

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

Complaint no. : 1566 of 2021  
First date of hearing: 27.04.2021  
Date of decision : 10.11.2021

Harish Jaggi  
R/O: - B-249, Greater Kailash-I,  
New Delhi-110048

**Complainant**

Versus

M3M India Pvt. Ltd.  
Regd. Office at: - Paras Twin Towers, Tower-B,  
6<sup>th</sup> Floor, Golf Course Road, Sector-54,  
Gurugram

**Respondent**

**CORAM:**  
Dr. KK Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Shri Sanjeev Sharma  
Shri Shriya Takkar

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 17.03.2021 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.

**A. Unit and project related details**

2. The particulars of unit details, 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.	Name of the project	M3M Golf Estate
2.	Nature of the project	Group Housing Colony
3.	Project area	63 acres
4.	DTCP license no.	234 of 2007 issued on 16.10.2007 valid up to 15.10.2017 52 of 2009 issued on 28.08.2009 valid up to 28.08.2024 35 of 2010 issued on 06.05.2010 valid up to 05.05.2025
5.	Name of Licensee	Manglam Multiplex and others
6.	Rera Registered	Not Registered
7.	Unit no.	MGE-2 TW-05/12 B [annexure-1 on page no. 32 of complaint]
8.	Unit measuring	3843 sq. ft.
9.	Date of execution of Flat buyer's agreement	19.09.2014 [annexure-1 on page no. 19 of complaint]



10.	Commencement of construction	28.12.2012 [page no. 7 of reply]
11.	Total consideration	Rs. 50,186,160/- [annexure R/5 on page no. 50 of reply]
12.	Total amount paid by the complainant	Rs. 46,689,495/- [annexure R/5 on page no. 50 of reply]
13.	Due date of delivery of possession as per clause 16 i.e., handover the possession of the apartment within a period of 36 months from the date of commencement of construction which shall mean the date of laying of the first plain cement concrete/mudmat slab of tower or the date of execution of this agreement, whichever is later. The possession of the apartment is not given within the commitment period, the allottee agrees to an extension of 180 days after expiry of the commitment period.	19.03.2018 [calculated from the date of execution of this agreement being later] <b>Note:</b> Grace period of 6 months is allowed in the present case.
14.	Offer of possession	02.01.2018 [annexure R/5 on page no. 48 of reply]
15.	Occupation certificate	25.07.2017 [annexure R/4 on page no. 46 of reply]
16.	Delay in offer of possession	No Delay

**B. Facts of the complaint**



3. That M/s Manglam Multiplex Pvt. Ltd. is the owner of land admeasuring approx. 63 acres situated in the revenue estate of village Maidawas, Sector-65, District Gurgaon, Haryana. The respondent is duly authorized to develop and construct on the above said land and is entitled to develop a group housing colony on the above said land.
4. That the respondent and the complainant entered into a builder buyer agreement on 19.09.2014 wherein the complainant was allotted unit no. MGE-2, TW-05/12, B admeasuring 3843 sq. ft. which was later increased to 3898 sq. ft. for a total consideration of Rs. 4,74,34,282/- excluding stamp duty/ possession charges. That as per clause 16.6 of the agreement, the possession of the unit in question was to be handed over within 3 years from the date of commencement of work along with grace period of 6 (six) months. That on the contrary, the vacant and peaceful possession of the residential unit was to be handed over lastly by 19.09.2017 end of 3 years and lastly by 19.03.2018 by adding 6 months' grace period.
5. That the respondent had offered possession of the unit in question to complainant on 02.01.2018 but the said offer of possession was completely a fraud document as the unit in question was completely comprised of various defects and in such a manner that the unit in question was and is completely non-habitable condition and therefore, the said offer of possession was neither peaceful not vacant offer of possession.

6. That the complainant though was offered the possession vide letter dated 02.01.2018, but the same was only a piece of paper with no sanctity or meaning for many reasons but primarily the respondent had issued an email to complete the formalities for the handover of the apartment on 20.08.2018 but the same was also a formality just to meet the deadline. Secondly, the complainant had through various emails right from 21.02.2018 to 21.09.2020 had cited various deficiencies to the respondent which were supposed to be rectified as without the rectification, nobody could have taken the peaceful and vacant possession of the unit in question.
7. That the defects were pertaining to the seepage in master bedroom which was going through the electric connection and sockets which was a grave threat to the life of the resident, it was further pointed out that there were various cracks in the wall and flooring along with other wooden damages and bad quality of stone used.
8. That vide email dated 27.08.2018, the complainant in detail pointed out the defects which are as follows
  - Major variation in the Italian stone quality laid out in the drawing room in front of the first bedroom door besides the main door.
  - The entire balcony railing etc. are rusted and pitted, whereas steel structures are known not to rust or pit.

