

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

Complaint no. : 2392 of 2018
First date of hearing: 01.08.2019
Date of decision : 13.08.2019

1.Nitesh Kumar
2.Bhawna Bhatia

Both R/o: Flat no.3, Khjani Devi Apartment,
Near Nav Shakti Apartment, Ghitorni,
M.G.Road-110030, New Delhi

Complainants

Versus

M/s Today Homes and Infrastructure Pvt. Ltd.
Regd. Office: Statesman House, 8th Floor
Barakhamba Road, New Delhi-110001

Respondent

CORAM:

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 Yadav

Shri Amit Singh

Shri Naveen Jakhar

Advocate for the complainants

Advocate for the respondent

Authorised representative of the
respondent

EX PARTE

1. The present complaint relates to an agreement to sell dated
07.09.2012 executed between the complainants and the

respondent/promoter, in respect of apartment measuring 1275 sq. ft. super area bearing no. T1/1702, 17th floor, Tower no. T1 in the project, namely, "Canary Greens" situated in Sector 73, Gurugram, (in short, the subject flat) for a basic sale price of Rs.56,30,400/- and other charges as per the agreement to sell dated 07.09.2012 and the complainants opted for construction linked payment plan. The project is not registered with this Authority.

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

1.	Name and location of the project	"Canary Greens", Sector 73, Gurugram
2.	Nature of project	Group housing colony
3.	Area of project	21.55 acres
4.	Apartment/unit no.	T1/1702, 17 th floor, tower no.T1
5.	Flat area	1275 sq. ft.
6.	DTCP licence no.	Not available
7.	RERA registered/ not registered	Not registered
8.	Date of execution of agreement to sell	07.09.2012 (Pg. no. 16 of the complaint)
9.	Payment plan	Construction linked payment plan (Pg. no. 30 of the complaint)
10.	Total sale consideration (as alleged by the complainants)	Rs.65,61,525/- (Pg. no. 7 of the complaint)
11.	Total amount paid by the complainant till date (as alleged by the complainants)	Rs.57,97,796 /- (Pg. no. 7 of the complaint)
12.	Date of delivery of possession as per clause 21 of agreement to sell (36 months + 6 months' grace period from the date of execution of agreement)	07.03.2016



13.	Delay in handing over possession	Continuing
14.	Penalty clause as per agreement to sell dated 07.09.2012	Clause 21 of the agreement prescribes rate i.e. Rs.5/- per sq. ft per month for the entire period of delay

3. As per clause 21 of the agreement to sell, the respondent had agreed to handover the possession of the subject flat to the complainants within 36 months from the date of execution of this agreement with the additional grace period of 6 months.
4. The complainants have submitted that the complainants regularly visited the site but were 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 complainants. The only intention of the respondent was to take payments for the tower without completing the work and not handing over the possession on time. The complainants' flat was booked with a promise by the respondent to deliver the flat by 07.03.2016 but the same was not completed within the time as promised. According to the complainants, they have made payment of Rs.57,97,796/- which is approximately 95% of the total sale consideration till date to the respondent and due to omission on the part of the respondent the complainants have been suffering from disruption on their living arrangements. It is stated that:

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"Despite receiving of 95 % approximately payments on time for all the demands raised by the respondents for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent has failed to deliver the possession of the allotted flat to the complainants within stipulated period."

5. It is further stated as follows:

"That as per clause 23 of the flat buyer agreement, it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainants a compensation @ Rs.5/- per sq. ft. per month of the super area of the flat. It is however, pertinent to mention here that a clause of compensation at such nominal rate of Rs.5/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainants by not providing the possession of the flat even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyers agreement and offered to pay a sum of Rs.5/- per sq. ft. for every month of delay. If we calculate the the amount in terms of financial charges it comes to approximately @2% per annum rate of interest whereas the respondent charges 18% per annum interest on delayed payment."

6. An application for amendment of the complaint was filed where the complainants have intended not to withdraw from the project. Hence, finding no other alternative the complainants have filed the present complaint.

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7. Issues raised by the complainants are as follows:
1. "Whether the developers have violated the terms and conditions of the flat buyer agreement?"
 2. Whether the complainants are entitled for possession along with prescribed interest for delay in possession?
 3. Whether the respondent/firm should complete the construction as soon as possible and there is no reasonable justification for the delay?
 4. Whether interest cost being demanded by the respondents / developers is very higher i.e. 18% which is unjustified and not reasonable?
 5. Whether complainants are entitled for any other relief?"
6. Reliefs sought:

The complainants are seeking the following relief:

- i. Direct the respondents to handover the possession of the flat along with prescribed interest per annum from the date of booking of the flat in question.

Notice of the complaint has been issued to the respondent thrice and the delivery reports have been placed in the file. Despite service of notice the respondent has failed to file the reply to the

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

Arguments are heard.

Issue wise findings of the Authority: -

7. **All issues:-** As per the sufficient and unchallenged documentary evidence filed by the complainants on the record and more particularly the agreement to sell, there is every reason to believe that vide the agreement to sell dated 07.09.2012, (copy at page no.16) the possession of the flat was to be handed over within 36 months + 6 months' grace period from the date of execution of agreement. Therefore, the due date of handing over the possession shall be computed from 07.09.2012. Accordingly, the due date of possession was 07.03.2016 and the possession has been delayed till date of decision. On the date of coming into force of the Act, the project in question was still not complete. Hence, it must be held to be an "ongoing project" and thus covered under the provisions of the Act and the Rules framed thereunder. Therefore, under section 18(1) proviso of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) respondent is liable to pay interest to the complainants, at the prescribed rate, for

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every month of delay till the handing over of possession. As the promoter has failed to fulfil their obligation under section 11(4)(a) of the Act, the respondent is liable under section 18(1) proviso of the Act read with rule 15 of the Real Estate (Regulations and Development) Rules, 2017 (in short, the Rules) to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. The Authority has the power to issue directions to the respondent u/s 37 of the Act, to pay interest at the prescribed prevailing rate of 10.45 % per annum on the amount deposited by the complainants with the respondent from the due date of possession i.e. 07.03.2016 upto the date of offer of possession. The complainants have opted not to withdraw from the project. The respondent shall make all out and sincere efforts to complete the construction of the Tower in question without any further delay.

8. Therefore, in the opinion of this Authority the complainants are entitled to interest for the delayed offer of possession. Accordingly, it is held that the complainants are entitled for delayed possession charges at the prevalent prescribed rate of interest of 10.45 % per annum.

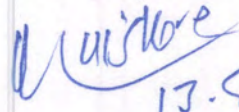
Findings of the Authority: -

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9. 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 complainants 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:-

10. The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to pay delayed possession charges at the prevailing prescribed rate of interest of 10.45% per annum with effect from the due date of delivery of possession i.e. 07.03.2016 till date within a period of 90 days from this order and to continue to pay interest at the said rate month by month


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by the 10th day of each succeeding English calendar month till the date of delivery of possession of the said flat to the complainants.

11. 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 initiate necessary action against the respondent under Section 59 of the Act. A copy of this order be endorsed to the registration branch.
12. The complaint stands disposed of accordingly.
13. The case file be consigned to the registry.

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(Former Additional District and Sessions Judge)
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Judgement uploaded on 21.08.2019