

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

Complaint no. : 1564 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

1. Ashish Chaturvedi

2. Mrs. Vimlesh Chaturvedi

Both, r/o –MS-8-302, Kendriya Vihar,
Sector-56, Gurugram-122001(Haryana)

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE.

Ms. Shriya Takkar

Advocate for the complainant

None present on behalf of respondents

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 allottees Mr. Ashish Chaturvedi and Mrs. Vimlesh Chaturvedi 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	
1.	Project name and location	M3M Wood shire, 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-B14/1102, 11 th floor, Tower B-14
8.	Carpet area	1943 sq. ft.
9.	Date of execution of agreement	15.11.2013 (page no 49 of complaint)
10.	Payment plan	Construction linked plan

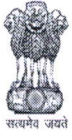
11.	Total sale consideration	Rs. 1,48,83,437/- (As per statement of accounts-cum-invoice, page no. 121 of the complaint)
12.	Total amount paid by the respondents/	Rs. 87,13,185/- (As per statement of accounts-cum-invoice cum invoice at pg. no. 122 of the complaint)
13.	Due date of delivery of possession as per agreement (as per clause 16.1- 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 from the date of execution of agreement whichever is later plus 180 days grace period)	23.06.2017 calculated from the first plain cement concrete/mud slab of the tower (i.e. 23.12.2013) as alleged by the complainant in Claus 4 (ii) at page no. 8 of the complaint)
14.	Date of offer of possession	25.08.2017 (page no 119 of complaint)
15.	Status of project (ongoing/complete)	OC for tower B14 received on 24.07.2017
16.	Period of delay in handing over possession till date	2 months 2 days
17.	Specific relief sought	<ul style="list-style-type: none"> To direct the respondents to take the possession of the said apartment To pay the balance consideration and delayed interest

		<ul style="list-style-type: none">• To pay holding charges• 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.
4. According to the complainant, 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 respondents 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 respondents and they were 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 respondents/allottees after paying the balance consideration. However, the respondents have

failed to fulfil their 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.

5. Before filing the complaint in the authority, the complainants sent copies of the complaint and the documents to the respondents at given address through speed post as well as on their 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 the respondents both ways. Despite that the respondents have failed to put their appearance or to file a reply before the authority. Respondent is accordingly proceeded ex-parte.
6. Arguments on behalf of the complainants are heard.
7. 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/ promoter on 24.07.2017 offer of possession letter was issued to the respondents on



25.08.2017 (pg. no. 119 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 but the respondent did not comply with the same.

8. This Authority holds that the respondent 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.
9. The possession of the subject apartment was to be handed over to the respondents 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. 23.12.2013 as per page 8 of the complaint or the date of execution of agreement whichever is later and 180 days grace period which comes to 23.06.2017. However, admittedly the offer of possession letter in respect of the subject apartment was issued by the complainants to the respondent on 25.08.2017. Therefore, the complainants/promoter is liable to pay the delayed

possession charges (DPC) for the said period to the respondents at the prescribed rate of interest.

Decision and directions of the Authority:

10. 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 complaints/promoter shall pay the delayed possession charges (DPC) with effect from 23.06.2017 to 25.08.2017 at the prescribed rate of interest of 10.15% 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 10.15% per annum by the complainants/promoters which is same as is being granted to the respondents/allottees in case of delayed possession.

- d) In the event the respondents(allottees) fails to take over the possession of the allotted unit within a period of 1 month the promoter (complainants) shall be entitled to charge maintenance charges.
- e) The allottees/respondents are 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.

10. Complaint stands disposed of.

11. File be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Date 12.02.2020

JUDGEMENT UPLOADED ON 16.05.2020