

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

Complaint no. : 4997 of 2019
Date of filing: 07.11.2019
Date of decision : 28.11.2023

S P Gupta And Sunita Gupta
R/o 34-T, Sector-7, Jasola Vihar, New Delhi-110025.

Complainants

Versus

M/s MVN Infrastructure Pvt. Ltd.
Regd Office at: 58A/1, Kalu Sarai, New Delhi-110016

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

**Member
Member
Member**

APPEARANCE:

Ms. Priyanka Aggarwal
Shri Lokesh Dixit

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint has been filed on 07.11.2019 by the complainant/allottees 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

12

also 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 the parties.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	MVN ATHENS SOHNA, Sector-5, Sohna Gurugram
2.	Nature of the project	Affordable Group Housing
3.	Project area	6.50625 acres
4.	DTCP license no. and validity status	49 of 2014 dated 18.06.2014 valid upto 17.02.2026
5.	Name of licensee	M/S MVN Infrastructure Pvt. Ltd.
6.	RERA Registered/ not registered	Registration no. 284 of 2017 dated 10.10.2017 valid upto 09.02.2021
7.	Date of allotment	05.10.2014
8.	Date of execution of Apartment Buyer's Agreement	17.02.2015

9	Date of environment clearance	05.01.2015 (Stated at bar by the counsel of respondent during proceeding)
10.	Addendum buyer agreement	26.11.2016
11	Unit no. and area	901, 9 th floor, Tower-B4
12	Changed unit no.	8-1404, 14 th floor (478.212 carpet area)
13.	Possession clause	3.1 <i>Subject to Force Majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Company and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per the payment plan, Stamp Duty and registration charges, the Company proposes to offer possession of the Said Flat to the Allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later, subject to the Allottee has executed the Flat Buyer's Agreement.</i>
14	Date of building plan	05.09.2014
15	Revised building plan on	16.05.2016

ra



16	Due date of possession	05.01.2019 (Calculated from the date of environment clearance being later) 16.05.2020 (Due date claimed by respondent <i>order dated 13.09.2018 of DTCP, the respondent has been granted zero period from 05.09.2014 to 16.05.2016 for commencement/construction of project</i> therefore, in the present case the due date of possession comes out to be 16.05.2020 (4 years from the date till zero period has ended i.e., 16.05.2016)
17.	Total sale consideration	Rs. 17,87,236/- As per BBA
18.	Amount paid by the complainant	Rs. 18,52,794/- As per SOA dated 07.06.2019 page 76 of the complaint
19.	Occupation certificate /Completion certificate	29.05.2019 Page 46-47 of the reply
20	Offer of possession	07.06.2019 (as per page no. 74 of complaint)
21	Legal notice sent by the respondent to the complainant regarding not to spread rumors and false information amongst the other allottees on	07.09.2019
22	Cancellation Letter	21.10.2019 Page 105 of the complaint

1A

B. Facts of the complaint

3. That somewhere in the first half of year 2014, the respondent through its marketing executives and advertisement via various mediums & means approached the complainants, with an offer to Invest and buy a flat in the proposed real estate project of respondent, namely "MVN Athens Sohna" in the Sector-5, Sohna, Gurugram. The respondent represented to the complainants that the respondent is a very ethical business house in the field of construction of residential project and in case the complainants would invest in the said project of respondent, then it would deliver the possession of proposed flat on the promised delivery date as per the best quality assured by the respondent. The respondent had further assured to the complainants that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development & completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainants given by the respondent and assured that the allotment letter and builder buyer agreement for the said project would be issued to the complainants within one week of booking to be made by the complainants. The complainants while relying on the representations and warranties of the respondent and believing them to be true had agreed to the proposal of respondent to book the residential flat in the project of respondent.
4. That based on these considerations and with a hope that flat would be handed over on time to applicants, the complainants on 05 Oct 2014,



applied for flat in 'MVN Athens Sohna' in Sector 5, Sohna, which was claimed to being developed under Government of Haryana, "Affordable Housing Policy, 2013" and paid an amount of Rs 89,360/- towards cost of application which is serially numbered as 2647.

5. That draw of all applicants was held on 04 Feb 2015 under supervision of DTCP and applicant was successfully allotted Flat with following descriptions:-

Project	"MVN Athens Sohna, Sector-5, Sohna
Tower No.	B4
Flat No.	901

6. This allotment letter was followed by execution of 'flat buyer agreement' (FBA for short), which was executed on 17th Feb 2015.
7. On 12 Jan 2016, respondent decides to revise his approved building plans which were earlier approved on 05.09.2014 and seeks objections to 'revised building plans' from complainants.
8. On receipt of this letter, complainants visited the office of respondent and raised various objections to the proposed revision, as given in proposal, were very vague and bordered on 'whims and fancies' of respondents. complainants refused to approve/ sign / accept the proposed changes. However, it was clearly indicated by respondent that it is immaterial whether complainants agree/ disagree with proposed revision - respondent will anyhow get it 'APPROVED' by DTCP.
9. To overcome this and with a hope that Government Department would listen to common man, complainants sent a written complaint to Senior

A

Town Planner, Gurugram. Not finding any response to above mentioned letter from Senior Town Planner, Gurugram, complainants decided to collect views of other home buyers. It was found that lot of home buyers were aggrieved by such proposed changes to already approved building plans on which allottees had relied upon at the stage of signing FBA.

