

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

Complaint no. : 1146 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:** 6<sup>th</sup>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**

**1.Arvind Oberoi**

**2.Bharti Oberoi**

**Both rr/o** – Flat No. 7153, Sector B-10,  
Vasant Kunj,  
New Delhi-110070.

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE.**

**Ms. Shriya Takkar**

Advocate for the complainants

**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 Arvind Oberoi and Bharti Oberoi 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: -

|     |                                 |   |
|-----|---------------------------------|---|
| 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     |
| 6.  | Name of licensee                | Cogent Realtors Pvt. Ltd.                             |
| 7.  | Unit no., Tower no.             | MW TW-B01/1401, 14 <sup>th</sup> floor, tower B1      |
| 8.  | Carpet area                     | 1943 sq. ft.  |
| 9.  | Date of execution of agreement  | 03.07.2013<br>(page no. 53 of the complaint)          |
| 10. | Payment plan                    | Construction linked plan                              |

|     |   |  |
|-----|---|--|
| 11. | Total sale consideration  | <b>Rs. 1,14,24,242/-</b><br>(As per statement of accounts-cum-invoice, page no. 105 of the complaint)  |
| 12. | Total amount paid by the complainants   | <b>Rs. 1,06,05,736/-</b><br>(As per statement of accounts-cum-invoice page no. 105 of the complaint)   |
| 13. | Due date of delivery of possession as per agreement<br><br>(as per clause 16.1 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, | <b>03.01.2017</b><br><br><b>Note: the due date of possession is calculated from date of execution of agreement</b>   |
| 14. | Date of offer of possession   | 28.04.2017<br>(annexure-D, page no. 103 of the complaint)  |
| 15. | Status of project (ongoing/complete)  | OC for tower B1 received on 24.07.2017   |
| 16. | Period of delay in handing over possession  | 3 months 25 days   |
| 17. | Specific relief sought  | <ul style="list-style-type: none"> <li>• To direct the respondents to take the possession of the said apartment</li> <li>• To pay the balance consideration and delayed interest</li> <li>• To pay holding charges</li> <li>• To pay outstanding maintenance dues of the maintenance agency</li> </ul> |

3. 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 dated 03.07.2013 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be handed over on 03.01.2017 to the respondents. 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 complaint No. 267/2018 before the National Consumer Disputes Redressal Commission (NCDRC) for seeking refund of the deposited amount of Rs. 1,06,05,736/- against a total sale consideration of Rs. 1,14,24,242/- as per the statement of accounts. 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 20.04.2017 and offer of possession letter was issued to the respondents on 28.04.2017 (Annexure- D,pg. no. 103 of the complaint) thereby asking the respondents to clear all their dues on or before 27.05.2017, 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 the National Consumer Disputes Redressal Commission (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. 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. They are at the liberty to knock the doors of the superior court/apex court. 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 03.01.2017. However, admittedly the offer of possession letter in respect of the subject apartment was issued by the complainants to the respondents on 28.04.2017. As such, the complainants/promoter is entitled for delayed possession charges w.e.f. 03.01.2017 to 28.04.2017 at the prescribed rate of interest i.e. 10.20% per annum. Respondents/allottees are directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed possession period. Interest on the due payment from the respondents 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 complainants/promoter in case of delayed possession. Therefore, the complainants/promoter are 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 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 03.01.2017 to 28.04.2017 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.


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)