

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

**Complaint no.** : 5947 of 2019  
**First date of hearing** : 09.01.2020  
**Date of decision** : 03.02.2021

Arun Kumar Raina

**Address:-** P-10 Parvana Vihar Apartment,  
Sector-9 Rohini, Delhi 85

**Complainant**

Versus

M3M India Private Limited

**Address:-** M3M Cosmopolitan, 12<sup>th</sup> Floor,  
Sector-66, Golf Course Extension Road,  
Gurugram

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman**  
**Member**

**APPEARANCE:**

Complainant in person  
Ms. Shreya Takkar

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 28.11.2019 has been filed by the complainant/allottee 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 wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or

the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se them.

**A. Unit and project related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S.No. | Heads                                       | Information  |
|-------|---|--|
| 1.    | Project name and location                   | M3M Escala, Sector- 70 A   |
| 2.    | Project area                                | 27.4713 acres  |
| 3.    | Nature of the project                       | Group Housing Colony   |
| 4.    | DTCP license no. and validity status        | 16 of 2009 dated 29.05.2009 valid upto 28.05.2024<br>73 of 2013 dated 30.07.2013 valid upto 29.07.2019 |
| 5.    | Name of licensee                            | Vibhor Home Developers Pvt. Ltd. and 6 others<br>DLF New Gurgaon Homes Developers Pvt. Ltd.            |
| 6.    | RERA registered/ not registered             | Not registered   |
| 7.    | Unit no.                                    | ME TW-02/0501, Tower-2   |
| 8.    | Revised unit area                           | 1638 sq. ft.<br><b>(Earlier it was 1600 sq. ft. as per allotment)</b>                                  |
| 9.    | Date of execution of flat buyer's agreement | 17.07.2014<br>(Page 97 of the complaint)   |
| 10.   | Payment plan                                | Construction linked payment plan   |

|     |   |  |
|-----|---|--|
| 11. | Total sale consideration  | Rs. 1,26,49,345.34/-<br>(As per statement of account dated 04.10.2019, page 44 of the complaint)   |
| 12. | Total amount paid by the complainant  | Rs. 1,36,92,208/-<br>(As per statement of account dated 04.10.2019, page 44 of the complaint)  |
| 13. | Date of construction  | 30.04.2014<br>(As stated by the respondent, page no. 8 of the reply)   |
| 14. | Due date of delivery of possession<br><b>(Due date of possession is calculated from the date of execution of this agreement i.e.17.07.2014)</b> | 17.01.2018<br><i>As per clause 16.1-36 months from the date of commencement of construction which shall mean the date of laying first plain cement concrete/mud slab of the tower or the date of execution of this agreement whichever is later plus 180 days grace period</i> |
| 15. | Offer of possession   | 04.08.2018<br>(Page 147 of the reply)  |
| 16. | Handover of physical possession of apartment  | 31.12.2018<br>(Page 155 of the reply)  |
| 17. | Delay in handing over possession till offer of possession i.e. 04.08.2018   | 6 months 18 days   |
| 18. | OC details  | 02.08.2018   |
| 19. | Conveyance deed executed on   | 30.01.2020<br>(Page 39 of the reply)   |

## B. Facts of the complaint

- The complainant submitted that the flat was booked in M3M Escala project on 21.2.2014. One- sided apartment buyer's



agreement of M3M, where the buyers were required to sign on dotted lines. The complainant signed the ABA (self, wife and son) with M3M on 17.07.2014 in respect of their Escala project in Sector 70- A Gurugram. M3M exploited them on such clauses of the ABA which favoured them on the pretext that the complainant signed the agreement but denied compliance themselves to such clauses which were against their interest and put them under additional financial obligations towards buyer e.g., clauses 16.6 & 16.7- (ABA) relating to delay in completion of the project and refund of full amount with Interest to buyers . The Escala project was delayed for more than one year. On request for surrendering of flat as per clause 16.7 of ABA with an option to opt for cancellation/termination of allotment/agreement and full refund of amount , it was told by M3M (Shri Kamal Sareen, PRO) that it is not M3M's policy to buy back the flats .

