


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

Complaint no. : 1514 of 2019
First date of hearing: 14.08.2019
Date of decision : 19.08.2019

Mr. Sunny Sharma
R/o. H.No. 315, Vasant Enclave,
New Delhi

Complainant


Versus

1.M/s Today Homes and Infrastructure Pvt.
Ltd.

Regd. Office: Statesman House, 8th Floor
Barakhamba Road, New Delhi-110001

Also at: - Upper Ground Floor 8 to 9, Pragati
Tower, Rajendra Place, New Delhi- 110008

Respondent

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

Advocate for the complainant

Advocate for the respondent

along with Shri Naveen Jakhar,
authorized representative for

respondent

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EX PARTE (ORDER)

1. The present complaint relates to an agreement to sell dated 11.07.2011 executed between the complainant and the respondent in respect of flat measuring 1640 sq. ft. super area bearing no. 1202, 12th floor, Tower no. T5 of the project, namely, "Canary Greens" situated in Sector 73, Gurugram (in short, the subject flat). The said project is not registered with this Authority. The total consideration is Rs. 69,18,220/- which includes BSP, car parking, IFMS, Club membership, PLC etc. as per the agreement to sell dated 11.07.2011.
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.	1202, 12 th floor, Tower no. T5
5.	Flat measuring	1640 sq. ft.
6.	DTCP licence no.	Not available
7.	RERA registered/ not registered	Not registered
8.	Date of execution of agreement to sell	11.07.2011
9.	Payment plan	Construction linked payment plan
10.	Total sale consideration as per payment plan	Rs.69,18,220/-
11.	Total amount paid by the	Rs. 60,96,200/-



	complainants till date	
12.	Due 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) i.e. 11.07.2011	11.01.2015
13.	Delay in handing over possession till date	Continuous
14.	Penalty clause as per agreement to sell dated 11.07.2011	Clause 21 of the agreement prescribes compensation @ Rs.5/- per sq. ft per month for the entire period of delay

3. The complainant till date has paid an amount of Rs. 60,96,200/- to the respondent vide different cheques on different dates. As per clause 21 of the agreement to sell, the respondent had agreed to handover the possession of the subject flat to the complainant within 36 months from the date of execution of this agreement with the additional grace period of 6 months after expiry of the said commitment period.
4. The complainant has submitted that the respondent had allotted a unit bearing no. 1202, 12th floor, Tower No. T5 having super area of 1640 sq. ft. to him

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5. 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 complainant. The complainant has further stated that 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 despite even after collecting 95% approximately of the total consideration. The complainant's flat was booked with a promise by the respondent to deliver the flat by 11.01.2015 but the promise was not completed within the time as promised.
6. According to the complainant, as per clause 21 of the flat buyer agreement, in case of delay the respondent has agreed to pay a compensation of Rs. 5/- per sq. ft. per month of the super area of the apartment/flat. The clause of compensation at such a 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.
7. 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 @ 18% per annum on delayed payment and 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.

9. Issues raised by the complainant is as follows:

1. "Whether the developer has violated the terms and conditions of the flat buyer agreement?"
2. Whether the complainant is 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 respondent/ developer is very higher i.e. 18% which is unjustified and not reasonable?
5. Whether complainant is entitled for any other relief?"

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10. Reliefs sought:

“Direct the respondent 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 via speed post and on email address gurgaonsales@todayhomes.in provided to the Authority and the delivery reports have been placed in the file. Despite service of notice the respondent failed to file the reply to the complaint within the stipulated period of 21 days. Accordingly, the Authority is left with no other option but to decide the complaint ex-parte against the respondent.

11. Reply to the complaint has been taken on record subject to all just exception on 14.08.2019.

12. Arguments are heard.

Findings of the Authority on all Issues: -

13. As per the sufficient and unchallenged documentary evidence filed by the complainant on the record and more particularly the agreement to sell, there is every reason to believe that vide

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agreement to sell dated 11.07.2011 the respondent had agreed to handover the possession of the subject flat to the complainant within a period of 36 months with a grace period of 6 months from the date of execution of agreement which, in other words, means that the respondent was bound to offer the physical possession of the subject flat to the complainant on or before **11.01.2015**. However, the respondent has failed to offer the possession till date even after a delay of more than 4 and a half years approximately. On the date of coming into force of the Act the project in question was not complete. Hence it must be considered as "ongoing" project and thus covered under the provisions of the Act and the Rules framed thereunder. Delay in completion of the project is admitted by the respondent for the reasons recorded in the reply which are neither reasonable nor palatable to the mind of this Authority. Demonetisation policy dated 08.11.2016 or the disputes said to have arisen between the earlier contractor and the respondent, closure of brick kilns etc. cannot be a ground for invoking force majeure clause for the simple reason that like the complainant the other buyers must have also paid about

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90% of the total sale consideration amount of their respective flats to the respondent-builder promoter and that money ought to have been utilized in the completion of the project. Therefore, in the considered opinion of this Authority this is in violation of the terms and conditions of the buyer's agreement dated 11.07.2011 and also violation of section 11(4)(a) of the Act.

14. 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 and not @ 18% per annum or Rs. 5/- per sq. ft. per month of the super area of the subject flat as stipulated in the agreement to sell.

Findings of the Authority: -

15. The Authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the

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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: -

16. 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 prevalent prescribed rate of interest of 10.45% per annum with effect from the due date of delivery of possession i.e. 11.01.2015 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 complainant. Respondent shall also deliver the possession of the subject flat to the complainant within 9 months from the date of this order.

17. Since the project is not registered, so the Authority has decided to take suo moto cognizance of this fact and directed 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.

18. The complaint stands disposed of accordingly.

19. The case file be consigned to the registry.

N. K. Goel
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(Former Additional District and Sessions Judge)

Registrar -cum- Administrative Officer (Petitions)

(Haryana Real Estate Regulatory Authority, Gurugram)

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Dated: 19.08.2019

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