

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 18.12.2018
Complaint No.	753/2018 Case Titled As Sunil Vij V/S M Three M India Limited
Complainant	Sunil Vij
Represented through	Complainant in person with Ms. Archana Arora proxy counsel for Dr.Rau P.S.Girwar, Advocate.
Respondent	M Three M India Limited
Respondent Represented through	S/Shri Anmol Kumar and Prabhakar Tiwari, Advocates for the respondent.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari

**Proceedings**

**Project is not registered with the authority.**

Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act ibid be issued to the respondent. Registration branch is directed to do the needful.

As per clause 16.1 of the Builder Buyer Agreement dated 12.4.2013 for unit No.B-11/0302 in Woodshire, Sector 107, Dwarka Expressway, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of commencement of construction or the date of execution of agreement whichever is later + 180 days grace period.

Date of laying of first plan cement concrete/mud mat slab is 20.11.2013, as such the due date of delivery of possession comes out to be **20.5.2017**. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.1,20,45,741/-with the respondent.

Possession of the unit has been offered to the complainant on 28.8.2017, copy of offer of possession is placed on record, after receiving of occupation certificate on 24.7.2017. The total sale consideration of the flat is Rs.1,22,21,083/-. Complainant has paid 95% payment. Complainant is directed to make balance payment and take the possession within one month failing which respondent shall be at liberty to forfeit the entire amount. Since the matter is under dispute, no holding charges may be taken by the respondent.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar  
(Member)  
18.12.2018

Subhash Chander Kush  
(Member)  
18.12.2018

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

**Complaint No. : 753 of 2018**  
**First date of Hearing : 18.12.2018**  
**Date of Decision : 18.12.2018**

Mr. Sunil Vij  
R/o: House no. 743A, Sector-14,  
2<sup>nd</sup> floor, Gurugram, Haryana-122001

**Complainant**

Versus

1. M/s M3M India Limited  
Address: Paras twin towers,  
tower-B, 6<sup>th</sup> floor, Golf course road,  
Sector-54, Gurugram, Haryana-122002
2. Cogent Realtors Pvt. Ltd.  
Address: 303, Sagar Apartments,  
Sector-56, Gurugram

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Ms. Archana Arora proxy  
counsel for Dr. Rau P.S.Girwar

Advocate for complainant

Shri Sunil Vij

Complainant in person

Shri Anmol Kumar and

Advocate for the respondent

Prabhakar Tiwari



**ORDER**

1. A complaint dated 31.8.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read

with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Sunil Vij in respect of apartment/unit described below in the project 'Woodshire', on account of violation of the section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 12.4.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, 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 contractual obligation on the part of the promoter/respondent 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: -

**\*Nature of project:** Group housing colony

1.	Name and location of the project	"Woodshire", Sector-107, Dwarka Expressway, Gurugram, Haryana
2.	RERA registered/ not registered	<b>Not Registered</b>
3.	Unit no.	B11/0302
4.	Unit measuring	1943 sq. ft'
5.	Buyer's agreement executed on	12.4.2013
6.	Total consideration	Rs.1,22,21,083/-
7.	Total amount paid by the complainants till date	Rs.1,20,45,741/-
8.	Percentage of consideration amount	98.56%
9.	Payment plan	Construction link plan



10.	Due date of delivery of possession (36 months from the commencement of construction or the date of execution of agreement, whichever is late + 180 days grace period) clause 16.1	20.5.2017 (date of laying of first plain cement concrete/mud mat slab is 20.11.2013)
11.	Date of offer of possession	28.8.2017
12.	Delay in handing over possession till date	3 months 8 days (approx.)
13.	Penalty clause as per buyer's agreement	Clause 16.6 of the agreement i.e. Rs.10 per sq. ft' of the super area.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A buyer's agreement is available on record for the aforesaid unit. The possession of the said unit was to be delivered by 20.5.2017 as per the said agreement. Therefore, the promoter has not fulfilled his committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent has filed the reply.

#### **BRIEF FACTS OF THE COMPLAINT**

6. The complainant purchased the apartment no B11/0302 admeasuring 1943 sq. ft' in M3M Woodshire for total consideration of Rs.1,22,21,083 and the complainant has paid Rs.1,20,45,741 to the builder.



