

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

Complaint no. : 1143 of 2021
First date of hearing : 27.04.2021
Date of decision : 25.08.2021

M Three M Private Limited

Address:- Unit no. SB/C/5 L office 0008, M3M
Urbana, Sector-67, Gurugram

Complainant

Versus

Rajesh Batra

Address:- Flat no. 404, Jade Apartments,
Seven Bungalows, Andheri West,
Mumbai-400061

Respondent

CORAM:

Shri Samir Kumar
Shri V.K. Goyal

**Member
Member**

APPEARANCE

Ms. Shriya Takkar
None present

Advocate for the complainant
Advocate for the respondent

EX-PARTE ORDER

1. The present complaint dated 16.03.2021 has been filed by the complainant/promoter in Form CRA 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 19(6) (7) and (10) of the Act.

A. Project and unit related details



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

S.No.	Heads	Information
1.	Name and location of the project	M3M Escala, Sector-70A
2.	Nature of the project	Group housing colony
3.	Project Area	27.4713 acres
4.	RERA registration status	Not registered
5.	DTCP license no.	16 of 2009 dated 29.05.2009 valid upto 28.05.2024
6.	Name of licensee	Vibhor Homes Developers Pvt. Ltd. and 6 others
7.	Apartment/unit no.	METW-02/1903, level 19, Tower-2,
8.	Unit area	2100 sq. ft.
9.	Date of execution of apartment buyer's agreement	20.04.2015 (Page 39 of the complaint)
10.	Payment plan	Construction linked payment plan
11.	Total sales consideration	Rs. 1,81,91,127/- (As per statement of account on page 118 of the complaint)
12.	Total amount paid by allottee	Rs. 1,10,22,825/- (As per statement of account on page 118 of the complaint)
13.	First mud slab laid on	30.04.2014 (As per facts of the complaint on page 10)
14.	Due date of delivery of possession	20.04.2018 (Due date calculated from the date of execution of agreement)



	as per clause 16.1: 36 months from the date of commencement of construction/the date of laying the first plain mud slab or from the date of execution of agreement whichever is later. Should the possession of the apartment not be given within the commitment period the allottee agrees to an extension of 180 days after expiry of the commitment period.	[Note: grace period not allowed]
15.	Date of offer of possession	04.08.2018 (Page no. 116 of the complaint)
16.	OC received on	02.08.2018 for tower M1, M2, EWS on page 93 of the complaint
17.	Delay in handing over possession till offer of possession i.e. 04.08.2018 plus 2 months i.e. 04.10.2018	5 months 14 days

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- That after making independent enquiries and only after being fully satisfied with the project the respondent applied for the allotment of an apartment in the project 'M3M Escala' which was being developed by complainant in sector 70a. That the original allottee paid the amount of Rs. 27,20,000/- vide cheques dated 04.10.2014 as an



amount towards provisional booking of the residential apartment. The respondent had also duly signed and understood the indicative terms and conditions of the allotment along with the application form. All the terms and conditions including the cost of the apartment, size/area of the apartment, timeline for possession etc. were clearly mentioned in the said application along with indicative terms and conditions.

- ii. The complainant had in due consideration of the respondent commitment to make timely payments, allotted apartment no. ME TW-02/1903 vide provisional allotment letter dated 13.10.2014. That after constant follow ups with the respondent, the apartment buyer's agreement (**herein after referred as ABA**) was executed between the complainant and the respondent on 20.04.2015. That the respondent made the payment for demand due on completion of basement slab vide cheques dated 01.01.2015 and accordingly receipts were issued by the complainant. That the complainant company vide the demand letter dated 11.05.2016 raised the demand due on the completion of top floor slab. That since the allottee failed to make the payment the complainant issued reminder-I and reminder II notices



dated 15.06.2016 and 15.07.2016 requesting the allottee to clear his outstanding dues. That the respondent had availed a loan facility from HDFC Ltd. towards the sale consideration of the apartment and accordingly a permission to mortgage letter dated 02.08.2016 was issued by the complainant developer to HDFC Ltd. thereby allowing the respondent to mortgage the apartment for availing Loan facility. A tripartite agreement between the respondent, HDFC Ltd. and the complainant was also executed. That thereafter the respondent made the payment towards the previous outstanding dues vide cheques dated 01.08.2016, 03.08.2016, 02.08.2016 and 13.08.2016 and accordingly receipts were issued by the complainant.

- iii. That the complainant vide letter dated 04.08.2018 offered the possession of the said apartment to the respondent and requested the respondent to take possession of the said apartment after clearing the dues in terms of the agreement. That as per clause 16.1 of the ABA the possession of the apartment was to be handed over 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 plus 6 months grave

period. That the date of laying of the mud slab is 30.04.2014 and the date of execution of the ABA is 20.04.2015. The possession timeline comes out to be 20.10.2018 when calculated from the date of execution of agreement. That since the respondent failed to make the payment the complainant issued a reminder letter dated 18.09.2018 and requested the respondent to clear his dues. Since even after issuance of reminder the respondent did not approach the complainants to clear their outstanding dues, the complainant was forced to send pre-cancellation notice dated 04.10.2018 to the respondent. That vide letter dated 29.11.2018 and the complainant issued a holding charges Intimation intimating that if the respondent fails to take over possession of the apartment holding charges will be payable by the respondent till date. That since the respondents continuously failed to make the payments hence, the complainant was constrained to send letters dated 07.02.2019 and 30.09.2020 giving last and final opportunity to the respondents for remittance of the due amount and taking over possession of the apartment. That the cause of action to file the present case is still continuing as respondent continues to fail to take the

possession of the apartment in question as per the terms and conditions of the ABA and the notice of offer of possession despite being well aware of the fact that the apartment is in the state of being occupied subject to the due completion of the possession related formalities and paperwork.

