



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

Complaint no. : 1523 of 2019
First date of hearing : 28.08.2019
Date of decision : 22.10.2019

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
Office : LGF, F-22, Sushant Shopping
Arcade, Sushant Lok, Phase-1, Gurugram-
122102

Complainants

Versus

1. Prithivi Raj Ahuja
2. Gunita Ahuja
Both R/o: S-38, Greater Kailash-II, New Delhi-
110048

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE

Ms. Shriya Takkar
Shri Keshav, Advocate proxy
counsel

Advocate for complainant
Advocate for respondent



ORDER

1. A complaint dated 08.04.2019 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 allottees Prithivi Raj Ahuja and Gunita Ahuja, on account of violation of the provisions of the Real Estate(Regulation and Development) Act, 2016.

2. Since the apartment buyer's agreement has been executed on 15.05.2013 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 the statutory obligations on the part of the allottees 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.	Occupation certificate	24.07.2017



5.	RERA Registration status.	Not registered
6.	DTCP License no.	33 of 2012 dated 12.04.2012
7.	Unit no.	MWTW-A04/1202, 12 th floor, Woodshire Tower A4
8.	Unit area	2746 sq. ft.
9.	Provisional Allotment Letter	23.02.2013
10.	Date of execution of apartment buyer's agreement	15.05.2013
11.	Date of first mud slab laid on (as per alleged by the complainants in the complaint)	03.12.2013
12.	Payment plan	Construction linked payment plan
13.	Total sale consideration(as per statement of accounts cum invoice on page no. 116)	Rs.1,72,71,387/-
14.	Total amount paid by allottees (as per statement of accounts cum invoice on page no. 116)	Rs.1,47,95,992/-
15.	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	03.06.2017



	which shall mean the date of laying of the first plain cement concrete/mud-mat slab of the tower or the date of execution of agreement whichever is later plus 180 days grace period) Note: Date of first mud slab laid on 03.12.2013 is later than the date of execution of apartment buyer's agreement dated 15.05.2013	Note: as calculated from the date of first mud slab laid dated 03.12.2013
16.	Date of offer of possession	04.12.2017
17.	Delay in handing over possession till date	6 months 1 day
18.	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 the record available in the case file which has been provided by the complainants and the respondents. An apartment buyer's agreement dated 15.05.2013 is available on record based on which the possession of the apartment was to be delivered by 03.06.2017 (page 47-97).



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

FACTS OF THE COMPLAINT

As per the averments made in the complaint, complainant no. 2 is the absolute owner of the project land described hereinafter and has taken licence 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 framed thereunder and the 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.

6. The complainants submitted the complainants developers have developed in a planned and phased manner over a period of time, on the 'Land' situated in Village Dharampur, Gurugram, Sector 65, Gurugram, Haryana, India a Group Housing Colony under the name & style as "M3M Woodshire" ('Project')

inter alia 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 over a period of all in accordance with the licenses and the building plans as approved by DGTCP from time to time. In accordance with the sanctioned building plans, the complainants have already developed the project with suitable infrastructural facilities.

7. The complainants submitted that being impressed by the project being constructed by the complainants, the respondents approached the Complainant Developer for booking of an apartment in the project of the complainant and accordingly signed and submitted a Booking Application. In due consideration of the commitment by the Respondents to make timely payments, the Complainants Developers allotted the Apartment bearing No. MWTW-A04/1202, 12th Floor, Woodshire Tower A4 measuring 2746 sq. ft. (in short, the subject apartment) in favour of the Respondents vide the allotment letter dated 23.02.2013.



8. Subsequently, the Apartment Buyer Agreement dated 15.05.2013 was executed between the complainants and the respondents; that while executing the Apartment Buyer Agreement, it was agreed by the complainants and the respondents 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 but it was only a proposed period based on estimates, and was not a period which was absolute, fixed or cast in stone. It is stated that the first mud slab was laid on 3.12.2013 and the Apartment Buyer's Agreement had been executed between the parties on 15.05.2013 with a grace period of 180 days over and above the proposed/estimated "Commitment Period". The time taken by the complainant no. 1 to develop the project is the usual time taken to develop such a large scale project.



