



HARERA
GURUGRAM

1 HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY**

Complaint No. 4889/2020
Date of Decision: 16.09.2021

Shri Lokesh Pandey & Garima Pandey
R/o A-28, Mount Everest CGHS Ltd
Plot No.17, Sector-9
DWARLA

Complainants

Vs

M/s M3M India Pvt Ltd.
Paras Twin Towers, Tower-B
6th Floor, Golf Course Road,
Sector 54, Gurugram

M/s Hans Propcon Pvt Ltd.
Office No.1221-A, Devika Tower,
12th Floor, Nehru Place
New Delhi-110019

M/s Glory Infracon Pvt Ltd.
Office No.1221-A, Devika Tower,
12th Floor, Nehru Place
New Delhi-110019

Respondents

Complaints under Section 31
of The Real Estate(Regulation
and Development) Act, 2016

Present:

For Complainant^s.

For Respondent^s.

Sh. Anuj Malhotra, Advocate

Ms. Shriya Takkar Advovate

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ORDER

This is a complaint filed by Shri Lokesh Pandey and Ms Garima Pandey,(also referred as buyers) under Section 31 of The Real Estate(Regulation and Development) Act, 2016 (in brief of Act 2016) read with rule 29 of The Haryana Real Estate(Regulation and Development) Rules, 2017 against M/s s M3M India Pvt Ltd. etc (also called as developer) seeking refund of Rs.1,36,34,517/- alongwith interest @ 24% p.a. and costs of litigation.

2. According to complainants, a project known by the name and style of " M3M MARINA" situated in Sector 68, Gurugram was developed by the respondents. Coming to know about said project, they (complainants) booked a residential unit in said project and paid initial amount of Rs.5,00,000/- on 09.10.2014. They submitted booking application on 02.03.2015. Respondent made provisional allotment of unit bearing no. MR TW-04/1003, on 10th floor, measuring 1692sq ft. on 27.03.2015. Total sale consideration was agreed as Rs. 1,49,46,912. On receipt of Rs.23,01,548/-, respondent executed one sided Apartment Buyer's Agreement (ABA) after 9 months of booking i.e. on 18.05.2015. They (complainants) had opted for construction linked payment plan.

3 They availed loan of Rs.82,00,000/- from M/s Tata Capital Housing Finance Ltd, to pay to the respondent. A Tripartite agreement was entered among them, respondent and said M/s Tata Capital Housing Finance Ltd. on 10.08.2015. Allotted unit has been mortgaged. As per subvention scheme, the respondent No.1 was liable to pay pre-EMIs to the lender i.e. M/s Tata Capital Housing Finance Ltd. till possession of apartment in question. But said respondent No.1 stopped paying pre-EMs w.e.f. December, 2019, forcing the complainants to pay pre-EMIs.

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4. As per clause 16.1 of ABA, the respondent No. 1 was duty bound to offer possession of the allotted unit to the complainants, within a period of 48 months, with grace period of 180 days. Said respondent, under the garb of clause 8.4 of agreement, was charging interest @24% p.a. for delayed payment whereas same was liable to pay a meagre amount of Rs.7.50p per sq ft of the super area, in the event of delay in handing over possession. They received a letter for possession dated 18.09.2020, from respondents but after visiting the project, they (complainants) were shocked to see quality of construction and provision of amenities against the promised ones. Moreover, the builder had made several deviations in the building plans, contrary to specifications, as disclosed at the time of booking.

5. Citing all this, the complainants ^{have} sought refund of Rs.1,36,34,517/- in addition to TDS and GST paid alongwith interest @24%p.a., as well as compensation under section 18(1) read with section 19(4) of the Act. Costs of litigation are also prayed for.

