

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

Complaint no.	:	3925 of 2024
Date of complaint	:	05.09.2024
Date of order	:	28.05.2025

Dinesh, R/o: Shiv Colony, Ward No.5, Sohna, Gurugram.	Complainant
Versus	
M/s M3M India Private Limited Regd. office: 41st Floor M3M International Financial Centre, Sector-66, Golf Course Road (Extn), Gurugram-122001.	Respondent
CORAM:	
Ashok Sangwan	Member
APPEARANCE:	
Chander Mohan Sharma (Advocate)	Complainant
Shriya Takkar (Advocate)	Respondent

ORDER

- The present complaint 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 29 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and 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 Sector 107, Gurugram
2.	Project area	18.88125 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	33 of 2012 dated 12.04.2012 valid upto 11.04.2018
5.	Name of licensee	Cogent Realtors Pvt. Ltd.
6.	HRERA registered/ not registered	Not Registered
7.	Provisional allotment letter dated	25.04.2017 (Page no. 26 of complaint)
8.	Unit no.	EWS Flat No. 714, 7 th Floor (page 26 of complaint)
9.	Unit measuring	259 sq. ft. (page 29 of complaint)
10.	Date of execution of buyer's agreement	Not executed
11.	Possession clause	Not on record
12.	Due date of possession	As per EWS policy
13.	Basic sale consideration	Rs.1,94,250/- (As per payment plan at page 29 of the complaint)
14.	Total amount paid by the complainants	Rs.1,65,113/- (As per page 10 of reply)

15.	Occupation certificate granted on	20.04.2017 (as per DTCP website)
16.	Date of offer of possession	Not on record

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That in the year 2017, respondent purportedly launched an affordable housing residential EWS project under the name "M3M WOODSHIRE" situated at Sector-107, Gurugram.
- II. That the complainant belongs to a "EWS category" applied under the policy of flat to the EWS in the license colony. The name of complainant was shortlisted/selected according to draw conducted on dated 30.03.2017 and after this an allotment letter was issued in favour of complainant on dated 25.04.2017.
- III. That on 30.03.2017, a flat has been allotted through draw of lot for which an allotment letter was issued on 25.04.2017 and according to which complainant was issued a flat bearing no. 714, 7th floor, Sector-107, Gurugram admeasuring tentative area of 200 sq.ft. at the rate of Rs.750/per sq.ft. for total consideration of Rs.1,50,000/-.
- IV. That vide EWS payment request letter dated 04.06.2017, the respondent demanded payment for next installment for increased area i.e. 59 sq.ft. (chargeable @750 per sq.ft) therefore total tentative area of unit was 259 sq ft. carpet area at total sale consideration of Rs.1,94,250/-. The complainant opted construction linked plan for payment of the allotted apartment/unit and as per respondent's last demand raised, the complainant made the payments of Rs.64,050/- towards the allotted unit on demand.
- V. That as per the terms of the allotment letter dated 25.04.2017 developer/respondent agreed to handover the possession of the said

unit soon but respondent has failed to deliver the unit on time and now it's been 7 years no possession has been given nor the respondent has given any information regarding the same, also the respondent keeps on ignoring the queries and calls of the complainant.

- VI. That the complainant made the total payment of Rs.1,65,000/- as per last demand which was duly received by the respondent and after this no further demands were made by respondent.
- VII. That when complainant did not receive any further demand from respondent, then he went to the corporate office of respondent to enquire but they were not even ready to answer any query of complainant.
- VIII. That having left with no other option, complainant went to see the project at Gurgaon and was shocked to see that the flat is completely ready and is being used for storage/go-down purposes by the respondent.
- IX. That by using this illegal trade practice and illegal act respondent had provide mentally harassment and pain to complainant by not delivering the booked/allotted unit in the project on time.
- X. That on 14.02.2024 and again on 24.05.2024 complainant sent the legal notice to the respondent/developer through his counsel for handing over of the possession along with delay payment charges @12% interest and to pay the amount of Rs.1,00,000/- for mental harassment and deficiency in service by the respondent, but despite the legal notice, the respondent failed to hand over the possession and pay the money to complainant. The complainant wanted to have the possession of the above mentioned flat as soon as possible and along with the delay payment charges @12% interest. Hence this complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- a) Direct the respondent to handover possession of the flat and to pay delay

possession charges.