10. The complainants submitted that the construction of the Project was affected on account of unforeseen circumstances beyond the control of the Complainants Developers. 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; 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 2.11.2015 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 said scarcity continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customers.

11. The complainants submitted that despite the aforementioned circumstances, the Complainants Developers 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 23.12.2016 with respect to the tower in which the subject apartment is situated with the statutory authorities and the same was granted by the authorities only on 24.07.2017 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 complainants applied for OC, the Apartment was complete in all respect.

12. The complainants submitted that the Occupation Certificate with respect to the Tower where the subject apartment is situated was only granted after inspections by the relevant authorities and after ascertaining that the construction was completed in all respects 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 04.12.2017 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 Agreement.

14. The complainants submitted that when the Respondents were not taking the possession of the apartment after clearing the outstanding dues, the complainants sent Reminder 1 dated 30.01.2018 to them. Since even after issuance of reminder 1 the Respondents neither approached the complainants to take the possession of the apartment nor to clear the outstanding dues, the complainants were forced to send pre-cancellation notice dated 27.03.2018 to the Respondents. On 08.02.2019 a Last and Final Opportunity notice was also issued to the Respondents. Thereafter on 15.02.2019 a letter was issued to the Respondents intimating regarding the holding charges in case possession was not taken.

15. The complainants submitted that the project "M3M Woodshire" consists of total 995 Apartments out of which 754 Apartments have already been sold and possession 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. Hence, this complaint for appropriate reliefs.

ISSUES TO BE DECIDED:

16. The complainants have raised the following issues:
 - a. Whether the respondents allottees have violated the terms and conditions of apartment buyer's agreement?
 - b. Whether the respondents allottees have violated their duty under section 19(6) read with section 19(7) of the Real Estate (Regulation and Development) Act, 2016?
 - c. Whether the respondents allottees have violated their duty not to take the physical possession of the apartment within a period of two months of the



issuance of the Occupancy Certificate for the said apartment under Section 19(10) of the Real Estate (Regulation and Development) Act, 2016?

- d. Whether the respondents are liable to pay holding charges as per the terms and conditions of the apartment buyer's agreement?
- e. Whether the respondents allottees are liable to be directed by this authority to forthwith take possession of the allotted unit after clearing all dues pending qua the same with delayed interest in the interest of justice and fair play?

RELIEFS SOUGHT

17. The complainants are seeking the following reliefs:
- (i) the respondents be directed 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) the respondents also be directed to pay the balance consideration and delayed interest as per Section 19 of the Real Estate (Regulation and Development) Act, 2016;



- (iii) the respondents also be directed to pay holding charges as per the terms and conditions of the Apartment Buyer's Agreement;
- (iv) the respondents also be directed to pay the outstanding maintenance dues of the maintenance agency;

REPLY ON BEHALF OF RESPONDENTS

18. The respondents have filed a joint reply and have submitted that the complainants have concealed true and material facts from this Hon'ble Forum. The true and correct facts are that the Respondents on the basis of advertisements and brochure of the complainants, showed his interest for allotment of a 4 BHK apartment in the group housing colony being developed in the name and style of "M3M WOODSHIRE" and submitted the application dated 20.06.2012 alongwith the application amount of Rs.7,00,000/- for provisional booking of space to be released in future. Respondents have booked the apartment through M/s. Investors Clinic (Channel Partner, Complainants). On 01.07.2012, Respondents received a letter from Mr. Vivek Sharma Manager, Sales and Marketing, representative of M/s. Investors Clinic (Channel Partner,