6. A brief detail of the complainant's case is reproduced hereunder in tabular form:

I.	Name of the project	M3M MARINA
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	1003, 10 th floor
V.	Tower No. / Block No.	Tower TW-4

VI	Size of the unit (super area)	Measuring 1692 sq yds
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	02.03.2015
XI	Date of provisional allotment(original)	27.03.2015
XII	Date of execution of ABA	18.05.2015
XIII	Due date of possession as per commitment made at the time of booking	18.11.2019 (48 months+grace period of three months) with further period of 180 days from the date of commitment
XIV	Delay in handing over possession till date	12 months
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	As per clause 16.6 of ABA

Payment details

XVI	Total sale consideration	Rs. 1,49,46,912/-
XVII	Total amount paid by the complainant	Rs.1,36,34,517/-

7. Contesting the claim of the complainants, the respondents raised preliminary objection with regard to jurisdiction of this forum, to entertain and adjudicate this complaint. It is averred that matter regarding powers of the authority and of adjudicating officer is still pending with the Apex court and hence this forum has no jurisdiction to adjudicate this complaint.

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Respondents requested to adjourn this matter sine die i.e. till the final decision on the subject matter, by Hon'ble Supreme Court.

8. The facts that ABA was executed between the parties on 18.05.2015, a tripartite agreement dated 10.08.2015 was executed among the complainants, respondent No.1 and M/s Tata Capital Housing Finance Ltd. are admitted by respondent No.1. According to it, permission to mortgage unit in question was issued by it i.e. respondent No.1, under subvention scheme, opted by the complainants. Same (respondent no.1) agreed to pay pre-EMIs on the entire amount of loan disbursed by M/s Tata Capital Housing Finance Ltd for a fixed period of 42 months, starting from the date of disbursement. According to it (respondent No.1), subvention scheme was extended twice by it as a goodwill gesture to complainants. Despite being aware of their duty to make timely payments, the complainants defaulted in making payments and thus it (respondent no. 1) was forced to issue reminder and pre-cancellation notices date 28.06.2018 and 06.05.2019.

9. It is further the case of respondent no.1 that against total sale consideration of Rs.1,49,46,912/- plus taxes of the apartment in question, the complainants have paid an amount of Rs1,36,34,517/- only, till date. As per clause 16.1 of ABA the possession of booked unit was to be handed over within a period of 48 months from the date of commencement of construction i.e. laying the first plain concrete/mud mat slab of the tower or date of execution of agreement, whichever is later plus six months grace period. The complainants agreed to an extension of 180 days, after expiry of committed period of possession. Since, the mud mat slab was laid on 10.01.2017, the due date of possession comes to 10.07.2021. In this way, this complaint is pre-mature.

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10. Respondent no.1 claims that occupancy certificate for tower, in which the unit of the complainants is located, was applied on 13.11.2019 and same has been granted by the competent authority on 14.09.2020. The possession of booked unit was offered to the complainants on 18.09.2020, The complainants are thus not entitled for any relief, whatsoever.

11. I have heard learned counsels for the parties and also gone through record on case file. So far as preliminary objection with regard to jurisdiction of this forum is concerned, Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, provides for filings of complaint/application for inquiry to adjudge quantum of compensation by Adjudicating Officer. Matter came before. The Haryana Real Estate Appellate Tribunal (in brief Appellate Tribunal) in case titled as **Sameer Mahawar Vs M G Housing Pvt Ltd.** Where it was held by the Appellate Tribunal on 02.05.2019, that the complaint regarding refund/compensation and interest for violations under section 12,14, 16 of the Act of 2016 are required to be filed before the Adjudicating Officer, under Rule 29 of the Rules of 2017. In September 2019, Government of Haryana amended Rules of 2017, by virtue of which, the authority was given power to adjudicate issues stated above except compensation. Amendment in the rules came into challenge in Civil Writ Petition No. 34271/2019 before Hon'ble Punjab & Haryana High Court. The validity of amendment in rules was upheld by the High Court. The judgment was further challenged before the Apex Court in Special Leave Petitions No.13005 of 2020 & 1101 of 2021. The Supreme Court vide order dated 05.11.2020 was pleased to pass an order, staying operation of impugned order, passed by Punjab & Haryana High Court referred above. Said special leave petition is still pending, before the Apex Court.

12. When the order of Hon'ble Punjab & Haryana high Court upholding the validity of amendment in rules of 2017 has been stayed by the Apex

Court, which amounts to restoration of status qua ante i.e. when the complaints seeking refund, compensation and interest were entertained by the Adjudicating Officer. Considering all this, I do not agree with the respondent alleging that this forum has no jurisdiction to try and entertain present complaint.

