

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

Complaint no. : 1376 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: 6th Floor, 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

Naresh Malhotra

Address: R/o: D-143, East of Kailash,
New Delhi-110065

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE.

Ms. Shriya Takkar

Advocate for the complainants

None Present

Advocate for the 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 Naresh Malhotra 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	
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 2012 dated 12.04.2012 valid upto 11.04.2018
7.	Name of licensee	Cogent Realtors Pvt. Ltd.
8.	Unit no., Tower no.	MWTW-B04/0702, 7 th floor, tower B4
9.	Super area	1534 sq. ft.
11.	Date of execution of agreement	16.08.2013 (page no. 56 of the complaint)
12.	Payment plan	Construction linked payment plan
13.	Total sale consideration	Rs.1,03,04,332/- (as per statement of accounts-cum-invoice, page no. 120 of the complaint)

14.	Total amount paid by the complainant	Rs. 7,900,505/- (as per statement of accounts-cum-invoice page no. 120 of the complaint)
15.	Due date of delivery of possession as per agreement (as per Clause 16.1, 36months from the date of commencement of construction or from the date of execution of agreement whichever is later plus 6 months grace period)	16.02.2017 Note:- due date of possession is calculated from the date of agreement
16.	Date of offer of possession	28.04.2017 (Annexure-F, page 118 of the complaint)
17.	Status of project (ongoing/complete)	OC for tower B4 received on 20.04.2017
19.	Period of delay in handing over possession	2 months 12 days
20.	Specific relief sought	<ul style="list-style-type: none"> • To direct the respondent to take the possession of the said apartment • To pay the balance consideration and delayed interest • To pay holding charges • 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 dated 16.08.2013 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be handed over on 16.02.2017 to the respondent. However, the respondent has failed to fulfil its contractual obligation by not taking the possession within stipulated period despite several reminders. Hence, this complaint for issuing above mentioned directions to the respondent.

4. Despite service of notice to the respondent by speed post as well as by email the respondent has failed to file its reply to the complaint. Hence the authority left no other option proceeded ex-parte proceeding against the respondent.
5. Arguments heard.
6. Facts are not in dispute. Documents are also not in dispute. Vide order dated 09.07.2019 respondent has already been proceeded ex-parte. Respondent had booked a flat with the complainants/promoter and deposited a sum of Rs. 7,900,505/- against a total sale consideration of Rs.1,03,04,332/- as per statement of accounts. As per clause 16.1 of the BBA dated 16.08.2013, the possession was to be handed over within a period of 36 months from the date of commencement of construction or from the date of execution of BBA plus 6 months grace period

which comes out to be 16.02.2017. The occupation certificate of the project was received by the complainants/promoter on 20.04.2017 and offer of possession letter was issued to the respondent/allottee on 28.04.2017, copies of both the documents are placed on record. However, as per section 19(6) (7) and (10) of the RERA Act, the respondent is under obligation w.r.t. making of timely payment with interest at the prescribed rate and to take over possession respectively. In the instant case, when the occupation certificate as well as offer of possession have already been made, all the pleas now being taken by the respondent/allottee are after thought.

7. However, respondent is at liberty to knock the doors of superior courts/apex court. He is once again directed to make the requisite payment and to take over the possession as the provisions of Section 19 (6) (7) and (10) within a period of 30 days. As per clause 16.1 of the BBA dated 16.08.2013, the possession was to be handed over within a period of 36 months from the date of commencement of construction or from the date of execution of BBA plus 6 months grace period which comes out to be 16.02.2017. As such, the respondent/allottee is entitled for delayed possession charges w.e.f. 16.02.2017 to 28.04.2017 at the prescribed rate of interest i.e. 10.20.% per annum. Respondent/allottee is directed to pay outstanding dues, if any,

after adjustment of interest awarded for the delayed possession period. Interest on the due payment from the respondent shall be charged at the prescribed rate of interest i.e. 10.20% p.a. by the complainants/promoter which is the same as is being granted to the complainant/promoter in case of delayed possession. Therefore, the complainants/promoter is liable to pay the delayed possession charges (DPC) for the said period to the respondent at the prescribed Rate of interest.

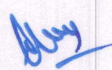
8. In view of the above discussion the authority pass an order under section 34(f) of the Act, and issue the following direction:-

- a) 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 period of 30 days.
- b) The complainants/promoter shall pay the delayed possession charges (DPC) with effect from 16.02.2017 to 28.04.2017 at the prescribed rate of interest of 10.20% per annum to the respondent and shall adjust the said amount towards the final amount to be paid by the respondent.

- c) The respondent/allottee shall be charged interest at the prescribed rate of interest that is at the rate 10.20% per annum by the complainants/promoters.


9. Complaint stands disposed of.

10. File be consigned to the registry.


Subhash Chander Kush
(Member)

Date 12.12.2019

JUDGEMENT UPLOADED ON 14.03.2020


Samir Kumar
(Member)