10. Consequently, the complainants wrote a detailed letter to respondent on 25 March 2016, which was duly receipted by respondent. Two possible solutions were suggested in this letter:-
 - i) Since home buyers are directly affected by such proposal of revising building plans, the proposed revision be scrapped.
 - ii) If respondent still feels that he should continue with proposed changes, money paid by home buyers be refunded with 15% interest.
11. Now, finding that numbers of aggrieved home buyers are increasing day by day, instead of meeting aggrieved home buyers at Gurugram, Distt Town Planner asked them to meet Building Plan Approval Committee at Chandigarh on 11 May 2016.
12. The complainants traveled all the way to Chandigarh on appointed date along with other aggrieved home buyers and presented their case to Building Plan Approval Committee. The committee did not give any decision during the meeting. However, they said that decision of committee shall be forwarded to complainants in 'due course'. This decision is still awaited.
13. It is pertinent to mention here that on 16 May 2016 i.e within 4 days of above meeting, DTCP APPROVED proposed revisions in building plan and sanction the same.



14. On getting to know of this development, complainants again visited respondent office and demanded that since revised building plans were not consented by complainants, their money should be refunded with 15% interest on reciprocal basis.
15. However, respondent clearly stated that no such refund is permitted and they will have to sign on 'Addendum to Builder Buyer Agreement' which shall be issued in due course.
16. On 26 Nov 2016, respondent asked complainants to sign on 'Addendum to Builder Buyer Agreement', for which there was no other option available with the complainants and they had to sign on dotted line or risk losing money.
17. On receiving the 'Offer of Possession', dated 07.06.2019 based on claimed receipt of 'Occupation Certificate' and after paying the final amount, as demanded by Respondent, Complainants visited the site office of Respondent to inspect the Flat as envisaged in the FBA para 3.7. On inspection of Flat, it was noticed that Respondent has not taken electricity connection from DHBVNL. Electricity was being provided from 'Diesel Generators'. This entailed huge unbearable recurring costs on allottees. Besides this, it was found that the fitting, fixtures and workmanship of Flat was of poor quality. It was also noticed that potable water to households is being supplied through captive borewells, which is contrary to existing directions of Hon'ble High Court of Punjab and Haryana.
18. Clarification to above issues were sought from respondent, but, no satisfactory reply was received.
19. Later, Instead of providing any clarification on above request and despite having taken whole amount towards cost of allotted flat, the respondent

A

issued a 'Legal Notice' on 07 Sep 2019, blaming complainant that complainant is damaging reputation of respondent.

20. The complainant on 22.09.2019 sent a letter with the intention to leave the project and on the consideration of the said letter, the respondent builder cancelled the allotted unit on 21.10.2019.

C. Relief sought by the complainant:

- a. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.

D Reply by the respondent

The respondent has contested the complaint on the following grounds:

21. That the complainant applied for the allotment of a flat in the above mentioned project of the respondent vide application dated 05.10.2014. That, as per the applicable rules the concerned government department/agency was to carry out a draw of lots for the allotment of the unit in the project.
22. That, pursuant to the draw of lots held on 04.02.2015, in the presence of a Committee headed by the representative of the Deputy Commissioner, Senior Town Planner, DTP, Gurugram, the complainant was allotted a flat no. 901, 9th Floor in Block / Tower B - 4 having 485.2734 sq. Ft. (hereinafter referred to as 'the said flat') for a total consideration of Rs. 17,87,236 /-. In pursuance of the said allotment, parties entered into flat buyer's agreement dated 17.02.2015.
23. That ever since the allotment of flat in complainant's favour the complainant started creating nuisance and have conspired other customer also to put undue influence on respondent to fulfill his desire of having control over administration of respondent. The complainant had



caused hindrance not only to the smooth construction of the project site but also induced other allottees against respondent and its project.

24. That during the execution of its obligations under the License it had come to the notice of the respondent that certain works were being carried out on the land near the project, for erection of two electrical poles for the installation of high tension lines (HT Lines). The location of these electrical poles was such that in the event the high tension lines were to connect the two poles, the ht lines would have run through a portion of the project, that too in a manner that it would have come in the way of the buildings that were planned and approved to be constructed over the said project land. This state of affairs could not have been allowed considering the well-being and health related issues of the allottees of the project as any HT Line passing over the edifice of the allottees would have played havoc with their health and life.