b) Direct the respondent to pay litigation cost and compensation.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions 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 respondent:

6. The respondent vide reply dated 26.03.2025 contested the complaint on the following grounds:

- i. That the complainant after making independent enquiries and only after being fully satisfied about the projects developed by the respondent had approached and applied for booking of a residential unit in EWS category vide application form in the project 'M3M Woodshire', Sector 107, Gurugram, Haryana of the respondent company. As per the norms, the allotment of the EWS unit was done by way of draw of lots. The draw of lots was scheduled on 30.03.2017, the name of the complainant was selected for allotment of an apartment in the said project. The complainant accordingly paid an amount of Rs.15,000/- vide cheque dated 13.01.2017 which was duly acknowledged by the respondent.
- ii. That the respondent vide letter dated 25.04.2017 allotted EWS flat number 714 admeasuring approximately 200 sq.ft. for the total sales consideration of Rs.1,94,250/- plus other charges in the said project. The respondent vide the said letter requested the complainant to bring certain original documents for verification and a demand draft of Rs.37,500/- latest by 15.05.2017. The relevant portion of the allotment letter dated 25.04.2017 is reproduced hereinbelow for ready reference:

"Accordingly, we are starting the process of provisional allotment of the above said EWS flat to you. For this purpose, you are requested to bring the following original documents for verification and next payable installment to our office:

1. Haryana Domicile Certificate



2. Aadhar Card
 3. BPL card
 4. *Duly sworn Affidavit on Rs. 10 stamp paper, stating "that if my name does not appear in the BPL list on the date of draw of lot, the allotment of flat will be cancelled and entire deposited amount will be forfeited." A sample copy of the affidavit is attached for ready reference.*
 5. *Demand Draft of Rs.37,500/- favouring "M3M Woodshire EWS Account" payable at Gurugram, as per terms and conditions as mentioned in the EWS application form, within 20 days i.e. latest by 15.05.2017, at the office of the company situated at Vipul Office, Ground Floor-1, Suncity Golf Course Road, Sector-54, Gurugram-122002."*
- iii. The complainant paid the said amount vide the banker's cheque dated 08.05.2017 which has been duly acknowledged by the respondent. The complainant assured the respondent that he would provide the documents stated in the provisional allotment soon, however, despite repeated requests the complainant failed to provide the necessary documentation.
- iv. That as per the schedule of payment, the respondent raised a demand vide letter dated 04.06.2017 due within 60 days of allotment requesting the complainant to pay an amount of Rs.64,050/- and the same was to be paid before the due date i.e., 24.06.2017. The respondent as per the payment plan opted by the complainant raised a demand vide letter dated 08.07.2017 due within 90 days of allotment for an amount of Rs.1,12,613/- which included previous outstanding dues to the tune of Rs.64,050/- wherein an amount of Rs.64,050/- was payable immediately and Rs.48,563/- was payable on or before 24.07.2017. The complainant belatedly paid an amount of Rs.64,050/- vide bankers cheque dated 11.07.2017 and the same was duly acknowledged by the respondent. The complainant also vide bankers' cheque dated 24.07.2017 paid an amount of Rs. 48,653/- and the same was



acknowledged by the respondent. It is submitted that the complainant is liable to pay interest on delayed payment on the amount of Rs.64,050/- as the same demand was paid by the complainant after the due date i.e., 24.06.2017.

- v. That the respondent requested the complainant a number of times to provide the necessary documents to verify and ascertain that the complainant is a genuine applicant/allottee and falls under the EWS category so that it can offer possession of the apartment to him. However, the complainant despite repeated requests failed to submit the necessary documentation.
- vi. That the respondent thereafter vide emails dated 28.02.2025, 17.03.2025 and 18.03.2025 again requested the complainant to come forward and submit the necessary documents i.e. yellow card also known as BPL card so that the notice for offer of possession can be issued. Thus, from the above it is absolutely clear that the complainant has failed to provide proof to the respondent that he falls under EWS category as a consequence of the same the respondent was forced to withhold the offer of possession.
7. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

8. 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

9. 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee's 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.

11. 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.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to handover possession of the flat and to pay delay possession charges.

12. That complainant has submitted that he belongs to a "EWS category" and has applied for a flat under the policy of EWS in the license colony. The name of complainant was shortlisted/selected according to draw conducted on dated 30.03.2017 and after this an allotment letter was issued in favour of complainant on dated 25.04.2017 vide which a flat bearing no. 714, 7th floor, Sector-107, Gurugram admeasuring tentative area of 200 sq.ft. at the rate of Rs.750/per sq.ft. was allotted to him. As per the terms of the allotment letter dated 25.04.2017, the respondent agreed to handover

the possession of the said unit soon but has failed to deliver the unit on time. Accordingly, on 14.02.2024 and again on 24.05.2024 complainant sent the legal notice to the respondent/developer through his counsel for handing over of the possession along with delay payment charges @12% interest and to pay the amount of Rs.1,00,000/- for mental harassment and deficiency in service by the respondent, but despite the legal notice, the respondent failed to hand over the possession and pay the money to complainant. The respondent has submitted that vide letter dated 25.04.2017 a EWS flat number 714 admeasuring approximately 200 sq.ft. was allotted for the total sales consideration of Rs.1,94,250/- plus other charges in the said project. The respondent as per the payment plan opted by the complainant raised a demand vide letter dated 08.07.2017 due within 90 days of allotment for an amount of Rs.1,12,613/- which included previous outstanding dues to the tune of Rs.64,050/- wherein an amount of Rs.64,050/- was payable immediately and Rs.48,563/- was payable on or before 24.07.2017. The complainant belatedly paid an amount of Rs.64,050/- vide bankers cheque dated 11.07.2017 and the same was duly acknowledged by the respondent. The complainant also vide banker's cheque dated 24.07.2017 paid an amount of Rs.48,653/- and the same was acknowledged by the respondent. It is submitted that the complainant is liable to pay interest on delayed payment on the amount of Rs.64,050/- as the same demand was paid by the complainant after the due date i.e., 24.06.2017. Further, the respondent vide letter dated 25.04.2017 requested the complainant to bring certain original documents for verification. However, the complainant despite repeated requests failed to submit the necessary documentation. The relevant portion of the provisional allotment letter dated 25.04.2017 is reproduced hereinbelow for ready reference:



"Accordingly, we are starting the process of provisional allotment of the above said EWS flat to you. For this purpose, you are requested to bring the following original documents for verification and next payable installment to our office:

- 1. Haryana Domicile Certificate*
- 2. Aadhar Card*
- 3. BPL card*
- 4. Duly sworn Affidavit on Rs. 10 stamp paper, stating "that if my name does not appear in the BPL list on the date of draw of lot, the allotment of flat will be cancelled and entire deposited amount will be forfeited." A sample copy of the affidavit is attached for ready reference.*
- 5. Demand Draft of Rs.37,500/- favouring "M3M Woodshire EWS Account" payable at Gurugram, as per terms and conditions as mentioned in the EWS application form, within 20 days i.e. latest by 15.05.2017, at the office of the company situated at Vipul Office, Ground Floor-1, Suncity, Golf Course Road, Sector-54, Gurugram-122002."*