13. Coming to merits of this case, it is contended by counsel for complainants that respondent made several changes in the project, which was contrary to the brochure as well as representations to his clients by the developer. Attracted by those promises, complainants opted to book unit in question. Learned counsel pointed out following deviations/changes:

- a. The visuals of the project depicted in the brochure have been canvassed so as to mislead the complainants. In the brochure, the main entrance of the project was depicted from the corner of Ikonic Tower, whereas currently the entrance has been created from the interior roads of village Akilmpur.
- b. Road promised in the brochure is not as per the Drawing No DTP(G) 2195/2014 dated 20.05.2014: As per the Sector drawing of Sector 68, a 24-meter-wide road which has been portrayed by the Respondents in brochure, crossing the Project, does not actually cross the project rather it turns to the opposite direction, much before the main gate of the Project.
- c. In term of the brochure of the company, the Respondent no. 1 had promised a football park as well as a grand park in the centre. However, on the ground, neither does a football park exist nor does exist a central park. Said place has been encroached by a podium lake, leaving no open area for children to play freely.

14. It is further the contention of learned counsel for complainants that ABA was unilateral and there are clauses which are oppressive, one sided and against the interest of buyers/complainants. Terms of ABA were never agreed by his clients. The respondent failed to hand over possession in time, despite the fact that complainants had paid about 90% of sale consideration and that too by taking loan from TATA Capital Housing Finance Ltd. under subvention scheme, after execution of tripartite agreement. As per said agreement, respondent no.1 undertook to pay pre-EMIs to said finance company till possession of apartment is handed over to the complainants, but said respondent failed to fulfil its promise. The respondent is not entitled to benefit of grace period i.e. 180 days as there were ~~not~~^{to} force majeure circumstances.

15. On the other hand, learned counsel for respondent, re-asserted plea taken by her client that this complaint is premature, as first mud mat slab was laid on 10.07.2017, due date of possession came to 10.07.2021. Occupation certificate was received on 14.09.2020 and respondent offered possession through letter dated 18.09.2020 i.e. much prior to due date of possession. Learned counsel vehemently claimed that complaint is liable to be dismissed.

16. As per The Indian Contract Act, terms of the contract should be reasonable. Famous writer Dr. R H Bangia in his book "Law of Contract with specific relief Act" 7th Addition 2017 stated that it is not enough that terms of the contract have been brought to the knowledge of the other party by a sufficient notice, before contract is entered into, it is also necessary that terms of the contract themselves should be reasonable. If the terms of the contract are unreasonable and opposed to public policy, they will not be enforced, merely because they are printed on the reverse of bill or a receipt or have been expressly or impliedly agreed upon between the parties. In

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case, **R.S. Deboo Vs Hindleker AIR 1995, Bombay 68**. It was a dispute between a customer and a dry-cleaner. The receipt given against garments for dry-cleaning, restricted launderer's liability to 20 times, the service charges or 50% of the value of the garments, whichever was less. It was held by Bombay High Court that condition of contract in the receipt was unreasonable, arbitrary and opposed to public policy and hence the same was void. Similarly, in case **Naveen Khatri Vs Pareena Infrastructure & Ors** Consumer Case No.628/2017 National Consumer Disputes Redressal Commission, New Delhi struck down provision of forfeiture of 20% of sale consideration as earnest money by the developer on account of default from buyer, saying that only a 'reasonable amount' can be forfeited as earnest money....20% of the sale price cannot be said to be a reasonable amount, which petitioner company could have forfeited.

17. On the same analogy, terms and conditions of buyer's agreement between parties of this case are found to be unreasonable and favouring only the developer. The same are not enforceable.

It is not denied on behalf of respondents that there were changes in the layout plans of the project. It is explained that layout plans were revised prior to coming of Act of 2016 in force, but the same was in accordance with Clause 13 and 14 of ABA. The project has been completed in accordance with sanctioned plans with all amenities and facilities as agreed in ABA.