7. The buyers' agreement was signed on 12.4.2013 and as per clause 16.1 of the buyers' agreement, the builder failed to provide possession till 12.10.2016 i.e. within 36 months from execution of the agreement plus 180 days grace period and 10 months have passed from the due date.
8. The possession was offered on 28.8.2017 when the DTCP provided occupation certificate on 24.7.2017. the complainant sent legal notice on 7.10.2017 to DTCP and respondents. The respondent no.1 sent reply dated 15.11.2017 direct to arbitrator and not to the counsel.
9. The DTCP supplied some information through RTI to the counsel of complainant where state pollution control board did not give clearance to the respondents and no fire safety equipment were installed in the building.
10. Regarding the arbitration clause it has been held in Aftab Singh vs. Emaar MGF land ltd. that *"disputes which are to be adjudicated and governed by statutory enactments, established for specific public purpose to sub-serve a particular public policy are not arbitrable"*.
11. Before issuing occupation certificate, DTCP did not take RERA registration certificate from respondents which is mandatory



under RERA rules. The tower-B is not mentioned in the occupation certificate dated 24.7.2017.

12. That there are various disputes pending before national consumer forum between M3M and respondent no.1. the complainant visited the site and found that green area outside the towers was eliminated and used for other purposes as compared to the brochure. The respondents provided only 1 basement instead of 2 and the total number of parking cannot be adjusted in single basement. As mentioned in brochure, the green area should be 80% whereas it actually is 30%.

13. **ISSUES RAISED BY THE COMPLAINANT**

I. **Whether the respondent no.1 and 2 have received occupancy certificate through DTCP illegally without completing the project?**

II. **Whether the respondents have violated the terms of OC by using D.G set even when NGT has also issued guidelines for not using it?**

III. **Whether the respondent company violated the provisions rule 55, section 24, section 52 of Haryana apartment ownership rule, 1987 and**





sections 3(f)(6), section 3(m) of Haryana Apartment Ownership Act, 1983?

- IV. Whether the ratio of carpet area to super area i.e. 55% is less and is changed after signing of the agreement without intimating the complainant?
- V. Whether the refund due to delay in project should be according to RERA provisions?
- VI. Whether DTCP has not taken RERA registration certificate from the respondents before issuing occupation certificate which is required under rule 2(o) of Haryana Real Estate (Regulation and Development) Rules, 2017?

#### 14. RELIEF SOUGHT

The complainant is seeking the following reliefs:

- I. To direct the respondent be directed to refund the amount charged till date with interest.
- II. To grant ad-interim stay against excess charge, penalty laid down by the office of respondent no.1 arbitrarily.
- III. To grant ad-interim stay against unnecessary demand of outstanding 5% at this stage where the project is incomplete.





**IV. Any other relief which this authority deems fit and proper.**

**REPLY ON BEHALF OF RESPONDENT NO.1**

15. The present reply is being filed by Mr. Deepak Kapoor who is duly authorized by the board of directors vide resolution dated 26.9.2018 to file the present reply. The name of the respondent has been changed from "M3M India Limited" to "M3M India Private Limited" w.e.f 11.8.2014.
16. The complainant is not entitled to seek refund because the project was completed in time and possession was offered on 28.8.2017. as per section 19(10) of RERA Act, it is the duty of the allottee to take physical possession within 2 months of the issue of occupation certificate however, the complainant has not come forward to take the possession in the present case.
17. If refund is allowed it would affect the rights of other home buyers who wish to continue with the project and the authority has to protect the interests of other allottees as well.
18. The first plain cement concrete was laid down on 20.11.2013 so, the possession became due on 20.5.2017 and the occupation certificate was granted on 24.7.2017 and the respondent immediately offered possession on 28.8.2017. the



complainant didn't take the physical possession of the unit and thereby breached his contractual obligation. So, the respondent issued a pre-cancellation notice dated 27.11.2017 and then also the complainant failed to comply with the obligations.

19. The complainant is not a consumer and has booked the unit for commercial purpose as a speculative investor. Mr. Sunil Vij and Ms. Yamini Vij booked another unit no. SB/SA/14L/02 in one of the project of the respondent and has invested in various projects of other companies.