4. It is submitted that on receipt of Occupancy Certificate on 02.08.2018, M3M vide their notice for final payment dated 04.08.18 which was received by them on 05.08.18 or 06.08.18, requesting for payment Rs. 61 lakhs within a period of 30 days from the date of issuance of the letter and for taking the possession of the flat. They paid the entire amount a little late on 15<sup>th</sup> September,18 and for this delayed period of 12 days, the complainant was charged interest @24%. In spite of

repeated requests M3M did not agree for allowing the complainant some grace period and charged interest on delayed payment @ 24%, while they fixed a paltry compensation in apartment buyer's agreement for themselves for the extended delayed period of the project @Rs.10 per sq. ft. pm. The extended delayed period is referred to as the period of actual delay in construction of the project minus the grace period sought for completion of project. For the extended delayed period M3M paid to the complainant a partly compensation for six months only.

5. The complainant submitted that as per clause 13.5 of ABA, that required to intimate to the allottee any revision in the super area of the apartment, PLC and other charges in writing, however no such intimation was sent prior to the notice for final payment vide their letter dated 04.08.2018 including additional payment for the increased super area which worked out to Rs.3 lakhs approx. complainant had applied for a flat having super area of 1600 sq. ft. but had to make payment for 1638 sq. ft. for which no details were provided as to show where the increase in super areas of 36 sq. ft. has actually resulted. After the issue of OC on 02.08.2018 by DTCP and also after making final payment on 15.09.2018, the complainant requested to the M3M authorities to give us the possession of flat, however, M3M took another three and a half



months to hand over the possession and the flat was handed over to them on 31st December 18. When the complainant went to have a look at the flat, he noticed entire kitchen wall and also both the bathrooms with excessive seepage. The drawing rooms and one room was also having some seepage and wall surface were damaged. This was immediately brought to the notice of M3M representative who had handed over the possession of flat ( Mr. Kamal Sareen, PRO of M3M) and to maintenance staff.

6. Further submitted that the complainant was invited by Shri Abhijeet Singh, Vice President (VP) of M3M on 4.09.2019 at his office for a meeting and also to sort out the issues. He promised to settle his pending dues with M3M e.g. refund of GST dues Rs.72,858 withheld by M3M for unknown reasons since Sept. 2018 and also to initiate immediate action for registration of the Flat No. 501, Tower 2 at their Escala Project, for which the complainant already deposited a sum of Rs.5.19 lakhs to M3M on 15<sup>th</sup> September,18 a state govt. levied duty 'Stamp duty Charges' but the conditions for that was he should withdraw his complaint from HARERA and state government since the complainant did not agree to their conditions for withdrawing his complaint, the pending dues of GST and state govt levied duty 'stamp duty charges' are still lying with them without initiating any action in these matters.



**C. Relief sought by the complainant:**

7. The complainant have sought the following reliefs:
- (i) DTCP issued OC for M3's Escala project, this project was required to be registered with HARERA on or before 31.07.2017 which was not done by M3M promoters or builders. The question of seeking relief for the financial loss suffered would arise only, after the authority take a decision on registration of the M3M's Escala project under the provision of RERA Act under Section 3(1).
8. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

9. The respondent has contested the complaint on the following grounds.
- i. The respondent submitted that the present complaint has been filed in November 2019 under the amended form CRA which came into effect by way of amendment in HARERA Rules vide notification dated 12th September 2019. However, by way of order dated 25.11.2019 in the CWP no. 34244 of 2019 the Hon'ble High Court of Punjab and Haryana has stayed the operation of the amended rules. That the amended form CRA forms part of the

schedule of the amended Haryana Rules and thus the present complaint cannot be heard by this authority.

(ii) It is submitted that the present complaint has become infructuous as the complainant has taken possession of the apartment and has also got the conveyance deed in his name. It is imperative to state that all the allegations of the complainant are liable to fail as he himself has taken lawful ownership of the apartment and therefore no issues which subsist at the present. That the authority has taken already cognizance of the relief sought in the present complaint and based on the same has served upon the respondent herein a show cause notice dated 15.01.2020 and 18.08.2020 (**RERA-GRG-234-2020**), and the same is pending before the authority. It is pertinent to state that the respondent has already submitted a reply to the said show cause notice to the authority. The present complaint needs to be dismissed on the above grounds itself. The complainant if aggrieved has all the right to join the proceedings issued under show cause notice subject to an appropriate application. The continuation of the present complaint will amount to multiplicity of the proceeding for the same cause of action.

