

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

Complaint no. : 1586 of 2019
First date of hearing : 12.12.2019
Date of decision : 18.12.2020

1.M3M India Private Limited

Address: - Unit No. SB/C/5L/Office/008,
M3M Urbana, Sector-67, Gurugram-122102
Correspondence address at 6th floor,
M3M Tea Point, Setor-65, Gurugram-Manesar
Urban Complex, Gurugram-122102

2. Cogent Realtors Private Limited

Address:- LGF,F-22, Sushant Shopping Arcade,
Sushant Lok , Phase-1, Gurugram-122002,
Haryana, India

Complainants

Versus

Aviral Bindle

Address:- 1231 A, Bindal Bhawan,
I.B School Lane, G.T Road, Panipat-132103,
Haryana

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

Chairman
Member

APPEARANCE:

Ms. Shriya Takkar
None

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 15.04.2019 has been filed by the complainants/promoters 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.

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

S.No.	Heads	Information
1.	Project name and location	"M3M Woodshire, Dwarka Expressway, Sector107, Gurgaon
2.	Project area	18.88125 acres
3.	Nature of the project	Group housing colony
4.	RERA Registered	Not Registered
5.	License No. & validity status	33 of 2012 dated 12.04.2012 valid upto 11.04.2018
6.	Name of licensee	Cogent realtors Pvt. Ltd.
7.	Unit no.	MWTW-B12/1202, 12th floor, Tower 12
8.	Super area	1943 sq. ft.
9.	Provisional Allotment letter	01.03.2013 (page 44 of the complaint)
10.	Date of execution of apartment buyer agreement	23.01.2015 (page 56 of the complaint)
11.	Payment plan	Construction linked payment plan (page 45 of the complaint)



12.	Total sale consideration	Rs. 1,16,63,188/- (as per statement of accounts on page 123 of the complaint)
13.	Total amount paid by the respondent	Rs. 1,04,77,896/- (as per statement of accounts on page 123 of the complaint)
14.	First mud slab dated	First mud slab laid on 14.12.2013 as stated by the complainant
15.	Due date of delivery of possession (the date of execution of agreement is later than date of first mud slab so, due date of possession is calculated from the date of execution of agreement)	23.07.2018 <i>as per clause 16.1- 36 months from the date of commencement of construction which shall mean the date of laying of the first plain cement concrete/ mud slab of the tower or the date of the execution of this agreement, whichever is later plus 180 days grace period.....</i>
16.	Offer of possession	25.08.2017 (page 121 of complaint)
17.	Occupation certificate	24.07.2017 for tower A1-B14 (Page 119 of the complaint)
18.	Delay in handing over possession till	No delay
19.	Pre-cancellation notice dated	12.02.2015 (page 114 of complaint) If the outstanding dues are not cleared within 15 days, then the booking of apartment will be cancelled.



3. As per clause 16.1 of the apartment buyer's agreement, the possession was to be handed over within a period of 36 months along with a grace period of 180 days from the date of commencement of construction or the date of execution of agreement whichever is later. The date of laying first mud slab is 14.12.2013 and the date of execution of agreement is 23.01.2015. The date of execution of agreement is later than the date of laying first mud slab therefore, the due date of possession is calculated from the date of execution of apartment buyer's agreement which comes out to be 23.07.2018. Clause 16.1 of the apartment buyer's agreement is reproduced below:

"16.1 Possession of the apartment

16.1 The company based on its present plans and estimate, and subject to all just exceptions, proposes to hand over possession the said apartment within a period of thirty six (36) months from the date of commencement of construction which shall mean the date of laying of the first cement/concrete/mud slab of the tower which shall be duly communicated to the Allottee(s) or the date of execution of the agreement whichever is later. Should the possession of the Apartment be not given within the time specified above, the Allottee agrees to an extension of One hundred and



eighty (180) days (grace period) after expiry of the commitment Period.....

4. The complainants submitted that the complainant vide letter dated 01.04.2013 Sent copies of the apartment buyers agreement for execution. The respondent however failed to execute the same on time and accordingly a reminder dated 07.05.2013 was issued to the respondent for the same. subsequently the apartment buyers agreement dated 23.01.2015 Was executed between the complainant and the respondent. It is submitted that clause 16.7 has to be read along with clause 16.1 which specifically provided that in case of failure of the allottee to make timely payments of any of the instalments as per the payment plan along with other charges and use as applicable for otherwise payable in accordance with the payment plan as per the demands raised by the company from time to time in this respect despite acceptance of delayed payment along with interest or any failure on the part of the allottee to abide by any of the terms and condition of this agreement, the time periods mentioned in this clause shall not be binding upon the company with respect to the handing over of the possession of the apartment. That in the present case the allottee has been a chronic defaulter.
5. The complaint submitted that respondent has committed defaults in making payment of the instalments and according the complainant/ developer has issued various reminders and pre cancellation notices. In the year 2012 on the direction of

the Hon'ble Supreme Court of India the mining activities of minor minerals was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession rules. Reference in this regard may be had to the judgment of "*Deepak Kumar v. State of Haryana, (2012) 4 SCC 629*". The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said project became scarce. Further, developer was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. Despite this, the complainant's developer made all diligent efforts to source the raw material for construction and development. Despite the aforementioned circumstances the complainant developer completed the construction of the project diligently and timely without imposing any cost implications of the aforementioned circumstances on the allottees. The complainant applied for OC on 23.12.2016 with respect to the tower in which the apartment is situated with the statutory authority's and the same was granted by the authorities only on 24.07.2017 after a period of almost 7 months.