25. Under such emergent and pressing circumstances, the Respondent approached the Haryana Vidyut Prasaran Nigam Limited ('HVPNL') and other relevant/concerned authorities by way of various correspondences, requests and representations to change the alignment of the HT lines running through the project. The respondent had even met the officials of the Department of Town and Country Planning, Haryana, as license and all necessary approvals had been granted by this Department, apprising them of the milieu in which the respondent had got embroiled. but the said requests were not acceded to and the respondent was granted no relief by HVPNL or any other authority. Apparently, there was a direct conflict between the obligations of the respondent and the health and safety of the allottees of the project. Under such circumstances and being an ethical developer who is not driven by profit motive and who always puts the



interests and the well-being of its buyer at the forefront the respondent decided to take legal recourse in the matter for the benefit and well-being of its Buyers.

26. That in this back drop, the respondent being left with no other alternative filed Civil Writ Petition No.18929 of 2014 before the Hon'ble Punjab and Haryana High Court. Significantly, in the said writ petition, a short reply was filed by Chief Town Planner, Department of Town and Country Planning, acting on behalf of the Director, Town and Country Planning, Haryana. In the reply, while acknowledging the fact that the high tension wires would affect the project, it was inter-alia, stated that if the realignment of the proposed electric poles cannot be avoided by the executing agency, the Respondent herein could get the zoning plans and building plans revised from the office of said department so as to avoid passing of high tension wires over the buildings proposed to be constructed by the respondent.
27. That accordingly, the respondent, under such force majeure circumstance, submitted request for revision of the building plan(s) zoning plan(s) on July 13, 2015 and the revision was approved provisionally vide Memo No.14925 dated August 12, 2015, for the purpose of inviting objections/suggestions. After considering all the objections raised against such provisional approval with respect to revision of the building plan(s) the revised building plans were approved vide memo No. ZP-9811SD(BS)/201619626 dated May 16, 2016. The said fact which stands recorded in the records and order of the competent authority i.e. Director, Town and Country Planning, Haryana. It is very relevant to mention here that after the revision of the building plans the complainants after considering the objections of the complainants the complainants not only

executed the addendum to the builder buyer agreement thereby specifically accepting the revised building plan and change of unit but also made further payments after the aforesaid revision of the plan.

28. Thus, it is quite obvious from the above-mentioned facts that the necessity to revise the building plans arose due to circumstances beyond the control of the respondent and in the interest of the allottees which amounted to force majeure conditions and consequently the area of the flat allotted to the complainant had got changed and the towers that were earlier marked alphabetically were then marked numerically.
29. That thereafter, in the writ petition then pending before the Hon'ble High Court, the respondent had submitted that due to the process involving the change and revision of the building plan certain period has elapsed during which the respondent could not continue the development of the project and therefore prayed that such period which was lost during this period in the interregnum be removed from the limited time of completion provided under the policy. Considering the plea of the respondent the Hon'ble High Court disposed of the said writ petition vide order dated July 26, 2017 with a direction thereby granting liberty to the respondent to make a representation to the Department of Town and Country Planning, Haryana in that regard.
30. Needless to mention that as per the said direction of the competent authority i.e. The Director General, Town and Country Planning the date of commencement of the project shall be deemed as May 16, 2016 and the project is required to be completed on or before May 15, 2020.
31. That only because of the impediments created by the complainants towards the revision of the building plan of the project of the respondent company, the same was finally approved by the concerned



department/competent authority only after an inordinate delay of more than a year due to which the respondent company had to suffer heavy losses and damages in terms of goodwill as well in terms of financial losses as almost 100 of its allottees left the project due to delay caused in revision of the building plan and due to the self-serving and false anecdote spread by complainants with respect to the revision of the building which was necessitated due to urgent and pressing circumstances which were completely out of the hands of the respondent company. It is quite plain and obvious that all such malicious and malafide acts were committed by the complainant to cause maximum possible damage and losses to the respondent company so that utmost pressure could be created to make illegal financial gains under the illegal and criminal threat of getting the application for revised building plan rejected which would have resulted into complete loss of the investment already made by the respondent company. The complainant continued their malicious propaganda against the respondent company and its project by spreading false and baseless rumour which were false to the knowledge of the complainant themselves.

32. In the wake of the facts and circumstances stated above respondent issued legal notice dated 07.09.2019 and requested complainant not to spread rumours and false information amongst the other allottees. However complainant paid no heeds to the said legal notice.

