

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

**Complaint no. : 1381 of 2019**  
**First date of hearing : 02.07.2019**  
**Date of decision : 04.09.2019**

M3M India Private Limited  
Registered Office : Unit no.  
SB/C/5L/Office/008, M3M Urbana, Sector 67,  
Gurugram-122102

Cogent Realtors Private Limited  
Office : LGF, F-22, Sushant Shopping Arcade,  
Sushant Lok, Phase-1, Gurugram-122002

**Complainants**

**Versus**

Mr. Harpreet Singh  
R/o: 77/R, New Colony, Sector-4&7, S.B.I. New  
Colony Branch, Gurugram-122001

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE**

Ms. Shreya Takkar  
Mr. Harpreet Singh

Advocate for complainant  
Respondent in Person

**ORDER**

1. A complaint dated 01.04.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 by the complainants M3M India Private Limited and Cogent Realtors Private Limited, against the respondent/allottee Mr. Harpreet Singh, on account of violation of provisions of Real Estate(Regulation and Development) Act, 2016.

2. Since, the apartment buyer's agreement has been executed on 28.05.2013 i.e. prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on the part of the allottees in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"M3M Woodshire", Sector-107, Gurugram
2.	Nature of the project	Group housing colony
3.	Project Area	18.88125 acres
4.	Occupation certificate	20.04.2017
5.	RERA Registration status.	<b>Not registered</b>
6.	DTCP License no.	33 of 2012 dated 12.04.2012



7.	Unit no.	MWTW-B03/1003, 10 <sup>th</sup> floor, Woodshire Tower B3
8.	Unit area	1943 sq. ft.
9.	Provisional Allotment Letter	25.01.2013
10.	Date of execution of apartment buyer's agreement	28.05.2013
11.	Date of first mud slab laid on (as per alleged by the complainant in complaint)	14.05.2013
12.	Payment plan	Construction linked payment plan
13.	Total sale consideration(as per the apartment buyer's agreement)	Rs.1,12,58,327/-
14.	Total amount paid by allottees (as per statement of accounts on page no. 121)	Rs. 82,25,146/-
15.	Date of delivery of possession (as per clause 16.1 of apartment buyer's agreement : within 36 months from the date of commencement of construction which shall mean the date of laying of the first plain cement concrete/mud-mat slab of the tower or the date of execution of	<b>28.11.2016</b>  <b>Note: as calculated from the date of apartment buyer's agreement</b>

	agreement whichever is later plus 180 days grace period)  Note: Date of execution of apartment buyer's agreement dated 28.05.2013 is later as to date of first mud slab laid dated 14.05.2013	
16.	Delay in handing over possession till date	5 months
17.	Penalty (as per clause 16.6 of the said apartment buyer's agreement)	Rs.10/- per sq. ft. per month calculated on the super area for every month of delay
18.	Pre-cancellation notice(latest one)	18.11.2017
19.	Notice of possession	28.04.2017

4. Details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. An apartment buyer's agreement dated 28.05.2013 is available on record based on which the possession of the apartment was to be delivered by 28.11.2016. The possession was offered by the complainants on 28.04.2017 after receipt of OC dated 20.04.2017 but the respondent allottee has failed to take possession and pay

outstanding dues which is in violation of obligation of allottee under section 19 of the Act *ibid*.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The case came up for hearing on 02.07.2019, 23.07.2019 and 04.09.2019. The reply filed on behalf of the respondent on 25.04.2019 has been perused by the authority. The respondent through its counsel appeared on 02.07.2019.

#### **FACTS OF THE COMPLAINT**

6. The complainants submitted the complainant developer has developed in a planned and phased manner over a period of time, on the 'land' situated in Village Dharampur, Gurugram, Sector 107, Gurugram, Haryana, India a group housing colony under the name & style as **"M3M Woodshire" ('project')** *inter alia* comprising of various buildings and units therein, with suitable infrastructural facilities including multi-level basement parking. The said development has been carried out in planned and phased manner over a period of all in accordance with the licenses and the building plans as approved by DGTCP from time to time. In accordance with the

sanctioned building plans, the complainant has already developed the project with suitable infrastructural facilities.

7. The complainants submitted that being impressed by the project being constructed by the complainants, the respondent approached the complainant developer for booking of an apartment in the project of the complainant and accordingly signed and submitted a booking application. In due consideration of the commitment by the respondents to make timely payments, the complainant developer allotted the apartment in favour of the respondent vide the allotment letter dated 25.01.2013.
8. The complainants submitted that the complainant had vide letter dated 7.05.2013 reminded the respondent to execute the buyer's agreement. Subsequently, the apartment buyer's agreement dated 28.05.2013 was executed between the complainant and the respondent. It is pertinent to mention here that while executing the apartment buyer's agreement, it was agreed by the complainants and the respondent that they would be bound by the terms and conditions of the apartment buyer agreement.

9. The complainants submitted that as per clause 16.1, the complainant no. 1 proposed to handover the possession of the apartment 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 (the commitment period) is only a proposed period based on estimates, and is not a period which is absolute, fixed or cast in stone. It is pertinent to mention here that the first mud slab was laid on 14.05.2013 and the apartment buyer's agreement has been executed between the parties on 28.05.2013. Further, a grace period of 180 days is also provided over and above the proposed/estimated "commitment period". The time taken by the complainant no. 1 to develop the project is the usual time taken to develop such a large scale project.
10. The complainants 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 dues as applicable or otherwise payable in accordance with the payment plan or 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 conditions 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. Since the respondent has committed defaults in making payment of the instalments, various demand letters, reminders and pre-cancellation notices were issued to him.

11. The complainants submitted that the construction of the project was affected on account of unforeseen circumstances beyond the control of the complainant developer. In the year 2012, on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) 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. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A no. 171/2013, wherein vide order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna river bed. These orders inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was

almost 2 years that the scarcity as detailed in the para aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer.

12. The complainants submitted that the complainant developer completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the allottees. Upon completion of the construction of the apartment in terms of the apartment buyer's agreement, an application for the receipt of the occupation certificate was applied for on 12.09.2016 with respect to the tower in which the apartment is situated with the statutory authorities and the same was granted by the authorities only on 20.04.2017 i.e. after a period of almost 7 months. This delay of the competent authorities in giving OC cannot be attributed in considering the delay in delivering the possession of the apartment, since on the day the complainant applied for OC, the apartment was complete in all respect.

13. The complainants submitted that the complainant company, vide letter dated 28.04.2017 offered the possession of the said apartment to the respondent and requested the respondent to take possession of the said apartment after clearing the outstanding dues in terms of the agreement.
14. The complainants submitted that since, the respondent was not taking the possession of the apartment after clearing the outstanding dues, the complainant sent reminder 1 dated 15.06.2017. Since even after issuance of reminder 1, the respondent neither approached the complainant to take the possession of the apartment or clear the outstanding dues, the complainant was forced to send pre -cancellation notice dated 18.11.2017 to the respondent.
15. The complainants submitted that thus, the complainants are entitled to file the present complaint under section 19 of the said Act which provides for the rights and duties of the allottees, read with section 31 and 71 of the Act. The complainants are also equally entitled to the interest on the payments due, which were delayed by the respondent-allottee

as per the provisions of the Real Estate (Regulation and Development) Act, 2016.

16. The complainants submitted that the project "M3M Woodshire" consists of total 995 apartments out of which 754 apartments have already been sold and possession offered to the eligible allottees. The project is very much habitable and already the possession of approx. 465 apartments have been taken over by the respective allottees and approx. 200 families are already staying in the project as of now and the said figure is increasing day by day with more possessions being taken over and more families moving into the project and enjoying the various facilities and amenities therein. Further, the respective allottees are enjoying and making use of the various facilities and amenities as provisioned for their comfort.

**ISSUES TO BE DECIDED:**

17. The complainants have raised the following issues:
- a. Whether the respondent allottee has violated the terms and conditions of apartment buyers agreement?

- b. Whether the respondent allottee has violated their duty under section 19(6) read with section 19(7) of the Real Estate (Regulation and Development) Act, 2016?
- c. Whether the respondent allottee has violated his duty not to take the physical possession of the apartment within a period of two months of the issuance of the Occupancy Certificate for the said building, apartment under Section 19(10) of the Real Estate (Regulation and Development) Act, 2016?
- d. Whether the respondent allottee is liable to be directed by this authority to forthwith take possession of the allotted unit after clearing all dues pending qua the same with delayed interest in the interest of justice and fair play?

#### **RELIEFS SOUGHT**

18. The complainants are seeking the following reliefs:
- i. To direct the respondent allottees to take the possession of the apartment which is ready and in the state of being occupied after the completion of the requisite formalities by the respondent allottee;

- ii. To direct the respondent allottees to pay the balance consideration and delayed interest as per section 19 of the Real Estate (Regulation and Development) Act, 2016.
- iii. To direct the respondent also be directed to pay holding charges as per the terms and conditions of the apartment buyer's agreement.

### **REPLY ON BEHALF OF RESPONDENT**

19. The respondent submitted that the respondent approached the complainant in the year 2012 for purchase of an flat in its upcoming residential project "M3M Woodshire" situated in Sector-107 Gurugram Haryana.
20. The respondent submitted that apartment buyer's agreement was signed between complainant and respondent on dated 28.05.2013, just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the respondent.
21. The respondent submitted that the complainant on the basis of payment plan extracted Rs. 45,70,422/- more than 35%

amount before execution of the apartment buyer's agreement and respondent always paid amount before the due amount date but builder never gave him any timely payment discount. The complainant without executing the said agreement extracted more than 35% is illegal and arbitrary.

22. The respondent submitted that total value of flat is Rs. 1,19,14,690/- inclusive taxes out of that complainant paid Rs. 82,25,146/- (i.e. approximately 70% of total value) before March 2014 in time bound manner.
23. The respondent submitted that the complainant company was liable to hand over the possession of a said unit before 28.05.2016 as per clause 16.1 of the said agreement but builder offered the possession on dated 01.05.2017. This is discriminatory attitude of builder, if respondent delay in installment, builder charged interest @24% per annum otherwise delay on his part, he is not given any single penny.
24. The respondent submitted that the complainant cancelled the unit on 13.11.2014 rather than refund the balance paid amount again sent the letter of possession.

25. The respondent submitted that the respondent is retired person and got home loan from ICICI bank for buying this apartment and also carried the responsibility of 2 school going children and he is not in capacity to carry this apartment still respondent wrote the letter to complainant on 03.05.2014 and again on 16.12.2016 for waver of interest amount which was imposed on him @24% but builder never replied.

26. The respondent submitted the complainant's project was not registered under RERA is untenable in the eyes of law and the present complaint filed by the complainant is liable to be dismissed as the complainant is having no locus standi and had made wrong allegations against the respondent without any substantial evidence.

**DETERMINATION OF ISSUES:**

27. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under.

a. With respect to **first and second issue**, as per clause 8 of the apartment buyer's agreement dated 28.05.2013 read with section 19(6) and section 19(7) of the Real Estate



(Regulation and Development) Act, 2016, the allottee is under an obligation to make necessary payments in accordance with the payment plan along with applicable registration charges, maintenance charges and other charges. However, the respondent-allottee has made payment of Rs.82,25,146/- as against the total consideration of Rs.1,12,58,327/-, and the promoter has offered the possession on 28.04.2017 but the allottee respondent has not paid the due amount till date in accordance with the payment plan. Thus, the respondent-allottee has violated the conditions of apartment buyer's agreement and has also violated the duty under section 19(6) and section 19(7) of the Act *ibid*.

- b. With respect to **third and fifth issue**, as per section 19(10) of the said Act, the allottee shall take physical possession of the unit within a period of two months of the issuance of occupation certificate of the unit in question. In the present case, the occupation certificate was received on 20.04.2017 and the possession was offered on 28.04.2017. However, the

respondent-allottee failed in taking possession thereby violating section 19(10) of the said Act.

Thus, keeping in view the circumstances of the case, the respondent-allottee is hereby directed to take possession of the allotted apartment after clearing all dues pending along with delayed interest at the prescribed rate of 10.45% per annum. Further, the complainants shall also be liable to pay delayed interest charges at equitable interest rate of 10.45% per annum from the due date of handing over possession, i.e. 28.11.2016 till the offer of possession on 28.04.2017.

**FINDINGS OF THE AUTHORITY:**

28. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district. 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.

Arguments heard.

Respondent is directed to issue possession letter alongwith other relevant documents as required by the complainant in connection with availing of loan from his banker.

Legal representative alongwith counsel of the complainant categorically made a statement that they are willing to waive off interest component as mentioned at serial no. F of Statement of Accounts-Cum Invoice(at page no.121 of the complaint) accrued upto date i.e. when the actual possession shall be handed over to the respondent. Respondent is directed to take over the possession of the allotted unit within a period of two months i.e. upto 04.11.2019 by making balance dues of the complainant/promoter.

It is made clear that if the respondent/allottee fails to take over the possession of the allotted unit by 04.11.2019, the allottee shall be liable to pay penal interest.

**DIRECTIONS OF THE AUTHORITY:**

29. After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:


- (i) Respondent is directed to take over the possession of the allotted unit within a period of two months i.e. upto 04.11.2019 by making balance dues of the complainant/promoter.
- (ii) In case, the respondent/allottee failed to take over the possession of the allotted unit by 04.11.2019, the allottee shall be liable to pay penal interest.

30. The order is pronounced.

31. Case file be consigned to the registry.

(Samir Kumar)  
Member

(Subhash Chander Kush)  
Member

  
Dr. K.K. Khandelwal  
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 04.09.2019