18. What so, if agreement between the parties was entered before the Act of 2016 came into force, project in question, being an on-going project, the developer/respondent was duty bound to apply for registration within three months of Act came into force. It is clear from the permeable of this Act that object to establish the Real Estate Regulatory Authority was:

- i) to ensure regulation and promotion of the real estate sector;

- ii) to ensure sale of plot, apartment or building , as the case may be; or sale of real estate project, in an efficient manner;
- iii) to protect the interest of consumers in the real estate sector;
- iv) to establish an adjudicating mechanism for speedy dispute redressal; and
- v) to establish Appellate Tribunal to hear appeals from the decisions, directions or orders

19. Being a special Act, this act overrides even covenants entered between the parties, in any agreement, if same are found contrary to provisions of this act.

20. As per clause 16.1 of ABA company (respondent No.1) proposed to hand over possession of apartment within 48 months from the date of commencement of construction which shall mean the date of laying of laying of the first plain cement concrete/mud-mat slab or the date of execution of this agreement, whichever is latter. It was clarified that if possession of apartment is not given within commitment period, the allottee agreed to extension of 180 days (grace period) after expiry of said commitment period, for handing over apartment. However, in case of failure of the allottee to make timely payment of any instalment as per payment plan, alongwith other charges and dues as applicable or other payable in accordance with payment plan or as per demand raised by the respondent from time to time alongwith interest, the time period mentioned in this clause was not binding upon the company (respondent) in respect of possession of apartment.

21. A plain reading of this provision makes it abundantly clear as how these terms of agreement were one sided, and against the interests of buyer. According to complainants, same paid Rs.5,00,000/- to the respondent on

09.10.2014 i.e. at the time of booking of their unit. The respondent had received a sum of Rs.23,05,148/- before ABA was executed. In this way, the respondent enjoyed the money paid by buyers i.e. complainants, which was a big amount like more than Rs.23,00,000/-, without any explanation/reason. Even, after ABA was executed, terms of same were unreasonable. Date of commencement of period of limitation for handing over possession was fixed as the date of laying of the first plain cement concrete/mud-mat slab. It depended upon sweet will of respondent, as when it lays plain cement concrete/mud-mat slab. The hapless buyer had no option but to sign agreement. Even, despite this, the respondent mentioned about allottee, having agreed for extension of 180 days time. Matter did not end here. It was not of much pinching for respondent, if same fails to fulfil its commitment in completing construction in time. As per agreement, its liability was limited to extent of paying Rs. 7.50 per sq. ft. of super area for delay in handing over possession but in event of buyer's failure to pay even single instalment, the respondent opted to mention in the agreement that in that event buyer will be liable to pay interest on delayed payment @24% p.a. Further, the schedule for completion of construction, will not be binding upon it. The buck did not stop here. By inserting clause 8.2 in the agreement, the respondent reserved its right to cancel this agreement (consequently by unit) and to forfeit the earnest money, which was 15% of total sale consideration and other amounts including interest occurred or delayed payment, any commission/brokerage/margin paid by the company (respondent) to channel partners. In this way, the agreement was one sided, oppressive to buyer and biased in favour of developer. Same is not binding upon the buyer/complainant.

22. According to respondent, first plain cement concrete/mud-mat slab was laid on 10.01.2017. There is nothing on record to verify this fact. Taking


the date of ABA as date of commence of time limit for completion of project, the respondent was obliged to hand over possession within 48 months of that agreement, due date, thus comes to 18.05.2019. Respondent states that after receipt of occupation certificate, possession of apartment was offered to the complainants on 18.09.2020. In this way, there was delay of about one year and 4 months.

23. Although, the complainants have impleaded three respondents. Copy of ABA is on file. Same was executed between the complainants and respondent No.1 It is pointed out that respondent No.1 only was responsible for development of project in question. After execution of said agreement, all payments are shown to have been received by said respondent.

24. Respondent No. 1 failed to hand over possession of the apartment in reasonable/agreed time and that building plans were deviated without consent/information of buyer's/complainants. The latter are thus well within their rights to claim refund of their amount. Complaint in hands, is allowed and respondent no. 1 is directed to refund the amount received from the complainants and also from M/s Tata Capital Housing Finance Ltd. under tripartite agreement. Amounts of pre-EMIs paid by respondent be adjusted. The payments are to be made to the complainants alongwith interest @ 9.3% per annum from the date of receipt of each payment till its realisation. The respondent is burdened with cost of litigation, amounting to Rs. 50,000/- to be paid to complainants.

25. File be consigned to the Registry.

16.09.2021


(RAJENDR KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram