

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

Complaint no. : 1218 of 2019
First date of hearing : 12.12.2019
Date of decision : 12.12.2019

1.M3M India Private Limited

Address: Unit No. SB/C/5L/Office/008,
M3M Urbana,Sector-67, Gurugram-122102;

Also, at: 6thFloor, M3M Tee Point,
Sector-65, Gurugram

2.Cogent Realtors Private Limited

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

Complainants

Versus

1.Abhilash Gupta

2.Mrs. Shashi Gupta

**Both r/o – B-110/2, East of Kailash,
New Delhi- 110065.**

Respondents

CORAM.

Shri Namir Kumar

Shri Subhash Chander Kush

Member

Member

APPEARANCE.

Ms. Sarita Takkar

Advocate for the complainant

Sh. Manoj Yadav and Ms. Mehr Kaur

Advocates for the respondents

ORDER

1. The present complaint has been filed by the complainants/promoter M3M India Private Limited and Cogent Realtors Private Limited against the allottees

Abhilash Gupta and Shashi Gupta 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's 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 Sector 107, Gurugram
2.	Project area	18.88125 acres
3.	Nature of project	Group Housing Colony
4.	RERA registered/ not registered	Not Registered
5.	RERA registration valid upto	N/A
6.	License No. & validity status	33 of 2012 dated 12.04.2012 valid upto 11.04.2018
7.	Name of licensee	Cogent Realtors Pvt. Ltd.
8.	Unit no., Tower no.	MW TW-B 11/0401, 4th floor, tower B11
9.	Super area	1366 sq. ft.
10.	Date of provisional Allotment letter	25.01.2013 (page no. 45 of the complaint)

10.	Payment plan	Construction linked plan
11.	Total sale consideration	Rs. 84,28,443/- (as per statement of accounts-cum-invoice, page no. 60 of the complaint)
12.	Total amount paid by the complainant	Rs. 77,57,313/- (as per statement of accounts-cum-invoice cum invoice at pg. no. 60 of the complaint)
13.	Due date of delivery of possession as per the agreement (36 months from the date of commencement of construction or from the date of execution of agreement whichever is later, and 180 days grace period) (as per clause 46 of the allotment letter at page. 41 of the complaint)	20.05.2017 (as the agreement has not been executed by the complainant, so the due date of possession has been calculated from the first plain cement concrete/mud slab of the tower (i.e. 20.11.2013) as alleged by the complainant in Claus 4 (ii) at page no. 9 of the complaint)
16.	Date of offer of possession, if any	28.08.2017 (page no. 58, annexure D)
17.	Status of project	OC for tower B 11 received on 24.07.2017
19.	Period of delay in handing over possession till offer of possession	3 months 7 days

20.	Reliefs sought (in specific terms)	<ul style="list-style-type: none"> • To direct the respondents to take the possession of the said apartment. • To direct the respondents to pay the balance consideration and delayed interest. • To direct the respondents to pay holding charges. • To direct the respondents to pay outstanding maintenance dues of the maintenance agency.
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21. The details provided above have been checked on the basis of the record available in the case file which has been provided by the complainants. An apartment buyer's agreement has not been executed between the parties, but the allotment letter is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be taken by the respondents/allottees after paying the balance consideration. However, the respondents have failed to fulfil their obligation by not taking the possession within stipulated period despite several reminders. As per the averments made in the complaint, instead of clearing the outstanding dues and taking possession of the subject apartment the respondents filed a complaint before the national consumer disputes redressal commission(NCDRC) bearing no. CC/347/2018 for seeking refund. Hence, this

complaint for issuing above mentioned directions to the respondents.

4. Respondents have not filed any reply to the complaint though the respondents have been represented through Sh. Manoj Yadav and Ms. Mehar Kaur Advocates.
5. Arguments heard.
6. Facts are not in dispute. Documents are also not in dispute. It stands established that the averments made in the complaint have been admitted to be correct by the respondents. After receiving the occupation certificate of the project by the complainants/ promoter on 24.07.2017 offer of possession letter was issued to the respondents on 28.08.2017 (Annexure- D at pg. no. 58 of the complaint) thereby asking the respondents to clear all their dues on or before 26.09.2017, submitting the documents as per the offer of possession letter for handing over the possession. However, the respondents adopted a peculiar way. Instead of clearing dues and filing documents with the complainants, they filed the above stated complaint before the national consumer disputes redressal commission (NCDRC) with an intention to side-line the provisions of section 19(6),(7),(10) of the Act. Here we say that the jurisdiction of this Authority does not get ousted by a mere fact that the complaint for the refund of the deposited amount filed by the respondents against the complainants is pending before (NCDRC).

7. This Authority holds that the respondents were/ are under an obligation of making timely payment with interest at the prescribed rate as provided under Rule 15 of the Rules and to take possession of the subject apartment without further delay.
8. After the receipt of the offer of possession letter, no plea is now opened to the respondents and the plea, if any, taken by them in this regard is nothing but after thought. The respondents are at the liberty to knock the doors of the superior court/apex court.
9. The possession of the subject apartment was to be handed over to the respondents within 36 months and 180 days grace period from the date of commencement of construction which comes out to be 20.05.2017. However, admittedly the offer of possession letter in respect of the subject apartment was issued by the complainants to the respondents on 28.08.2017. Therefore, the complainants/promoter is liable to pay the delayed possession charges (DPC) for the said period to the respondents at the prescribed rate of interest.

Decision and directions of the Authority: -

10. In view of the above discussion the authority pass an order under section 34(f) of the Act, and issue the following directions:-

- (a) The respondents/allottees 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 period of 30 days
- (b) The complainants/promoter shall pay the delayed possession charges (DPC) with effect from 20.05.2017 to 23.08.2017 at the prescribed rate of interest of 10.20% per annum to the respondents and shall adjust the said amount towards the final amount to be paid by the respondents.
- (c) The respondents/allottees shall be charged interest at the prescribed rate of interest that is at the rate 10.20% per annum by the complainants/promoters.

11. Complaint stands disposed of.

12. File be consigned to the registry.


(Samir Kumar)

Member


(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date 12.12.2019

JUDGEMENT UPLOADED ON 13.03.2020