- Master room toilet and first room toilet drainage area in the shower portions was broken/ dis jointed and being unprofessionally filled in with fillers.
  - Many wall corners near kitchen area and between lobby and dining room as well as wardrobe area in bedrooms had cracks and breakages possibly due to polishing machine movements.
  - Main door and kitchen door not closing properly due to wrong fitting of door frames.
  - Main door security lock, flat no. plate, eye hole etc not fitted.
  - The polishing and finishing of the marble not up to the mark and very poor in finishing.
9. That as per the statement of account which was received by the complainant at the time of taking the possession, the complainant has made a total payment of Rs. 5,01,51,970/-.
10. That as per the agreement the possession of the unit in question was to be handed lastly by March 2018, however the vacant and peaceful possession of the unit was taken by the complainant on 28.12.2018.

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

11. The complainant has sought the following relief:
- (i) Direct the respondent to pay interest on Rs. 45,47,527/- at prevailing rate of interest @9.30% and possession of the subject unit.

12. 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.**

13. That the respondent i.e., M3M India Private Limited is engaged in the business of construction and development of real estate projects and has carved a niche for itself in the real estate and infrastructure sector. The present reply for and on behalf of the respondent is being filed by Ms. Anisha Mitra who has been duly authorized by the board of directors of the respondent vide board resolution dated 25.06.2020.
14. That the respondent denies each and every statement, submissions and contentions set forth in the complaint to the extent the same are contrary to and/or inconsistent with the true and complete facts of the case and/or the submissions made on behalf of the respondent in the present reply.
15. That the complainant by way of the instant complaint is trying to unjustly enrich himself even though the respondent has duly performed its obligations, applied funds and has developed the residential complex with various facilities and amenities therein, obtained occupancy certificate after due verification and inspection from the competent authority and notified the complainant to take the possession of the apartment by completing the requisite possession related formalities.

16. That the complainant upon the receipt of the notice of offer of possession inspected the said apartment and after being completely satisfied with all aspects of the apartment on his own free will and understanding and making all due diligence, cleared all his dues, discharged his outstanding arrears, executed acknowledgment/acceptance of full and final settlement of accounts and executed and submitted Indemnity bond-cum undertaking where the complainant consented and without any conditions or reservations agreed to take over the legal possession of the apartment after executing and registering the conveyance deed of the apartment in his favour.
17. That the complainant is not entitled to get any amount of interest that the complainant has already issued acknowledgment/ acceptance of full and final settlement of accounts wherein the complainant had admitted that all amounts due against the unit stands paid and nothing is payable/due, by/against the company, including the amount, if any, towards delay compensation.
18. That the complainant even after taking the physical possession of the said apartment failed to execute and register the conveyance deed of the said apartment and therefore the respondent was constrained to issue the reminder dated 06.12.2019. It is submitted that the complainant till date has not got the conveyance deed of the said apartment executed and registered in his favour. That the complainant instead of



performing his contractual obligations has filed the present complaint as an afterthought to unjustly enrich himself.

19. That there was no delay on the part of the respondent in delivering the possession as per the terms of the apartment buyers' agreement. That the respondent has fulfilled its side of obligations cast upon it by the virtue of apartment buyers' agreement dated 19.09.2014 and has offered the possession of the said apartment to the complainant before the agreed timeline.
20. That the complainant on various occasions has defaulted in making timely payments for which the respondent on the request of the complainant as a goodwill gesture waived off his interest accrued upon the delay payments made by the complainant.
21. That the complainant has approached this hon'ble authority with unclean hands and have tried to mislead this hon'ble authority by making incorrect and false averments and stating untrue or incomplete facts and, as such, is guilty of suppressio very suggestion falsi. The complainant has suppressed and misstated the facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law.
22. 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 threshold.
23. That the apartment buyer's agreement, was entered into between the parties and, as such, the parties are bound by the

terms and conditions mentioned in the said agreement. The said agreement was duly signed by the complainant after properly understanding each and every clause contained in the agreement. The complainant was neither forced nor influenced by the respondent to sign the said agreement.

24. That the complainant has concealed the material fact that the complainant only after inspecting and examining the said apartment and after being completely satisfied with all aspects of the apartment on his own free will and understanding executed the indemnity bond-cum-declaration where he consented and agreed to take over the legal possession of the 14 said apartment without having any claims or demands of any nature whatsoever against the respondent in respect of or in relation to the apartment.
25. That the complainant has not approached this hon'ble regulatory authority with clean hands. It is submitted that the complainant is attempting to raise nonissues and is now, at a belated stage, attempting to seek a modification of the agreement entered into between the parties in order to acquire benefits for which the complainant is not entitled in the least.
26. That the relationship of the complainant and the respondent is defined and decided by the apartment buyer's agreement executed between both parties. It is submitted that a specific clause for referring disputes to arbitration is included in the said agreement i.e., clause 49 of the agreement.

**E. Jurisdiction of the authority**

27. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

28. 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.

**E. II Subject matter jurisdiction**

29. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale.