C. Relief sought by the complainant

4. The complainant has filed the present complaint for seeking following reliefs:
 - i. To direct the respondent to take the possession of the said apartment;
 - ii. To direct the respondent, pay the balance consideration and delayed interest;
 - iii. To direct the respondents to pay holding charges;
 - iv. To pay the respondents outstanding to pay maintenance dues of the maintenance agency.
5. The authority issued a notice dated 15.06.2021 of the complaint to the respondent by speed post and also on the given email address at rbatra856@gmail.com. Despite service of notice, the respondent has preferred neither to put in appearance nor file reply to the complaint within the stipulated period. Accordingly, the authority is left with no

other option but to decide the complaint ex-parte against the respondent.

6. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

D. Jurisdiction of the authority

7. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

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 completed territorial jurisdiction to deal with the present complaint.

D.II Subject matter jurisdiction

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) and 19(6),(7),

(10) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

E. Finding on the relief sought by the complainant

8. Relief sought by the complainant:

- (i) Direct the respondent to take the possession of the said apartment;
- (ii) Direct the respondent pay the balance consideration and delayed interest;
- (iii) Direct the respondents to pay holding charges;
- (iv) To pay maintenance dues of the maintenance agency.

9. In the present complaint, the complainant/promoter intend to give the possession of the apartment which is ready and as per section 19(10) the Act, allottees shall take physical possession of the apartment, plot, building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building as the case may be. Section 19(10) proviso read as under.

"Section 19: - Right and duties of allottees.-

*.....
19(10) states that every allottee shall take physical possession of the apartment, plot or building as the case may be within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.*

The respondent/allottee has failed to abide by the terms of agreement by not making the payments in timely manner and take the possession of the unit in question as per the terms and conditions of the apartment buyer's agreement and the payment plan opted by the respondent/allottee. Further cause of action also arose when despite repeated follow-ups by the complainant and the complainant having performed their contractual obligations, the respondent/allottee withheld their contractual obligation. The respondent/allottee shall make the requisite payment as per the provision of section 19(6) of the Act and as per section 19(7) to pay the interest at such rate as may be prescribed for any delay in payments towards any amount or charges to be paid under sub-section (6). Proviso to section 19(6) and 19(7) reads as under.

"Section 19: - Right and duties of allottees.-

*19(6) states that every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13[1], shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, **maintenance charges**, ground rent, and other charges, if any.*

19(7) states that the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

10. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoters, in default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

11. Therefore, interest on the delay payments from the allottee shall be charged at the prescribed rate i.e. 9.30% by promoter. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 25.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
12. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 20.04.2018 and further provided in agreement that promoter shall be

entitled to a grace period of 180 days after expiry of committed period. As a matter of fact, the promoter has not given the valid reason for delay to complete the project within the time limit prescribed by the promoter in the apartment buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace periods of six months each cannot be allowed to the promoter at this stage.

13. On consideration of the documents available on record and submissions made by the complainant regarding contravention of provisions of the Act, the authority is satisfied that the respondent/allottee is in contravention of the section 19(6), 19(7) and 19(10) of the Act by not making the payment on time and not taking the possession as per the agreement. By virtue of clause 16.1 of the agreement executed between both the parties on 20.04.2015 the possession of the subject apartment was to be delivered within 36 months from the date of commencement of construction/the date of laying the first plain mud slab or from the date of execution of agreement whichever is later. Should the possession of the apartment not be given within the commitment period the allottee agrees to an extension of 180 days after expiry of the commitment period i.e. 20.04.2018. Accordingly, it is the



failure of the complainant/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the complainant/promoter is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 20.04.2018 till the handing over of the possession i.e. 04.08.2018 at the prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

14. 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 complainant offered the possession of the unit on 04.08.2018, so it can be said that the respondent 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 respondent/allottee 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., 20.04.2018 till the expiry of 2 months from the date of offer of possession (04.08.2018) which comes out to be 04.10.2018. Accordingly, it is the failure of the allottee/respondent to fulfil their obligations, responsibilities as per the buyer's agreement dated 20.04.2015 to take the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 19(6), 19(7) and 19(10) of the Act on the part of the respondent/allottees is established.

F. Directions of the authority:-

15. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act:
 - i. The respondent/allottee shall make the requisite payments and take the possession of the subject apartment as per the



provisions of section 19(6), (7) and (10) of the Act, within a period of 30 days.

- ii. Interest on the delay payments from the respondent shall be charged at the prescribed rate of interest @9.30% p.a. by the promoter which is the same as is being granted to the respondent/allottee in case of delayed possession charges.
- iii. The arrears of such interest accrued from the due date of possession i.e. 20.04.2018 till the date of offer of possession i.e. 04.08.2018 plus two months i.e. 04.10.2018 shall be paid by the complainant/promoter to the respondent/allottee within a period of 90 days from the date of this order.
- iv. The complainant/promoter shall not charge anything from the respondent/allottee which is not the part of the agreement. However, holding charges also 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. 3864-3889/2020 decided on 14.12.2020.

16. Complaint stands disposed of.

17. File be consigned to registry.


(Samir Kumar)
Member


(V.K. Goyal)
Member

Date: 25.08.2021

Judgement uploaded on 08.11.2021.