the possession of the allotted unit to the

- complainants after confirmation from DTCP Haryana, regarding deemed occupation certificate in terms of Code NO. 4.10(5) of the Haryana Building Code, 2017.
9. As such the complainants are entitled for delayed possession charges @ 10.20 % p.a. w.e.f. 29.11.2016 till offer of possession as per provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016.
 10. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of each subsequent month.
 11. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 12. Complaint stands disposed of.
 13. File be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date 09.01.2020


(Subhash Chander Kush)

Member