Complainants), wherein the complainants demanded 10% amount of the total cost of the apartment every month for the month of June, July and August, 2012 (i.e. 30% of total cost of apartment) and further informed the Respondents that no receipt will be issued against the payment of said amount since the Project is still under soft launch, copy of letter dated 01.07.2012. It is ironical to mention that the complainants had soft launched this project through their Channel Partner, i.e. M/s. Investors Clinic and violated the regulation of Urban Area Act, 1975 before taking approval of the building plan. That subsequently on 03.12.2012 the Respondents submitted the application for allotment of residential apartment i.e. 4 BHK + Servant having a super area 2764 Sq. feet bearing apartment No.A-4/1202 booked in the name of Respondents at a basic sale price of Rs.4462/- per Sq. feet after three percent discount plus one parking space at Rs.4,50,000/-, plus development charge at Rs.381/- per Sq. feet, plus IFMS at the rate of Rs.100/- per Sq. feet plus PLC charges at the rate of Rs.400/- per Sq. feet plus community club membership charges at the rate of Rs.1,50,000/-. The complainants as per clause 46 of the



application form appearing on page No.39 of the complaint paper book, had agreed to complete the construction within 36 months as such from the date of application i.e. 03.12.2012, the complainants were to give possession of the apartment by 03.12.2015.

19. The respondents submitted that complainants during that intervening period of year 2012 and 2013, the Respondent no.1 was hospitalised for very serious ailment and requested the complainants to not impose interest for the delayed payment and submitted the payment alongwith the covering letter dated 07.02.2013 against the demand raised by the complainants on 04.12.2012,. The provisional allotment letter dated 23.02.2013 was issued to the respondents wherein the property detailed above i.e. apartment No.MW TW-A04/1202 was provisionally allotted to the respondents alongwith the said allotment letter, the complainants also submitted the payment plan. A close perusal of the payment plan, appearing at page No.44 of the complaint paper book, clearly shows that the due date of the first instalment of 20% of BSP is to be paid on 03.01.2013, whereas the complainants had demanded 30%



payment at the time of making provisional application. This fact itself clearly shows the malafide intent of the complainants, who had not issued any receipts of the payment received from the respondents and that too had demanded excess payment than the actual agreed schedule of the payment.

20. The respondents submitted that the respondents received Apartment Buyer's Agreement for signing on 15.05.2013 and after going through the terms and conditions of the Apartment Buyer's Agreement, the respondents raised various issues with the complainants vide email(s) dated 21.02.2018 & 22.06.2018, but the complainants failed to address the issues raised by the respondents and the respondents were left with no option but to sign the Apartment Buyer's Agreement as the respondents had already invested an amount of more than rupees twenty five lakhs. The respondents sent the signed Apartment Buyer's Agreement on 15.05.2013. The complainants again started demanding the instalments without even starting the stage of the construction as completion of the construction of the project was fixed for 36



months as per the clause 16.1 of the Apartment Buyer's agreement appearing on page No.75. The complainants started raising demand and in furtherance of that demand, the complainants again issued a letter alongwith the demanded amount vide letter dated 17.05.2013. The complainants were again issued a letter not to charge any interest because the respondent No. 1 was critically ill and a letter to this effect was issued on 28.05.2013. The respondent No. 1 also issued a letter on 03.08.2013 calling upon the complainants to release the receipts of the payment made by the respondents as they were required by the respondents. As per the clause 16 of the Apartment Buyer's Agreement which was ultimately signed on 15.05.2013 after a gap of one and half year from taking the application money from the respondents, the period agreed by the complainants to hand over the property was three years or 36 months and accordingly the complainants were bound to hand over possession of the apartment in question to the respondents by 15.05.2016 without prejudice to the actual delay considering the delay in execution of the Buyer's Agreement and failed to give possession on the stipulated date



but Department of Town & Country Planning ("DTCP"), Haryana helped the Complainants and given Occupancy Certificate ("OC") on dated 24.07.2017 illegally arbitrating only to escape from the liability of RERA applicability in Haryana on the complainants, without inspecting, without videography and violated terms and rules of various Acts and issued the OC without any inspection, without any amenities and in violation of various layout plans, without electricity connection only on the basis of D.G. set and so many issues were ignored before giving OC, which is not circulated to the respondents.

21. The respondents approached the complainants to issue permission to mortgage, so as to avail loan and the said letter dated 01.08.2014 was issued by the complainants and a tripartite agreement was executed on 01.08.2014 between the parties. The amount of loan which was received by the respondents was duly deposited with the complainants but despite the said that the complainants kept on sending various demand letters and cancellation notices with malafide intent.