13. In the present complaint the complainant intends to continue with the unit and is seeking delay period interest along with physical possession.
14. The authority is of the view that the EWS policy does not specify any timeline for offering possession. As per the provisions of the policy, units are allotted only after the construction is completed. Furthermore, the units are offered at highly reasonable rates, even below the construction cost.
15. Upon perusal of the documents available on record as well as submissions made by the parties, it is determined that vide provisional allotment letter dated 25.04.2017, the complainant was allotted a unit bearing no. 714, 7th floor measuring 259 sq.ft. under the EWS policy in the project of the respondent named "M3M Woodshire", Sector-107, Gurugram for a sale consideration of Rs.1,94,250/- and the complainant has paid a sum of Rs.1,65,113/- in all till date. The complainant has made the last payment in July 2017, under the second last demand having head 'within 90 days of allotment' and the last demand was to be paid 'within 30 days of notice of

possession'. The occupation certificate was received by the respondent from the competent authority on 20.04.2017. Thereafter, neither the last demand was raised, nor possession of the unit was offered to the complainant. The complainant vide legal notice dated 14.02.2024 and 24.05.2024 requested the respondent to handover possession along with interest, but no heed was paid and it was only in 2025, when after receipt of the present complaint, the respondent vide emails dated 28.02.2025, 17.03.2025 and 18.03.2025 intimated the complainant to come forward and submit the necessary documents for issuance of notice for offer of possession which reflects substantial delay on part of the respondent. Although, the respondent vide provisional allotment letter dated 25.04.2017, intimated the complainant regarding submission of requisite documentation pursuant to the Economically Weaker Section (EWS) policy, however, the respondent later proceeded to accept the outstanding dues without subsequently requesting the mandated documents from the complainant up to the filing of this complaint. Accordingly, the respondent is liable to pay interest on the amount paid for the delayed period.

16. The authority observes that the counsel for the respondent vide proceedings dated 28.05.2025, stated at bar that the respondent is willing to handover the unit to the complainant on submission of essential documentation including Haryana Domicile Certificate, Aadhar Card, BPL card and affidavit as required under the Policy of allotment of EWS units. The complainant can come forward and obtain possession on submission of the above documents and due amounting to Rs.29,137.50/- and other charges as per Policy.
17. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 20.04.2017, however, the possession of the

unit has not been offered to the complainant till date. Accordingly, the respondent is directed to offer possession of the flat to the complainant within a period of 30 days to the complainant. Thereafter, the complainant upon receipt of the offer of possession shall submit essential documentation as required under the Policy and made payment of the outstanding dues within next 30 days for taking possession of the flat.

18. The authority further observes that the complainant-allottee has paid the last installment against the allotted unit in July 2017 and it has taken him more than 6 years to file a complaint seeking possession and delay possession charges. Although the complainant is entitled to interest for the delayed period, but it would be inequitable and unjust to direct the respondent to pay interest from the delayed period, particularly in light of the fact that breach of the contract has been done on part of the complainant also by not providing the requisite documentation and he has remained dormant on his rights for more than 6 years by not approaching any forum to avail his rights. Such inaction cannot result in the imposition of an undue financial burden on the respondent, especially when the allottee is himself at fault. Accordingly, the authority finds it appropriate to allow delay possession charges at the prescribed rate from the date of filing of complaint i.e. 05.09.2024 till offer of possession plus two months or actual handing over of possession whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules.

19. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @11.10% p.a. w.e.f. 05.09.2024 till offer of possession plus two months or actual handing over of possession whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules.

F.II Direct the respondent to pay cost of litigation and compensation.

20. The complainant is seeking above mentioned relief w.r.t. compensation.

Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. has held that an allottee is entitled to claim compensation and litigation charges under Sections 12,14,18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the Adjudicating Officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation and litigation expenses.

G. Directions of the authority.

21. 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 is directed to offer possession of the flat to the complainant within a period of 30 days to the complainant. Thereafter, the complainant upon receipt of the offer of possession shall submit essential documentation as required under the Policy and made payment of the outstanding dues within next 30 days for taking possession of the flat.
- II. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 11.10% from the date of filing of complaint i.e. 05.09.2024 till offer of possession plus two months or actual handing over of possession whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules.



III. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

22. Complaint stands disposed of.

23. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 28.05.2025



HARERA
GURUGRAM