

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

complaint no. 1140/2019

Date of First hearing 12.12.2019

Date of decision 12.12.2019

1.M3M INDIA PRIVATE LIMITED

Address: SB/C/5L/Office/008, M3M Urbana,
Sector-67, Gurugram-122102, Haryana
Also at: 6th floor, M3M Tee Point, Sector-65,
Gurugram Manesar Urban Complex,
Gurugram-122102, Haryana

2.COAGENT REALTORS PRIVATE LIMITED

Address: LGF, F-22, Sushant Lok,
Phase-1, Gurugram-12202, Haryana

Complainants

Versus

RAVINDER PALIWAL

Address: Flat No. 136, 3rd Floor, DDA
Pocket-1, Sector-9, Dwarka,
New Delhi-110075

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE.

Ms. Shriya Takkar
Shri Manoj Yadav And
Ms. Mehr Kaur

Advocate for the Complainant
Advocates for the respondent

ORDER

1. The present complaint has been filed by the complainants/
promoters M3M India Private Limited against the allottee

Ravinder Paliwal, 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.	RERA registration valid up to	N/A
6.	DTCP License No. & validity status	33 of 12 Dated 12.02.2012 valid up to 11.04.2018
7.	Name of licensee	Cogent Realtors Pvt. Ltd.
8.	Unit no., Tower no.	MW TW-B 03/0601, 6th floor, Tower B03
9.	Carpet area	1536 sq. ft.
10.	Date of execution of agreement	29.04.2013
11.	Payment plan	Construction linked plan (pg. 102 of the complaint)

12.	Total sale consideration	Rs. 90,87,865/- (as per Statement of Accounts cum Invoice at pg. 106)
13.	Total amount paid by the complainant	Rs. 83,73,374/- (as per Statement of Accounts cum Invoice at pg. 106)
14.	Due date of delivery of possession as per agreement (Clause 16.1: 36months from the date of commencement of construction i.e. laying of the first plain cement concrete/mud-mat slab of the tower or from the date of execution of agreement, whichever is later+ 6 month's grace period whichever is later- pg. 77)	29.10.2016 (the same has been calculated from the date of agreement since no document to substantiate the date of construction)
15.	Details of Occupation Certificate	Received on 20.04.2017 for tower-B03 along with other towers of the project
16.	Period of delay in handing over possession	6 months

17.	Status of project (ongoing/complete)	Complete
18.	Date of offer of possession, if any	28.04.2017
19.	Specific relief sought (in specific terms)	<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 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 complainant. An apartment buyer's agreement has been executed between the parties dated 29.04.2013 and a provisional allotment letter dated 25.01.2013 is also available on record for the aforementioned apartment. According to the Apartment Buyers Agreement the possession of the aforesaid unit was to be taken by the respondent/allottee after paying the balance consideration. However, the respondent has failed to fulfil

his 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 complainant filed a complaint no. CC/273/2018 before the National Consumer Dispute Redressal Commission (NCDRC) for seeking refund of the deposited amount that is of Rs. 83,73,374/- against a total sale consideration of Rs. 90,87,865/- as per the statement of accounts. Hence, this complaint for issuing aforementioned directions to the respondent.

4. Respondent has not filed the reply to the complaint though the respondent has been represented by Sh. Manoj Yadav and Ms. Mehar Kaur Advocates.
5. Arguments are 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 respondent. After receiving the occupation certificate of the project by the complainant/ promotor on 20.04.2017 an offer of possession letter was issued to the respondent on 28.04.2017 (at Annexure- D at pg. no. 104 of the

complaint) thereby asking the respondent to clear all his dues on or before 27.05.2017 and submitting the documents as per the offer letter for handing over the possession. However, the respondent adopted a peculiar way and instead of clearing dues and filing documents with the complainants, he filed the above stated complaint before the National Consumer Dispute 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 the mere fact that the complaint for the refund of the deposited amount filed by the respondent against the complainant is pending before the National Consumer Dispute Redressal Commission (NCDRC).

This authority holds that the respondent 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 opened to the respondent and the plea if any taken by him in this regard is nothing but an afterthought.

He is 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 respondent within 36 months with 6 months grace period from the date of commencement of construction or the date of execution of agreement, whichever is later, which comes out to be 29.10.2016. However, admittedly the offer of possession letter in respect of the subject apartment was issued by the complainants to the respondent on 28.04.2017. Therefore, the complainants/ promoters are liable to pay the delayed possession charges (DPC) for the said period to the respondent at the prescribed rate of interest.
9. In view of the above discussion the authority has passed an order under section 34(f) of the Act and issuing the following directions: -
- i. Respondent/Complainants are directed to pay outstanding dues, if any, after adjustment of the interest awarded for the delayed possession period.
 - ii. Interest on the due payments from the respondent/ complainants shall be charged at the prescribed rate

of interest i.e. 10.20% p.a. by the complainants/
promotor which is the same as is being granted to the
respondent/ complainants in case of delayed
possession.

- iii. The respondent is directed to take over the
possession as per the provisions of section
19(6),(7),(10) of the Act within a period of 30 days.

10. Complaint stands disposed of.

11. 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 14.03.2020