

PROCEEDINGS OF THE DAY

Day and Date	Monday and 21.01.2019
Complaint No.	758/2018 Case Titled As Manoj Bansal V/S M Three M India Ltd
Complainant	Manoj Bansal
Represented through	Complainant in person.
Respondent	M/S M Three M India Ltd
Respondent Represented through	Shri Ajay Bansal Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

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 be issued to the respondent. Registration branch is directed to do the needful.

Arguments heard.

Complaint was filed on 31.8.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 22.9.2018, 16.11.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 16.11.2018 and 29.11.2018 for non-filing of reply even after service of notices. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the authority.

From the above stated conduct of the respondent, it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to proceed ex-parte against the respondent and to decide the matter on merits by taking into a count legal/factual propositions, as raised, by the complainant in his complaint.

A final notice dated 14.1.2019 by way of email was sent to both the parties to appear before the authority on 21.1.2019.

Brief facts of the matter are as under :-

As per clause 16.1 of the Builder Buyer Agreement dated 23.3.2013 for unit No.MW-TW-B11/0803 in project Woodshire, Sector 107, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of start of construction or date of execution of BBA whichever is later + 6 months grace period which comes out to be 23.9.2016. It was a construction linked plan. Complainant has already paid Rs.74,46,480/- to the respondent against a total sale consideration of Rs.78,13,846/- . However, the respondent has miserably failed to deliver the unit in time and there are no chances to deliver the unit to the complainant in near future. The respondent has offered the possession to the complainant **on 28.8.2017**. However, complainant has not taken the possession of unit on one pretext or the other which are quite flimsy in nature. The complainant is directed to take possession of the unit within 30 days from the receipt of possession letter. However, the complainant is eligible for late delivery possession charges under section

18 (1) of the Real Estate (Regulation & Development) Act, 2016. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 23.9.2016 to 28.8.2017 as per the provisions of section 18 (1) of the Act ibid.

Both the parties are advised to settle their remaining issues amicably.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

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

Samir Kumar
(Member)
21.1.2019

Subhash Chander Kush
(Member)

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

Complaint No. : 758 of 2018
First date of hearing : 21.01.2019
Date of Decision : 21.01.2019

1.Mr. Manoj Bansal
2.Mrs. Shikha Bansal
R/o H. No. 236, ground floor, sector 47, **Complainants**
Gurugram, Haryana

Versus

1.M/s M3M India Limited(through its
chairman)
Registered office: M3M India Limited, Paras
twin towers, tower B, 6th floor, golf course
road, sector 54, Gurugram **Respondents**
2. Cogent Realtors Pvt. Ltd. (through its
director)
Office:303, Sagar Apartment, Sector 56,
Gurugram

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Manoj Bansal Complainant in person
Shri Ajay Bansal Advocate for the respondent



EX-PARTE ORDER

1. A complaint dated 30.08.2018 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 complainant Mr. Manoj Bansal against the promoter M/s M3M India Pvt. Limited in respect of apartment no. MW TW-B11/0803, measuring 1366 sq. ft. of the project 'M3M Woodshire' located in Sector 107, Gurugram for not starting with the construction of the project and by not handing over of possession, which is an obligation of the promoter/respondent under section 11(4)(a) of the Act *ibid*.

2. Since the apartment buyer's agreement dated 23.03.2013 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non compliance of contractual obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	Woodshire, Sector 107 , Gurugram
2.	Apartment no.	MW-TW-B11/0803
3.	Nature of real estate project	Group housing colony



4.	DTCP license no.	33 of 2012
5.	Total unit area	1366 sq.ft.
6.	RERA registered/unregistered	unregistered
7.	Date of booking	04.12.2012
8.	Date of execution of builder buyer agreement	23.03.2013
9.	Payment Plan	Construction linked payment plan
10.	Total consideration amount	Rs. 78,13,846/- (pg 81)
11.	Total amount paid by the complainant	Rs. 74,46,480 /-
12.	Due date of delivery Clause 16.1 of the agreement dated 23.03.2013 (36 months from the date of start of construction or date of execution of agreement whichever is later plus 180 days of grace period)	As date of start of construction is nowhere mentioned thus, date would be calculated from the date of execution of agreement which comes out to be 23.09.2016
13.	Delay in handing over possession till date	2 years 4 months
14.	Penalty clause 16.6 of the apartment buyer agreement dated 23.03.2013	Rs 10/- per sq. ft. of the super area per month of delay
15.	Status of the project	Occupation certificate received on 24.07.2017



4. The details provided above have been checked as per record available in the case file which has been provided by the complainant and the respondent. An apartment buyer

agreement is available on record dated 23.03.2013 for the aforesaid apartment no. MW-TW B11/0803. However, the due date of possession is 23.09.2016 and promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his obligation which is a violation of section 11(4)(a) of the Act *ibid*.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case up for hearing on 21.01.2019. Despite service of notice the respondent neither appeared nor filed their reply to the complaint and case is being proceeded *exparte* against the respondent.

Facts of the complaint

6. Briefly stated, facts relevant for the disposal of present complaint as the grievance of the complainant relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent in regards to apartment no. MW-TW B11/0803 bought by the complainant spending his hard earned life



savings, in the project called the 'Woodshire' in Sector 107, Dwarka Expressway, Gurugram, Haryana.

7. The complainants submitted that the respondents no. 1 and 2 started project under the name of "M3M Woodshire" and the complainants purchased the aforesaid apartment for a total sale consideration of Rs 78,13,846/- payable as per the construction linked plan as provided in the agreement dated 23.03.2013.
8. The complainants submitted that the respondent no. 1 provided a provisional allotment letter to the complainants dated 13.02.2013 and also gave them the bank details. The complainants had made 95% of the payment according to the schedule payment provided.
9. The complainants submitted that as per clause 16.1 the possession was to be delivered within a period of 36 months from the date of start of construction or execution of agreement whichever is later plus a grace period of 180 days which the respondents failed to deliver on time. The complainants further submitted that DTCP here helped both the respondents in obtaining occupation certificate dated



24.07.2017 arbitrarily and illegally only to escape the liability of RERA applicability without inspecting and videography and violated the terms of the Act.

10. The complainants submitted that in the month of August, 2017 after taking illegal OC for incomplete project from the office of DTCP, the respondents sent notice of possession with some documents regarding account statement and indemnity bond cum declaration by forcible order and without this undertaking no allotment has been permitted and also intimated first time regarding the formation of M-worth Facility Services Pvt. Ltd.

11. The complainants submitted that they sent legal notice dated 02.10.2017 to DTCP and various other authorities but DTCP helped the respondents and was silent on the obtaining of illegal OC only to protect the project of the respondents from RERA Act, 2016.

12. The complainants submitted that the respondent no. 1 arbitrarily made pressure on the complainants and asked the complainants to withdraw the notice when the complainants visited in the month of October at the project site. The



complainants further submitted that the respondents even wanted to forfeit the huge amount of rupees charged in excess and long period ago about 3 years ago and despite delay in possession sent illegal, unjust, unconstitutional demand for the provisional allotment and again demanded by ignoring the legal notice.

13. The complainants submitted that the respondent no 1. sent pre- cancellation notice dated 27.11.2017 during the disputed matter and also wanted to put up sand on all of their wrongs and excessively charged money only to stop voice of complainants sent arbitrarily notice for pre- cancellation.

14. The complainants submitted that they are not having any remedy other than to approach this hon'ble authority as respondent no. 1 is high handed and DTCP and other authorities are assisting the builder in obtaining the OC in respect of the concerned apartment number.

15. The complainants submitted that on their visit to the site they noticed that green area outside the towers was eliminated drastically and was used for other purpose as compared to that as was advertised in the sale brochure to them while



booking the apartment, hence the respondents no. 1 and 2 have cheated the complainants in every possible aspect. He further submitted that the green area should be 80%, whereas actually it is approximately 30% only.

16. The complainants submitted that the respondents provided only one basement instead of two basements to give 75% of covered parking to the buyers as per law but total number of parking cannot be adjusted in single basement. The respondents used the FAR by making additional flats in the stilt area instead of giving covered parking, so respondents increased the surface parking, and reduced the green area which is a violation of approval received from SEIAA.

17. The complainants submitted that as per the NBC, the minimum driveway in basement is 5.5 mtrs, whereas in many places in the basement the path is not meeting the above said criteria. The minimum covered parking as petitioner zoning is achieved by providing temporary fabric shed, for which the respondents have charged 4.5 lacs per car parking.



Issues to be decided:

18. Whether the respondent no. 1 and 2 have received occupancy certificate through DTCP illegally, unjust, unconstitutional just to escape from the liability of RERA, without completing the project and DTCP illegally provided occupancy certificate to respondent no. 1-2 without investigating the project is it justified as per law?
19. Whether respondents are not violating the terms of occupancy certificate and on the basis of O.C. issued by DTCP in managed manner various developers are running on D.G. set since long time and violating the various laws and even NGT also issued guidelines regarding non-using of D.G. set many times is it justified as per law?
20. Whether ratio of carpet area is also very less i.e. 55% and change in layout after signing the agreements without intimating the complainant is it justified as per law?
21. Whether the complainant is entitled to the refund of the paid amount along with the interest?