6. That the Complainant submitted that vide letter dated 25.08.2017 possession of the said apartment was offered to the respondent and requested the respondent to take possession of the said apartment after clearing the outstanding dues in terms of the agreement. After issuance of reminder 1 the respondent neither approached the complainant to take the possession of the apartment nor cleared the outstanding dues the Complainant was forced to send pre cancellation notice dated 23.11.2017 to the respondent. On 08.02.2019 a last in final opportunity notice was also issued to the respondent. Thereafter on 20.02.2019 a letter was issued to the respondent intimating regarding the holding charges if not taking possession. That considering the above facts, the respondent has defaulted in the obligation cast upon her and thus the complainants are entitled to seek the remedy as provided under the Act. Hence, this complaint for the reliefs as stated above.

- i. To direct the respondent to take the possession of the said apartment which is ready and in the state of being occupied after the completion of the requisite formalities by the respondent including payment of all the outstanding dues;
- ii. To direct the respondent to pay the balance consideration and delayed interest as per section 19 of the RERA Act 2016;

- iii. To direct the respondents to pay holding charges as per terms and conditions of the ABA;
 - iv. To pay the respondents outstanding to pay maintenance dues of the maintenance agency.
7. On the date of hearing, the Authority explained to the respondent/allottees about the contravention as alleged to have been committed in relation to section 19 (6) (7) and (10) of the Act to plead guilty or not to plead guilty.
8. The respondent contests the complaint on the following grounds:-
- i. It is submitted that the complainant has got no locus standi to file and maintain the present complaint. Hence the same is liable to be dismissed. The amenities as assured in the project to be delivered at the time of possession has not been complete such as internal road interior works connectivity of the said sector with Dwarka express highway or proper link linkage with the main roads have been established. The most importantly, one big drain is passing adjacent to the said project and same was not declared in the brochure given at the time of receiving booking application. Further the promise to close the said drainage at the time of giving the possession has remained unexecuted. in this

scenario if the answering respondent would agreed to take the possession then same would result to be hazardous to him as well as to his family. That at present the company has made a new announcement in the market to sell flat Rupees 5000/- per square feet on the other hand the company sold the said flat Rupees 5728/- per square feet. Now the present complaint has been filed with their oblique motive to mislead and receive with tactics to cover up their delay and to pressurise their innocent customers to pay the remaining amount by the influence of order of this Hon'ble court and same can be construed to be none other than misuse abuse of law and harassment to the customers. Hence the same is liable to be dismissed.

9. The complainants have filed written arguments and contended on the following grounds:-
- i. It is submitted that the present complaint at most can be termed to be counter suit or counter claim which needs to be only filed as per the provisions of act.
 - ii. that the honble real estate appellate tribunal vide order Dated 21.01.2020 in the appeal titled as mapsko builders private limited versus satya prakash (appeal

number 236 of 2019) has categorically held that the honourable regulatory authority has the jurisdiction to deal with the complaints with respect to the grant of interest for delayed possessions.

iii. It is submitted that the cause of action of the complainants herein is the non payment of dues and not taking the possession of the apartment after the offer of possession was sent. The cause of action of the respondent herein is the alleged deficiency in service. Thus the cause of action of the complaint before the Hon'ble RERA Authority and Hon'ble NCDRC are distinct and separate. It is prayed that this Hon'ble authority may kindly be pleased to allow the present complaint and direct the respondents to forthwith clear all outstanding dues (including maintenance and holding charges) along with delayed interest and take possession of the apartment which is complete and ready.

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

11. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainants considered view that there is no need of further hearing in the complaint.
12. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 16.1 of the apartment buyer's agreement executed between the parties on 23.01.2015, possession of the booked unit was to be delivered within a period of 36 months from the date of commencement of construction or from the date of execution of buyer's agreement whichever is later. As such the due date of delivery of possession comes out to be 23.07.2018. Accordingly, it is the failure of the allottee/respondent to fulfil his obligations, responsibilities as per the buyer's agreement dated 23.01.2015 to take the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 19(6) (7) and (10) of the Act on the part of the respondent is established. Section 19(10) of the RERA Act 2016 mandates every allottee to take physical possession within a period of two months of



OC issued for the unit. The due date of Delivery of possessions comes out to be 23.07.2018 and offer of possessions was made on 25.08.2017. allottee should have taken physical possessions within 2 months from the date of offer of possession. The allottee is duty bound to take possessions within the prescribed time as per provisions of section 19 (10) of the act and failure to take possessions invites legal consequences as per law. Accordingly, allottee is directed to take physical possessions within a month without prejudice to consequences of taking delayed positions charges. The amount due shall be paid by the allottee as per provisions of builder buyer agreement. However, the complainant has submitted that the respondent has filed a complainants before Hon'ble NCDRC but no proof regarding filing of such complaint has been produced by either of the parties.

13. Hence, the Authority hereby pass the following order and issue directions 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 month without prejudice to consequences as per law.

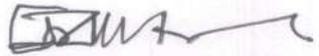


- ii. The respondent/allottees shall be charged interest at the prescribed rate of interest @9.30% p.a. by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.

14. Complaint stands disposed of.

15. File be consigned to registry.


(Samir Kumar)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.12.2020

JUDGMENT UPLOADED ON 12.02.2021