

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

Complaint no. : 1195 of 2019
First date of hearing: 12.12.2019
Date of decision 12.02.2020

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

Ashawani Handa

R/o: 5B, GH -2, Orchid Garden, Suncity
Gurugram- 122001, Haryana.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE.

Ms. Shriya Takkar
None on behalf of respondent

Advocate for the complainants

EX-PARTE ORDER

1. The present complaint has been filed by the complainants/promoter M3M India Private Limited and Cogent Realtors Private Limited against the allottee Mr. Ashwani Handa 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.	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- B08/1403, 14 th floor, tower B8
8.	Super area	1534 sq. ft.
9.	Date of execution of agreement	08.04.2013 (page no. 56 of the complaint)
10.	Payment plan	Construction linked plan
11.	Total sale consideration	Rs. 84,30,631/- (as per statement of accounts page no.118 of the complaint)

12.	Total amount paid by the allootee/respondent	Rs. 77,54,564/- (as per statement of accounts, page no. 118 of the complaint)
13.	Due date of delivery of possession as per the agreement clause 16.1 of apartment buyer's agreement: within 36 months from the date of commencement of construction which shall mean the date of laying of the first plain cement concrete/mud slab of the tower or the date of execution of agreement whichever is later plus 180 days grace period)	28.01.2017 (calculated from the date of laying of first plain cement concrete/mud slab of the tower (i.e. 28.07.2013) as alleged by the complainant in Clause 5 (ii) at page no. 8 of the complaint)
14.	Date of offer of possession	28.04.2017 (annexure F, page no. 116 of the complaint)
15.	Status of project	OC for tower B-8 received on 20.04.2017 (page 114 of the complaint)
16.	Period of delay in handing over possession till offer of possession	3 months

17.	Reliefs sought	<ul style="list-style-type: none"> • To direct the respondent to take the possession of the said apartment. • To direct the respondent to pay the balance consideration and delayed interest. • To direct the respondent to pay holding charges. • To direct the respondent to pay outstanding maintenance dues of the maintenance agency.
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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 had also been executed between the parties; copy is available on record. According to the complainants, construction of the project could not be started in time and construction completed due to the reasons mentioned in the complaint and, hence covered under clause 16 of the apartment buyer's agreement, which deals with force majeure circumstances and also because the respondent did not pay the amount in time in spite of letters and reminders. It is inter alia stated that the offer of possession letter was sent to the respondent and he was asked to make the payment of balance amount and to take possession of the apartment in question but in vain. 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 obligation by not

making the payment and taking the possession within stipulated period despite several reminders. Hence, this complaint for issuing above mentioned directions to the respondents.

4. Before filing the complaint in the authority, the complainants sent copies of the complaint and the documents to the respondent at his given address through speed post as well as on his email address which were delivered to him. Service proof has been filed on the record. After the filing of the complaint in the authority, notice was also sent to the respondent through speed post as well as on the given email address. The same have been duly delivered to/ received by respondent both ways. Despite that the respondent has failed to put his appearance or to file a reply before the authority. Respondent is accordingly proceeded ex-parte.
5. Arguments on behalf of the complainants heard.
6. Facts are not in dispute. Documents are also not in dispute. The averments made in the complaint stand unrebutted. After receiving the occupation certificate of the project by the complainants/promoters on 20.04.2017 offer of possession letter was issued to the respondent on 28.04.2017 (Annexure- F at pg. no. 116 of the complaint) thereby asking the respondents to clear all his dues on or before 27.05.2017 by submitting the documents as per the offer of possession letter for handing over the possession but the respondent did not comply with the same.

7. 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.
8. The possession of the subject apartment was to be handed over to the respondent within 36 months from the date of commencement of construction which shall mean the date of laying of the first plain cement concrete/ mud slab of the tower i.e. 28.07.2013 on page 8 of the complaint or the date of execution of agreement whichever is later plus 180 days grace period which comes to 28.01.2017. However, admittedly the offer of possession letter dated 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.

Decision and directions of the Authority: -

9. 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 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 one month
 - (b) The complainants/promoter shall pay the delayed possession charges (DPC) with effect from 28.01.2017(due date of possession) to 28.04.2017(offer of possession) at the prescribed rate of interest of

10.15% 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 10.15% per annum by the complainants/promoter.
- (d) The allottee/respondent is directed to take over the possession of the allotted unit within a period of one month by paying remaining dues, if any alongwith prescribed rate of interest i.e. 10.15% per annum to the promoter/complainant failing which the promoter (complainants) shall be entitled to charge maintenance charges.
- (e) In the event the respondent(allottee) fails to take over the possession of the allotted unit within a period of 1 month the promoters (complainants) shall be entitled to charge maintenance charges.

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 12.02.2020

JUDGEMENT UPLOADED ON 19.03.2020