22. Whether respondent has violated rule 55 of Haryana ownership Rules, 1987 and section 3(f)(6) and section 3(m) of Haryana Apartment Ownership Act, 1983 ?

Reliefs sought-

The complainant is seeking the following reliefs:

- i. Direct the respondents to refund the entire paid amount of Rs.74, 46,480/- received by the promoter with the prescribed interest.
- ii. To issue ad interim stay against excess charge, penalty laid by the office of respondent no.1 arbitrarily as, showed defaulter petitioner and forcible demand of amount as well as other formalities, documents only to escape from the liability of RERA as mentioned in delayed project definition as per RERA applicable on ongoing project.



Determination of issues: -

23. With regard to **first issue and second** raised by the complainant, regarding illegally receiving of the occupation certificate is not in the preview of the authority , as the

authority has no jurisdiction to decide these issue. The complainant may approach the competent forum.

24. With regard to **third issue** raised by the complainant, the changes made in the layout plan after signing the agreement without intimating the complainant is justified as per clause 13.3 of the apartment buyer agreement dated 23.03.2013 which is reproduced as under.

Clause 13.3 – The allottees agrees and understand that the layout plan and /or building plan of the group housing colony may be subject to change whether as may be required by any government authority or which may otherwise require or deemed necessary interest of the developer of the group housing colony . The allottees understand that such changes may result in addition , alteration , deletion or design , modification to the group housing colony and the allottee hereby agrees such changes and that it shall not be necessary on the part of the company to seek the approval or prior consent of the allottee for the purpose making any changes and layout plan as may be amended and approved ,from time to time , shall supersede the immediate previous approved layout plan and shall automatically form a part of this agreement.

Also the ratio of carter area to super area cannot be challenged as the complainant himself agreed to such dimensions while executing the agreement



25. With respect to the **fourth issue** raised by the complainant, as per clause 16.1 of the apartment buyer agreement dated 23.03.2013, the possession of the unit was to be handed by

23.09.2016. However, the possession has been delayed by 2 years 4 months(approx.) till the date of decision. As the occupation certificate is granted on 24.07.2017. Hence, the complainant is not entitled for refund of the paid amount and he is only entitled for interest at the prescribed rate of interest @10.75% as per the provision of section 18(1) of the Act.

26. With regard to **fifth issue** raised by the complainant, the authority has no jurisdiction to decide these issues. The complainant may approach the competent forum.

Findings of the authority

27. 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 Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all



purpose with offices situated in Gurugram. 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.

28. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs. 5,000. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs. 10,000.
29. Such notices were issued to the respondent on 22.09.2018 and on 16.11.2018 and on 29.11.2018.
30. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority hereby proceeds ex-parte on the basis of the facts available on record and adjudges the matter in the light of the facts adduced by the complainant in its pleading.
31. Since the project is not 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 be issued to the respondent. Registration branch is directed to do the needful.

32. Complaint was filed on 31.8.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 22.9.2018, 16.11.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 16.11.2018 and 29.11.2018 for non-filing of reply even after service of notices. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the authority. From the above stated conduct of the respondent, it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to proceed ex-parte against the respondent and to decide the matter on merits by taking into a count legal/factual propositions, as raised, by the complainant in his complaint.



33. A final notice dated 14.1.2019 by way of email was sent to both the parties to appear before the authority on 21.1.2019.

34. As per clause 16.1 of the builder buyer agreement dated 23.3.2013 for unit No.MW-TW-B11/0803 in project Woodshire, Sector 107, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of start of construction or date of execution of BBA whichever is later + 6 months grace period which comes out to be 23.9.2016. It was a construction linked plan. Complainant has already paid Rs.74,46,480/- to the respondent against a total sale consideration of Rs.78,13,846/-. The respondent has offered the possession to the complainant on 28.8.2017. However, complainant has not taken the possession of unit on one pretext or the other which are quite flimsy in nature.



Decision and directions of the authority: -

35. Keeping in view the dismal state of affairs with regard to the status of project and non-appearance of the respondent despite service, the authority left with no option but to order

refund of the amount paid by the complainant to the respondent along with prescribed rate of interest.

36. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions: -

1. The complainant is directed to take possession of the unit within 30 days from the receipt of possession letter. However, the complainant is eligible for late delivery possession charges under section 18 (1) of the Real Estate (Regulation and Development) Act, 2016. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 23.9.2016 to 28.8.2017 as per the provisions of section 18 (1) of the Act ibid. Both the parties are advised to settle their remaining issues amicably.
2. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.



3. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Real Estate (Regulation and Development) Act, 2016 by the registration branch.

37. The order is pronounced.

38. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated: 21.01.2019

Judgement uploaded on 31.01.2019

HARERA
GURUGRAM

