

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

Complaint no. 903/2019

Date of First hearing 02.07.2019

Date of decision 12.12.2019

1. M3M INDIA PRIVATE LIMITED

Address: SB/C/5L/Office/008, M3M Urbana,
Sector-67, Gurugram-122102, Haryana

2. MANGLAM MULTIPLEX PRIVATE LIMITED

Address: LGF, F-22, Sushant Shopping Arcade,
Sushant Lok, Phase-1, Gurugram-122102,
Haryana

Complainants/Promoters

Versus

M/s. PANSHIL DEVELOPERS PRIVATE LIMITED

Address: M-25, Greater Kailash, Part-II Market,
New Delhi-110048

Respondent/Allottee

And

Complaint no. 1431/2018

Date of First hearing: 07.03.2019

Date of decision: 12.12.2019

M/s. PANSHIL DEVELOPERS PRIVATE LIMITED

Through its Director Mr. Mukul Singhal

Address: M-25, Greater Kailash, Part-II Market,
New Delhi-110048

Complainant/Allottee

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Sushant Lok, Phase-1, Gurugram-122102,
Haryana

Respondent/ Promoter

CORAM:

Shri Samir Kumar

Member

Shri Subhash Chander Kush

Member

APPEARANCE:

Ms. Shriya Takkar

Advocate for the Promoter

Mr. Arjun Reki and

Advocates for the Allottee

Mr. Amit Sharma

ORDER

1. Vide this order the authority shall dispose off CC No. 903/2019 and CC No. 1431/2018. Complaint no. 903 of 2019 has been filed by the complainants/promoters MSM India Private Limited and Manglam Multiplex Private Limited against the allottee M/s. Panshil Developers Private Limited, 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 wherein it is inter alia prescribed that the allottee shall be bound to make timely payment and to receive the possession of the booked property within two months of receiving the occupancy certificate of the booked property. Complaint no. 1431 of 2018 has been filed by the complainant/allottee M/s. Panshil Developers Private Limited against the complainant/promoters MSM India Private Limited and Manglam Multiplex Private Limited, under section 31 of the Act read with Rule 28 of the Rules for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter

shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

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: -

	Heads	
1.	Project name and location	M3M Golf Estate-Fairway West, Sector-65, Gurugram
2.	Project area	63 acres
3.	Nature of project	Group Housing Colony
4.	RERA registered/ not registered	Not Registered
5.	RERA registration valid upto	N/A
6.	License No. & validity status	234 of 2007 dated 16.10.2007, 52 of 2009 dated 28.08.2009 and 35 of 2010 dated 06.05.2010
7.	Name of licensee	Manglam Multiplex Pvt. Ltd.
8.	Unit no., Tower no.	MGE TW-01/34 PH 1A, Level 34
9.	Carpet area	12834 sq. ft.

10	Date of execution of agreement	10.01.2013 (Annexure-at pg. 75)
11	Payment plan	Construc on linked plan
12	Total sale consideration	Rs. 18,42 43,922/- (statement of accounts-cum-invoice at pg. 143)
13	Total amount paid by the complainant	Rs. 15,94 62,648/- (statement of accounts-cum-invoice at pg. 143)
14	Due date of delivery of possession as per agreement (due date has been calculated from the date of agreement)	10.07.2016 (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)
15	Period of delay in handing over possession	1year 6months 20 days
16	Status of project	Complete
17	Details of Occupation Certificate	OC granted by the competent authority: on 12.04.2017 (copy at pg. 138)
18	Date of offer of possession	01.02.2018 (Annexure-G at pg. 140)

19	Specific relief sought by the promoter	<ul style="list-style-type: none"> • To direct the allottee to take the possession of the said apartment • To direct the allottee to pay the balance consideration and delayed interest • To direct the allottee to pay holding charges • To direct the allottee to pay outstanding maintenance dues of the maintenance agency.
20	Specific relief sought by the allottee	<ul style="list-style-type: none"> • To direct the promoter to pay refund the deposited amount along with pendent lite interest. • To direct the promoter to pay future nterest at prescribed rate of interest. • To direct the promoter to pay bank charges paid by the allottee towards bank charges.