20. The complainant has only paid Rs.1,22,81,408 out of the total payable amount of Rs.1,29,54,038 and has breached the contract. Also, there is arbitration clause under clause 48.1 in the agreement as per which the hon'ble authority should direct the complainant to resort to arbitration and so the present complaint is liable to be dismissed.

21. **DETERMINATION OF ISSUES**

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

22. With respect to the **first issue**, OC has been provided by DTCP on 24.7.2017 vide memo no. ZP-



809/SD(BS)/2017/7674. The legality of the OC is to be determined by the authority.

23. With respect to the **second issue**, the complainant has made assertions without providing material particulars for the same however, DTCP has issued OC dated 24.7.2017. so, the project is fit for occupation.

24. With respect to the **third issue**, for violation of provisions of Haryana Apartment Ownership Act, 1983 and Haryana apartment ownership rules, the complainant is advised to approach DTCP, Haryana for suitable remedy as the present authority does not have jurisdiction to entertain the same.

25. With respect to the **fourth issue**, clause G in the buyer's agreement and annexure B attached with it provides only for sale of super area and doesn't define the ratio of super area to carpet area.

26. With respect to the **fifth issue**, the authority came across clause 16.1 of the agreement which is reproduced hereunder:

*"36 months from the commencement of construction or the date of execution of agreement, whichever is late + 180 days grace period."*

Accordingly, the due date of possession was 20.5.2017 and the possession has been delayed by 3 months 8 days (approx.) till the date of offer of possession.



27. With respect to the **sixth issue**, the finding of the authority on the issue is that the respondent received OC for the project in question on 24.7.2017 which is before the publication of the rules *ibid* i.e. 28.7.2017. Hence, the said project is saved under Section 3(2)(b) of the Act *ibid* and is not covered under the definition of “on-going projects” as defined under Rule 2(o) of the Rules *ibid*. Therefore, the project is not registrable.

#### FINDINGS OF THE AUTHORITY

28. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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 complainant at a later stage.

29. As the possession of the apartment was to be delivered by 20.5.2017, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.



30. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligations.
31. In the present complaint, the complainant is seeking refund of the entire money paid till date i.e. 1,20,45,741/- along with interest from the date of provisional allotment till its realization of the payment and cancel the allotment upon entire refund.
32. However, keeping in view keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the interest of other allottees as the project has already been completed and the respondent has offered possession. The refund of deposited amount will also have adverse effect on the other allottees in the said project. Therefore, keeping in view the principles of natural justice and in public interest, the relief sought by the complainant cannot be allowed.



33. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.

The authority is of the considered opinion that the respondent has failed to deliver the possession of the said unit to the complainant by the committed date i.e. 20.5.2017 and the possession has been delayed by 3 months 8 days. Thus, the complainant is directed to pay the balance amount and take possession within 1 month failing which the total consideration will be forfeited.

#### **DECISIONS AND DIRECTIONS OF THE AUTHORITY**

34. 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 issues the following directions to the respondent in the interest of justice and fair play:

- (i) Since the project is registered, as such notice under section 59 of the Real Estate (Regulation and





Development) Act, 2016 for violation of section 3(1) of the Act ibid be issued to the respondent.

- (ii) As per clause 16.1 of the builder buyer agreement dated 12.4.2013 for unit no.B-11/0302 in Woodshire, sector 107, Dwarka Expressway, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of commencement of construction or the date of execution of agreement whichever is later + 180 days grace period.
- (iii) Date of laying of first plan cement concrete/mud mat slab is 20.11.2013, as such the due date of delivery of possession comes out to be 20.5.2017. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.1,20,45,741/- with the respondent.
- (iv) Possession of the unit has been offered to the complainant on 28.8.2017, copy of offer of possession is placed on record, after receiving of occupation certificate on 24.7.2017. The total sale consideration of the flat is Rs.1,22,21,083/-. Complainant has paid 95% payment. Complainant is directed to make balance payment and take the





possession within one month failing which respondent shall be at liberty to forfeit the entire amount. Since the matter is under dispute, no holding charges may be taken by the respondent.

Total sale consideration	Amount paid	Balance amount to be paid
Rs.1,22,21,083	Rs.1,20,45,741	Rs.1,75,342

35. The order is pronounced.

36. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.12.2018

HARERA  
GURUGRAM



Judgement Uploaded on 05.01.2019