

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

Complaint no. : 623 of 2019
First date of hearing: 09.08.2019
Date of decision : 13.08.2019

Mrs. Priyanka Mehta
R/o H No.53, Ground Floor, Block-A1, South
City-2, Gurugram-122018

Complainant

Versus

M/s Today Homes and Infrastructure Pvt. Ltd.
Regd. Office: Ground Floor 8-9, Pragati Tower
Rajendra Place, New Delhi-110008

Respondent

CORAM:

Shri N. K. Goel

(Former Additional District and Sessions Judge)

Registrar – cum – Administrative Officer (Petitions)

Haryana Real Estate Regulatory Authority, Gurugram

(Authorised by resolution no.

HARERA,GGM/Meeting/2019/Agenda 29.2/Proceedings/16th July
2019)

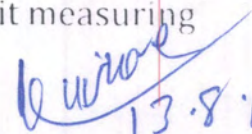
APPEARANCE:

Shri Sushil Advocate for complainant

Shri Amit Singh Advocate along with Shri Naveen Jakhar, AR for
respondent

EX PARTE (ORDER)

1. The present complaint relates to an agreement to sell dated
24.06.2017 executed between the complainant and the
respondent-promoter in respect of apartment/unit measuring


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1622 sq. ft. super area bearing no. CDT512A01, 12A floor, Tower no. T5 (in short the subject flat) of the project namely, "Callidora" situated in Sector 73, Gurugram which is not registered with this Authority for a basic sale price of Rs.73,67,124/- and other charges totalling to Rs.86,19,615/- and the complainant opted for Instalment linked plan.

2. The particulars of the complaint case are as under: -

1.	Name and location of the Project	'Callidora' Sector-73, Gurugram, Haryana.
2.	Nature of project	Group housing colony
3.	RERA registered / not registered	Not registered
4.	Total area	33.22 acres
5.	Unit/ Villa no.	CDT512A01, 12A floor, Tower no. T5
6.	Unit measuring	1622 sq. ft
7.	Date of execution of agreement to sell	24.06.2017
8.	Total consideration	Rs. 86,19,615/- (page 47 of complaint) And Rs.84,00,162/- (page-33)
9.	Amount paid by the complainant till date	Rs. 41,59,531/- (page 47 of complaint)
10.	Payment plan	Instalment linked plan [Page 32 of complaint]
11.	Due date of delivery of possession. clause 23 - possession to be delivered within 6 months from the date of execution of agreement plus 6 months grace period.	24.06.2018

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12.	Delay in delivering possession till date of decision	Continuing
13.	Date of offer of possession	Not offered

3. The complainant till date has paid an amount of Rs.41,59,531/- to the respondent vide different cheques on different dates. As per clause 23 of the agreement to sell, the respondent had agreed to handover the possession of the subject flat to the complainant within 6 months from the date of execution of this agreement with the additional grace period of 6 months.

4. According to the complainant, he regularly visited the site but was surprised to see that the construction work was not in progress and no one was present at the site to address the queries of the complainant. The complainant has further stated that the only intention of the respondent was to take payments for the tower without completing the work. The complainant's flat was booked with a promise by the respondent to deliver the possession of the flat by 24.06.2018 but was not completed within the time as promised.

5. According to the complainant, as per clause 23 of the flat buyer agreement, in case of delay the respondent agreed to pay a compensation of Rs. 5/- per sq. ft. per month of the super area

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of the apartment/flat. The clause of compensation at such nominal rate is unjust and the respondent has exploited the complainant by not providing the possession of the flat even after a delay from the agreed possession plan.

6. The complainant has submitted that if the amount is calculated in terms of financial charges it comes to approximately 2% per annum rate of interest whereas the respondent charges interest @ 24% per annum on delayed payment. Complainant has stated that the balance of the total sale consideration was to be paid on offer of possession, but the respondent arbitrarily sent demand letter dated 29.01.2019 demanding rest of the balance amount which is completely illegal as it was to be demanded on offer of possession.
7. It is stated that on the ground of equity and parity the respondent should also be subjected to pay the same rate of interest for the delay in delivery of possession. Hence, this complaint.
8. An application for amendment of the complaint has been filed wherein the complainant has stated that he does not intend to withdraw from the project.

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9. Issues raised by the complainant are as follows:
1. The respondent/firm is not completing the construction. Whether the respondent has incorporated the clause in one sided buyer agreement which is unjustified?
 2. Whether the delay caused in handing over the flat is justified?
 3. Whether interest cost being demanded by the respondent/ developer is very higher i.e. 24% which is unjustified and not reasonable?

10. Reliefs sought:

1. Direct the respondent to handover the possession of the flat along with prescribed interest per annum from the date of promissory date of the flat in question;
2. Direct the respondent to withdraw the illegal and absurd demand notice dated 29.01.2019 with immediate effect.

Notice of the complaint has been issued to the respondent via speed post and on email address gurgaonsales@todayhomes.co.in provided to the Authority and the delivery reports have been placed in the file. Despite service of notice the respondent has failed to file the reply to

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the complaint. Accordingly, the Authority is left with no other option but to decide the complaint ex-parte against the respondent.

11. Arguments are heard.

Issue wise findings of the Authority: -

12. **All issues:-** As per the sufficient and unchallenged documentary evidence filed by the complainant on the record and more particularly the agreement to sell (copy annexed-I), there is every reason to believe that vide agreement to sell dated 24.06.2017 the respondent had agreed to handover the possession of the subject flat to the complainant within a period of 6 months with a grace period of 6 months from the date of execution of agreement which, in other words, means that the respondent is bound to offer the physical possession of the subject unit to the complainant on or before 24.06.2018. On the date of filing of complaint, the project was still not complete. Hence, it must be held to be "on going project". However, the respondent has failed to offer the possession till date even after a delay of more than 1 year approximately, for

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which delay the complainant is entitled to delay possession charges. Hence, it is held that there being a delay of about 1 years in offering the possession of the subject flat to the complainant this is in violation of the terms and conditions of the agreement to sell and also violation of section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act).

13. Hence, in the opinion of this Authority the complainant is entitled to interest on delayed offer of possession. Accordingly, it is held that the complainant is entitled for delayed possession charges at the prevalent prescribed rate of interest of 10.45% per annum for every month of delay in terms of section 18(1) proviso of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

Findings of the Authority: -

14. The Authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the



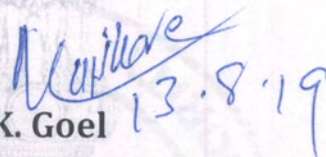
Adjudicating Officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose for promoter projects situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this Authority has complete territorial jurisdiction to deal with the present complaint.

Decision and directions of the Authority: -

15. The Authority exercising its power under section 37 of the Act hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.45% per annum with effect from the committed date of delivery of possession i.e. 24.06.2018 till the date of this order within a period of 90 days and to continue to pay the charges month by month by the 7th day of each succeeding English calendar month till the actual handing over of the possession of the subject apartment to complainant.

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16. Since the project is not registered, so the Authority has decided to take suo moto cognizance of this fact and direct the registration branch to take necessary action against the respondent under Section 59 of the Act. A copy of this order be endorsed to the registration branch.
17. The complaint stands disposed of accordingly.
18. The case file be consigned to the registry.


N. K. Goel

(Former Additional District and Sessions Judge)

Registrar –cum- Administrative Officer (Petitions)

Haryana Real Estate Regulatory Authority, Gurugram

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Dated: 13.08.2019

Judgement uploaded on 21.08.2019