

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

Complaint no. : 1591/2019
First date of hearing: 12.12.2019
Date of decision : 12.12.2019

1. M3M India Private Limited

Address: SB/C/5L/Office/008, M3M Urbana,
Gurugram-122102, Haryana
Also, at: 6th floor, M3M Tee Point, Sector-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.

Complainants

Versus

1. Himanshu Saxena

Address: R/o.: 3089, Ground floor, Sector-23,
Gurugram-122016

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Ms Shriya Takkar
Sh. Manoj Yadav and
Ms. Mehr Kaur

Advocate for complainants

Advocates for respondent

ORDER

1. The present complaint has been filed by the complainants/Promoter M3M India Private Limited and

Cogent Realtors Private Limited against the allottee Himanshu Saxena, 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),(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	Details
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)	License No. & validity status	33 of 12 Dated 12.04.2012 valid up to 11.04.2018
6)	Name of licensee	Cogent Realtors Pvt. Ltd.
7)	Unit no., Tower no.	MW TW-B11/0301, 3 rd floor, Tower-B11
8)	Super area	1366 sq. ft.

9)	Date of execution of agreement	29.05.2013
10)	Payment plan	Construction linked plan
11)	Total consideration sale	Rs. 82,81,887/- (As per statement of accounts-cum-invoice)
12)	Total amount paid by the complainants	Rs. 71,08,345/- (As per statement of accounts-cum-invoice cum invoice)
13)	Due date of delivery of possession as per agreement (36 months from the date of commencement of construction or from the date of execution of agreement + 6 months grace period)	29.11.2016 (the due date is calculated from the date of execution of agreement since no document to substantiate the start of construction is attached.)
14)	Status of project (ongoing/complete)	Received on 24.07.2017 for tower B11 along with other towers of the project.
15)	Date of offer of possession	25.08.2017
16)	Reliefs sought (in specific terms)	<ul style="list-style-type: none"> • To be directed to take the possession of the said apartment • To pay the balance consideration and delayed interest • To pay holding charges as per the terms of the agreement • To pay outstanding maintenance dues of the maintenance agency

3. The details provided above have been checked on the basis of the record available in the case file which have 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 contractual 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 this complaint no. CC/274/2018 before the National Consumer Dispute Redressal Commission (NCDRC). Hence, this complaint for issuing directions to the respondents.

4. Respondents have not filed the reply to the complaint. Though the respondents have been represented by Sh. Manoj Yadav and Ms. Mehar Kaur Advocates.

5. Arguments on behalf of the complainants are heard. The complaint is decided ex-parte.

6. Facts are not in dispute. Documents are also not in dispute.

It stands established that the arguments made in the complaint have been admitted to be correct by the respondents to the extent that even after receiving of the occupation certificate of the project by the complainants/promoters on 24.07.2017 and offer of possession letter was issued to the respondents on 25.08.2017. Thereby asking the respondents to clear all their dues on or before 25.09.2017 by submitting the documents as per the offer letter for handing over the possession. However, the respondents adopted a peculiar way instead of clearing dues and filing documents with the complainants, he filed the above stated complainants before the National Consumer Dispute Redressal Commission (NCDRC) with an intention to side line the provision 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 the National Consumer Dispute Redressal Commission (NCDRC). This authority holds that the respondents was/ is 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.

7. That after the receipt of the offer of possession letter, no plea is now open to the respondents and the plea if any taken by them in this regard is nothing but an after thought. The respondents are at the liberty to knock the doors of the superior court/Apex court.
8. The possession of the subject apartment was to be handed over to the respondents within 36 months and 6 months grace period from the date of commencement of construction or from the date of execution of BBA i.e. 29.05.2013 which comes out to be 29.11.2016. However, admittedly the offer of possession letter in respect of the subject apartment was issued by the complainants to the

respondents on 25.08.2017. Therefore, the complainants/promoters are liable to pay the delayed possession charges (DPC) for the said period to the respondents at the prescribed rate of interest

9. In view of the above discussion the authority pass this order under section 34(f) of the Act hereby issuing the following directions: -

- a) The respondents/allottees shall pay the balance dues/requisite payments requisite payments and take the possession of the subject apartment as per the provisions of Section 19(6),19(7) and 19(10) of the Act within a period of 30 days;
- b) The complaints/promoters shall pay the delayed possession charges (DPC) with effect from 29.11.2016 to 25.08.2017 at the prescribed rate of interest of 10.20% per annum to the complainants and shall adjust the said amount towards the final dues 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 which is same as is being granted to the respondents/allottees in case of delayed possession.

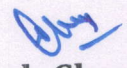
10. Complaint stands disposed of.

11. File be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Date 12.12.2019

JUDGEMENT UPLOADED ON 14.03.2020