(iii) Further submitted that the complainant by way of clever drafting has also sought the relief in the form of



compensation claiming relief for financial losses suffered subject to the authority taking cognizance under Section 3 of the RERA Act, 2016. The complainant, clearly is seeking a relief for compensation which cannot be adjudicated by the authority in view of the HARERA Rules, 2017 read with the findings of the appellate tribunal in **Sameer Mahawar vs. MG Housing Pvt. Ltd.** The complainant has already taken possession, and got the conveyance registered in his favour, subsequent to filing of this complaint. That the interim relief as prayed for also cannot be granted since the complaint in view of the main prayer has already become infructuous. That the complaint filed by the complainant is baseless, vexatious and is not tenable in the eyes of law therefore the complaint deserves to be dismissed at the very threshold.

(iv) it is submitted that in the intervening period when the construction was under progress there were various instances when the construction work had to be put on hold on account of non-availability of building material pursuant to the directions issued by the Hon'ble High Court of Punjab and Haryana on mining activities and on account of various environmental related directions issued by various judicial/quasi-judicial authorities from time to time. that the complainant has executed the

Indemnity-Bond-Cum-Declaration-Cum-Undertaking dated 30.03.2018 wherein the complainant undertaken/admitted that he had no claims or demands of any nature whatsoever against the respondent company in relation to the apartment in issue. It was further undertaken by the complainant that they accept all their liabilities/ obligations towards the respondent company and had executed the said undertaking without being influenced or coerced by any person in any manner. The relevant portion of the Indemnity Bond-Cum-Declaration-Cum-Undertaking are reproduced herein below:

*c. And whereas the Complainant has consented thereto and without any conditions or reservations agreed to execute these presents. That in consideration of the Executant having paid the entire sale consideration and compliance of all formalities for the said Apartment and all other charges as per the terms of Buyer's Agreement and the offer of possession communication, the Executant has been offered possession of the Apartment. In pursuance thereof, the Executant has/have inspected the Apartment including without limitation its size, super area, carpet area, dimensions, location, quality of construction and materials used, specification, services provided, etc. which he/she/it/they acknowledges to be in accordance with the Buyers Agreement and accordingly confirm to have no claims or demands of any nature whatsoever against the Indemnified Parties in respect of or in relation to the Apartment.*

v. That the terms of the agreement are binding between the parties. The Hon'ble Supreme Court in the case of "**Bharti Knitting Co. vs. DHL Worldwide Courier (1996) 4 SCC 704**" observed that a person who signs a document containing contractual terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect. It is seen that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract; it is for the party to establish exception in a suit. When a party to the contract disputes the binding nature of the signed document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents. That the Hon'ble Supreme Court in the case of "**Bihar State Electricity Board, Patna and Ors. Vs. Green Rubber Industries and Ors, AIR (1990) SC 699**" held that the contract, which frequently contains many conditions, is presented for acceptance and is not open to discussion. It is settled law that a person who signs a document which contains contractual terms is normally bound by them even though

he has not read them, even though he is ignorant of the precise legal effect.

- vi. The complainant is not a consumer and an end user since he had booked the apartment in question purely for commercial purpose as a speculative investor and to make profits and gains. that the complainant cannot be treated as a consumer and hence, the captioned complaint is liable to be dismissed.

#### **E. Jurisdiction of the authority**

10. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka v/s M/s EMAAR MGF Land Ltd. (complaint no. 7 of 2018)*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. The said decision of the authority has been upheld by the Haryana Real Estate Appellate Tribunal in its judgement dated 03.11.2020, in appeal nos. 52 & 64 of 2018 titled as ***Emaar MGF Land Ltd. V. Simmi Sikka and anr.***
11. Arguments heard.
12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute.

Hence, the complaint can be decided on the basis of these undisputed documents.

13. The authority, on the basis of information, explanation, other submissions made, and the documents filed by both the parties, is of considered view that there is no need of further hearing in the complaint.