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 promoter and the allottee. Copy of the apartment buyer's agreement executed between the parties is available on record for the afore mentioned apartment according to which the possession of the

aforesaid unit was to be taken by the allottee after paying the balance consideration. However, the allottee has failed to fulfil its contractual obligation by not taking the possession within the stipulated period despite several reminders. As per the averments made in the complaint filed by the promoter, instead of clearing the outstanding dues and taking possession of the subject apartment the allottee filed complaint no. CC/2359/2017 before the National Consumer Dispute Redressal Commission (NCDRC) for seeking refund of the deposited amount, that is, of Rs.15,94,62,648/- along with interest against a total sale consideration of Rs.18,42,43,922/- as per the statement of accounts. Hence, this complaint has been filed on behalf of the promoter.

4. Respondent/allottee has filed a reply. According to the respondent/allottee, though the promoter has obtained the occupation certificate in respect of the project but, however, at the site the construction is not complete in as much as recreational clubs, swimming pools, golf course, etc. as detailed in the reply are still not complete. Filing of the consumer complaint by the allottee against the promoter before the NCDRC is admitted. It is prayed that the complaint be dismissed.

5. Allottee company has also filed a complaint case no. 1431 of 2018 against the promoter/ respondent in respect of the same subject matter. Prayer of the allottee in this complaint is detailed in item no. 20 of the table (supra). Pleadings in that case are also complete. Since, common questions of facts and law arise in both the complaints we shall dispose of them together. We shall pass order in complaint no. 903 of 2019.

6. Arguments are heard.

7. Facts are not in dispute. Documents are also not in dispute. It stands established that the averments made in the above mentioned complaints have been admitted to be correct by the allottee and the promoter. After receiving the occupation certificate of the project by the complainant/ promoter on 12.04.2017 an offer of possession letter was issued to the allottee on 01.12.2018 thereby asking the allottee to clear all his dues in order to take possession of the apartment. The allottee did not make the payment and complete other formalities and indeed the allottee company adopted a peculiar way. Instead of clearing dues and filing documents with the promoter, the allottee filed the above stated complainant 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 allottee company against the promoter is pending before the National Consumer Dispute Redressal Commission (NCDRC).

This Authority holds that the allottee company 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. After the receipt of the offer of possession letter, no plea is now opened to the allottee company and the plea, if any, taken by him in this regard is nothing but an after thought. The allottee company is 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 allottee company within 36 month's and 6 month's grace period from the date of signing of agreement or from the date of commencement of construction i.e. 10.01.2013 which comes out to be 10.07.2016. However, admittedly the offer of possession letter in respect of the subject apartment was issued by the promoter to the allottee on

01.02.2018. Therefore, the promoter is liable to pay the delayed possession charges (DPC) for the said period i.e. 10.07.2016 to 01.02.2018 to the allottee company at the prescribed rate of interest as provided under Rule 15 of the Rules. 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 allottee M/s. Pansheel Developers Pvt. Ltd. shall make the requisite payments and take the possession of the subject apartment as per the provisions of Section 19(5),19(7) and 19(10) of the Act, within a period of 30 days.
- b) The promoter M/s M3M India Pvt Ltd. shall pay the delayed possession charges (DPC) with effect from 10.07.2016 to 01.02.2018 at the prescribed rate of interest of 10.20% per annum to the allottee and shall adjust the said amount towards the final amount to be paid by the allottee.
- c) The allottee shall be charged interest at the prescribed rate of interest, that is, at the rate 10.20% per annum by the promoter which is same as is being granted to the allottee in case of delayed possession.


The present complaint no. 903 of 2019 as well as complaint no. 1431 of 2018 stand disposed of. Certified copy of this order be placed in the case file of complaint no. 1431 of 2018.

Files be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


Subhash Chander Kush)

Member

Dated: 12.12.2019

JUDGEMENT UPLOADED ON 13.03.2020