22. The respondents submitted that complainants in the month of August 2017 after taking illegal OC, incomplete project of complainants, with the active assistance of the DTCP, Haryana, complainants sent notice of possession with some documents regarding account statement and indemnity bond- cum declaration-undertaking, i.e. annexure D by forcible order and without this undertaking no allotment has been permitted and also intimated for first time regarding the formation of M-worth Facility Services Pvt. Ltd. to be a maintenance agency. At this time respondents first time came to know that a self created RWA had apparently given maintenance tender to M-worth Facility Services Pvt. Ltd. without knowledge of respondents and this communication was not part of any of the existing agreements and was never informed to the respondents. Without handing over of actual possession, the complainants have started raising maintenance bills without any usage and one such bill was received by the respondents for consumption of gas dated 29.09.2018 where the respondents have been shown to have consumed gas.

23. The respondents submitted that the respondents upon their visit to the site noticed that green areas outside the towers were eliminated drastically and were used for other purpose as compared to that which was advertised in the sale brochure and hence the complainants have cheated the respondents in this respect. As per RTI documents, the 31% green area (20% tree plantation & 11% landscape) as directed in environmental clearance issued by SEIAA vide no: SEIAA/HR/2014/307 dated 21/02/14 is not the actual position at site. Also the given green area is not at the location shown in the plans submitted to SEIAA. As mentioned in the brochure, the green area should be 80%, whereas actually it is approximately 30% only.

DETERMINATION OF ISSUES:

24. After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the issue wise findings of the authority are as under.

a. With respect to first and second issue, as per clause 8 of the apartment buyer's agreement dated 15.05.2013 read with section 19(6) and section 19(7) of the Real Estate (Regulation



and Development) Act, 2016, the allottee is under an obligation to make necessary payments in accordance with the payment plan along with applicable registration charges, maintenance charges and any other charges. However, the respondents-allottees have made payment of Rs.1,47,95,992/- as against the total consideration of Rs.1,72,71,387/-/-, thus failing in making payment in accordance with the payment plan. Thus, the respondents-allottees have violated the conditions of apartment buyer's agreement and have also violated the duty cast upon them under section 19(6) and section 19(7) of the Act *ibid*.

b. With respect to third and fifth issue, as per section 19(10) of the said Act, the allottee 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 24.07.2017 and the possession was offered on 04.12.2017. However, the respondents-allottees failed in taking the possession thereby violating section 19(10) of the said Act.

Thus, keeping in view the circumstances of the case, the respondents-allottees are hereby directed to take possession of the allotted apartment after clearing all dues pending along with delayed interest at the prescribed rate of 10.25% per



annum according to section 18(1) proviso read with rule 15 of the rules *ibid*. The complainants shall also be liable to pay delayed interest charges at equitable interest rate of 10.25% per annum from the due date of handing over possession, i.e. 03.06.2017 till the offer of possession on 04.12.2017.

c. With respect to fourth issue, as per clause 16.2 of the said agreement, the allottee shall pay holding charges @ Rs. 10 per sq. ft. per month of the super area of the apartment on account of failure in taking possession within the 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 10.25% 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:

25. 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. 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.

DIRECTIONS OF THE AUTHORITY:

26. 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 complainants are directed to pay delayed possession charges for every month of delay at the prescribed rate of interest of 10.25% per annum from due date of delivery of possession i.e. 03.06.2017 till actual offer of possession i.e. 04.12.2017.
- (ii) As the promoters/ complainants are levying the interest on delay payments at the prescribed rate of 10.25% per annum, so they cannot levy the holding charges.

(iii) The respondents-allottees are hereby directed to take possession of the allotted apartment after clearing all dues pending along with delayed interest at the prescribed rate of 10.25% per annum with sixty days after adjusting the delay possession interest to be paid by the complainants to the respondents.

27. The order is pronounced.

28. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member


(Dr.K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 22.10.2019

HARERA
GURUGRAM