Section 11(4)(a) is reproduced as hereunder:

**Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

30. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the objections raised by the respondent.**

**F.1 Objection regarding untimely payments done by the complainant.**

31. The respondent has contended that the complainant has made defaults in making payments as a result thereof, the respondent had to issue various reminder letters. Clause 8 of the buyer's agreement wherein it is stated that timely payment of instalment is the essence of the transaction, and the relevant clause is reproduced below:

*"8. Time is the essence"  
"The obligation to make timely payment of every instalment of the Total Consideration in accordance with the Payment Plan along with payment of other charges such as applicable stamp duty, registration fee, IFMS, and other charges, deposits, as stipulated under this agreement or that may otherwise be payable on or before the due date or as and when demanded by the company, as the case may be, and also to discharge all other obligations under this agreement shall be the of essence of this agreement."*

32. At the outset, it is relevant to comment on the said clause of the agreement i.e., "8. TIME IS THE ESSENCE" wherein the

payments to be made by the complainant had been subjected to all kinds of terms and conditions. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in making timely payment as per the payment plan may result in termination of the said agreement and forfeiture of the earnest money. Moreover, the authority has observed that despite complainant being in default in making timely payments, the respondent has not exercised his discretion to terminate the buyer's agreement.

**F. II Objection regarding complainant is in breach of agreement for non-invocation of arbitration.**

33. The respondent had raised an objection for not invoking arbitration proceedings as per the provisions of flat buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

***"49. Arbitration***

*All or any disputes arising from or out of or touching upon or in relation to the terms of this Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the Parties shall be resolved through the process of arbitration. The arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996, or any statutory amendments, modifications thereof for the time being in force and shall be conducted by a sole independent arbitrator to be appointed by the company, whose decision shall be final and binding upon the parties hereto. The venue of the arbitration*

*proceedings shall be at any place specified by the Company in Gurgaon. The language of the arbitration proceedings shall be English. The provisions related to arbitration as mentioned herein shall supersede any or all other arbitration agreements/ clauses that may exist by and between the parties. The parties shall bear their respective costs of the arbitration."*

34. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.
35. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017,*

the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

*"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows: -*

*"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*

*It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.*

*56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainant and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."*

36. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing

arbitration clause in the builder buyer agreement, the hon'ble Supreme Court in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018* has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant paras are of the judgement passed by the Supreme Court is reproduced below:

*"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

37. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainant is well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection



Act and Act of 2016, instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

**F. Findings on the relief sought by the complainant.**

**Relief sought by the complainant:** The complainant had sought following relief(s):

- (i) Direct the respondent to pay interest on Rs. 45,47,527/- at prevailing rate of interest @9.30% and possession of the subject unit.

In the present complaint, the complainant intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"Section 18: - Return of amount and compensation***

***18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —***

***Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."***

38. Clause 16 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

***"Clause 16- 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 36 months from the date of commencement of construction which shall mean the date of laying of the first plain cement concrete/mudmat slab of the tower which shall be communicated to the Allottee or the date of the execution of this agreement, whichever is later(commitment period). Should the possession of Apartment not be given within the Commitment Period, the allottee agrees to an extension of 180 days (Grace Period) after expiry of the commitment Period.*

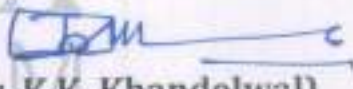
39. Considering the above-mentioned facts, authority calculated due date of possession as per clause 16.1 of the flat buyer's agreement i.e., 36 months from the commencement of construction which shall mean the date of laying of the first plain cement concrete/ mudmat slab of the tower which shall be communicated to the allottee or the date of execution of this agreement, whichever is later, which comes out to be 19.09.2017. A period of 6 months as grace period is to be given which is provided in the possession clause 16.1 which is unqualified which has been allowed in similar cases. Accordingly, the due date of possession comes out to be 19.03.2018. The OC of the tower in which the unit is situated was obtained on 25.07.2017 and offer of possession was made on 02.01.2018 and actual handing over of possession was made on 28.12.2018. The complainant submitted some of the communications regarding certain defects and damages. The letter dated 20.09.2018 and 12.09.2018 were taken on record.
40. The due date of possession is 19.03.2018. As the defects mentioned are otherwise to be rectified by the builder for next

years, possession cannot be denied to be taken on pretext of minor defects. The possession was offered on 02.01.2018 and two months period from the date of offer of possession comes out to be 02.03.2018 which is prior to the due date of possession. Accordingly, the delivery is within time and no delay possession charges can be allowed.

**G. Directions of the authority**

41. 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):
- i. The possession was offered on 02.01.2018 and two months period from date of offer of possession comes out to be 02.03.2018 which is prior to due date of possession. Accordingly, the delivery is within time and no delay possession charges can be allowed.
42. Complaint stands disposed of.
43. File be consigned to registry.

  
(Vijay Kumar Goyal)  
Member

  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 10.11.2021

Judgement uploaded on 22.12.2021.