**F. Incomplete application is not an application in the eye of law**

14. On the hearing dated 10.11.2020 the promoter stated that M3M has applied for OC on 12.05.2017. But the application was not complete and incomplete application is not an application in the eyes of law. Although OC was not rejected but rectifications were carried out as prerequisite fire NOC was complete on 06.03.2018, hence the application was completed only after coming into force of RERA. Accordingly, RERA provisions are applicable. The complainant also brought to the notice of the authority certain documents which is a proof that on 12.05.2017 the project was incomplete in many respects. The promoter again applied to the DTCP for grant of OC on 15.09.2017. The DTCP further intimated that the project is still not complete. Even on 30.01.2018 for the 3rd time their development work were not complete, and the project was not fit for the grant of OC. It is very unfortunate to note that builders were trying to avoid applicability of RERA Act and

fraudulently apply for issue of OC without pre-requisite requirements and without completing all necessary work and requisite standard of construction.

15. Further, show cause notice consequent upon non-registration of on-going project "M3M Escala" was issued on 15.01.2020 directing the developer to submit an application for registration. Three issues are highlighted by Mr. Raina again and again in his submission which are concluded further;

1. Penalty for non-registration
2. Incomplete application submitted to DTCP;
3. Issue of structure stability certificate;

Further the authority expresses its gratitude to Mr. Raina and appreciate his spirit in raising voice against injustice. For the time and again it is brought to the notice of the authority that the attitude of the employees of promoter specially customers relating schemes is not courteous towards the customers. The promoter is advised to at least organize a behavioural training to the staff, so the customer is attended with courtesy and goodwill.

16. As per clause 16.1 of the agreement dated 17.07.2014 the possession was to be delivered within a period of 36 months from the date of commencement of construction which shall mean the date of laying first plain cement concrete/mud slab of the tower or the date of execution of this agreement

whichever is later plus 180 days grace period which comes out to be 17.01.2018. The date of execution of agreement is later than the date of start of construction. So, the due date of possession is calculated from the date of execution of agreement. Clause 16.1 of the buyers agreement is reproduced below:

**16. POSSESSION OF THE APARTMENT**

*16.1 The company based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the apartment within a period of thirty-six (36) months from the date of commencement of construction which shall mean the date of laying of the first plain cement concrete/mud slab of the Tower or the date of execution if this Agreement, whichever is later ("Committed Period"). Should the possession of the Apartment not be given within the committed Period due to any reason (except delays mentioned in clause 16.4 below), the Allottee agrees to an extension of One Hundred and eighty (180) days (Grace Period) after expiry of the Commitment period for handing over the possession of the Apartment.*

17. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of flat buyer agreement executed between the parties on 17.07.2014, 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 commencement of construction or execution of buyer's agreement whichever is later. The date of execution of

agreement is later than the date of start of construction therefore the due date of delivery of possession comes out to be 17.01.2018. Accordingly, non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. @ 9.30% p.a. w.e.f. due date of possession i.e. 17.01.2018 till handing over of possession i.e. 04.08.2018 plus two months i.e. 04.10.2018 as per the provision of section 18(1)(a) of the Act read with rules 15 of the rules. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 02.08.2018. However, the respondent offered the possession of the unit on 04.08.2018, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the



completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 07.01.2018 till the expiry of 2 months from the date of offer of possession (04.08.2018) which comes out to be 04.10.2018.

**G. Direction of the authority**

18. Hence, the authority hereby passes the following order and issue directions under section 34(f) of the Act:

- (i) The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay on the amount paid by the complainant from due date of possession i.e. 17.01.2018 till the handing over of possession i.e. 04.08.2018 plus two months i.e. 04.10.2018 as per provisions of Section 18 (1) read with 19 (10) of the Real Estate (Regulation and Development) Act 2016. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
- (ii) The promoter may credit delay possession charges in the account's ledger of the unit of the allottee, if the amount outstanding against the allottee is more than the DPC this will be treated as sufficient compliance of this order.
- (iii) If there is no amount outstanding against the allottee or less amount outstanding against the allottee then the

balance delay possession charges shall be paid after adjustment of the outstanding against the allottee.

- (iv) The respondent shall not charge anything from the complainants which is not the part of the agreement, however, holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020.

19. Complaint stands disposed of.

20. File be consigned to registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**(Dr. K.K. Khandelwal)**

Chairman

Dated: 03.02.2021

**Judgement uploaded on 05.10.2021**