33. It is respectfully submitted that the complainant vide reply dated 22.09.2019 to the legal notice dated 07.09.2019, expressed their intention to leave the project. This intention was communicated by the complainants at various other occasions probably for the reason that they lost interest in the booking due to inadequate appreciation in the real estate or due to their other investments. It is further submitted that the

A

Respondent accepted the request of the complainant and terminated their booking vide letter dated 21.10.2019. The respondent has already communicated that, consequent to their request of withdrawing from the project and the termination of the booking by the complainants, it is ready and willing to make the refund of money to the complainants as per the Affordable Housing Policy of the state of Haryana under which the booking was made.

34. All other averments made in the complaint were denied in toto.

35. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

36. 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

A

The 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

37. 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 relief sought by the complainants

F.1 Direct the respondent to refund the entire amount paid by the complainant alongwith prescribed rate of interest.

38. The complainant is seeking refund of the deposited amount i.e. Rs.18,52,794/- against a total sale consideration of Rs. 17,87,236/- on account of failure of the respondent to hand over the possession of the allotted unit despite offer of possession dated 07.06.2019. Repeated requests were made by the complainant but despite that the respondent did not hand over the possession of the allotted unit.
39. The respondent states that the complaint was filed pre-mature as the due date of handing over of possession would also take into account zero period declared by DTCP from September 5, 2014 to 16.05.2016 and

A

would thus come to 15.05.2020. The Environment clearance certificate was obtained on 05.01.2015. Further, the respondent had offered possession of the unit even before the due date on 07.06.2019. The unit was cancelled by the respondent on 21.10.2019.

40. Some of the admitted facts are that the respondent has filed CWP No.18929 of 2014 [O&M] in the Hon'ble High Court and prayed that the high tension wires which were passing over its land be removed/deviated to enable it to execute Affordable Group Housing Project within time' It was also alleged that during, this interregnum the petitioner has applied for revised desired by the respondent and that revised zoning was allowed and consequently those high-tension wires are not coming in the way of the construction. However, because of this the petitioner has lost time and have a claim that the period of lost time be set off against the period within which the petitioner had to execute the project.
41. The Hon'ble High Court vide its order dated 26.07.2017 has ordered that once the main grouse of the petitioner has been redressed, it would be appropriate if they make a representation with respect to this subsidiary claim before the respondent No'3' If any such representation is made before respondent No'3, he shall take a reasoned decision within a period of 3 months.
42. In compliance of directions passed by the Hon'ble High Court, the DTCP vide its order dated 13.09.2018 has decided the representation made by the builder as under:

"in this case the project was stalled for approx. 1 year and 8 months and reasons were beyond the control of colonizer. Therefore, I am of the considered view that the time period from 05.09,20u1 to 1,6.05.2016 be treated as zero period for the purposes of commencement of project and extension in the period of licence as the licensee in the present case was restrained from undertaking development works of



the project due to installation of power line near the project land by HVPNL and in case the development works were executed by the licensee QS per the approved building plans, the HT line would have passed through the construction area"

43. Keeping in view the above orders passed by the DTCP, the period from 05.09.2014 to 16.05.2016 is treated as zero period for the purpose of commencement of project and extension in the period of licence as such the deemed date of commencement shall be deemed as 16.05.2016 and the project was required to be completed on or before May 15,2020.
44. It is pertinent to mention here that as per facts on record, the respondent-builder cancelled the allotted unit on 21.10.2019 stating that *"in response to our legal notice dated 07.09.2019 you again expressed your desire to surrender the booking of the unit in the project of the company vide your reply dated 22.09.2019"*. Clause 5(i) of the Affordable Group Housing Policy, 2013 provides a provision for cancellation of allotted unit and which runs as follow:

" if any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi news-paper having circulation of more than ten thousand in the State for payment of due amount within 15 Days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs. 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".

45. As per cancellation clause of the affordable housing policy the respondent can deduct the amount of Rs. 25,000/- only and the balance amount shall be refunded back to the complainants. In the present case, there is nothing on record which shows that respondent-builder refunded the balance amount to the complainants. Thus, the respondent is directed to deduct only Rs. 25,000/- and refund the balance amount of within a period of 90

12

days alongwith interest on the balance amount from the date of cancellation till its actual payment

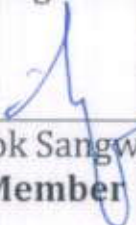
F. Directions of the Authority:

46. 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 respondent/promoter is directed to refund the paid up amount of Rs. 18, 52,794/- after retaining a sum of Rs. 25,000/- within a period of 90 days alongwith interest on such balance amount from the date of cancellation i.e. 21.10.2019 till its actual payment.
- ii. The above-mentioned amount be refunded to the complainant within a period of 90 days and failing which legal consequence would follow.

47. The Complaint stands disposed of.

48. File be consigned to registry.

 (Ashok Sangwan) Member	 (Sanjeev Kumar Arora) (Member)	 (Vijay Kumar Goyal) Member
Haryana Real Estate Regulatory Authority, Gurugram Date: 28.11.2023		