

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 21.08.2019
Complaint No.	722/2019 Case titled as Nandini Narula Rajeev Narula Vs Today Homes
Complainant	Nandini Narula Rajeev Narula
Represented through	Shri Sushil Yadav Advocate for the complainant.
Respondent	Today Homes
Respondent Represented through	Shri Amit Singh Advocate along with Shri Naveen Jakhar authorized representative.
Last date of hearing	First hearing
Proceeding Recorded by	Pawan Sharma

Proceedings

Respondent was served with the notice of complaint through speed post on 27.02.2019 and at the given e-mail address gurgaonsales@todayhomes.co.in on 21.02.2019 respectively with the direction to file the reply to the complaint within 21 days. The respondent did not put appearance nor did file the reply within the stipulated period.

Respondent is accordingly proceeded exparte.

Vakalatnama, authority letter and the reply on behalf of the respondent filed, now have been taken on record subject to all just exceptions. Copy of the reply given.

Arguments heard.



Vide separate detailed order placed on the file following order has been passed:-

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 prescribed rate of interest of 10.45% per annum with effect from the committed date of delivery of possession i.e. 23.11.2017 till 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 complainants.

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.

N. K. Goel
21-8-19

N.K. GOEL
(Former Additional
District and Sessions
Judge.)
Administrative Officer
(Petitions) -cum-
Registrar (Authorized
by the resolution no.
HARERA, GGM/
Meeting/2019/Agenda
29.2/ Proceedings/ 16th
July 2019) 21.08.2019



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

Complaint no. : 722 of 2019
First date of hearing : 21.08.2019
Date of decision : 21.08.2019

1. Ms. Nandini Narula
2. Mr. Rajeev Narula
Both R/o A-73 Sanjay Gram Opp. Plaza
Solitaire Hotel, Old Delhi Road, Gurugram.

Complainants

Versus

M/s Today Homes and Infrastructure Pvt. Ltd.
Regd. Office: Statesman House, 8th Floor
Barakhamba Road, New Delhi-110001.
Also at: UGF 8-9, 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 Advocate for the complainants
Shri Amit Singh Advocate for ex-parte respondent

Shri Naveen Jakhar Authorised representative for ex-parte
respondent

EX PARTE (ORDER)

1. The present complaint filed on 18.02.2019 relates to an agreement to sell dated 23.05.2014 executed between the complainants and the respondent-promoter in respect of

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apartment/unit measuring 1622 sq. ft. super area bearing no.CDT500201, 2nd floor, Tower no. T5 of the project, namely, "Callidora" situated in Sector 73, Gurugram (in short, the subject flat) which is not registered with this Authority for a total sale price of Rs.1,01,37,286/- (**Note:** as per annexure III to the complaint, the total sales value is Rs. 1,03,97,331.80/- page 58 of complaint) and the complainants opted for construction 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	11.794 acres
5.	Unit/ Villa no.	CDT500201, 2 nd floor, Tower no. 5
6.	Unit measuring	1622 sq. ft
7.	Date of execution of agreement to sell	23.05.2014
8.	Total sale consideration as per annexure III to the complaint	Rs. 1,03,97,331/- (Pg. no. 58 of the compliant)/-
9.	Total amount paid by the complainants till date as per annexure III to the complaint	Rs.65,86,949 /- (Pg. no. 58 of the complaint)
10.	Payment plan	Construction linked plan [Page 39 of complaint]

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11.	Due date of delivery of possession as per clause 23 of the said agreement- possession to be delivered within 36 months from the date of execution of agreement (23.05.2014) plus 6 months' grace period.	23.11.2017 (in para V at page 7, the complainants have stated the same to be 23.11.2018)
12.	Delay in delivering possession till date of decision	Continuing
13.	Date of offer of possession	Not offered

3. The complainants till date have paid an amount of Rs.65,86,949/- 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 complainants within 36 months from the date of execution of this agreement dated 23.05.2014 with the additional grace period of 6 months.

4. According to the complainants, they 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 complainants. The complainants have further stated that the only intention of the respondent was to take payments for the tower without completing the work. The complainants' flat was booked with a promise by the respondent to deliver the flat by 23.11.2018 (**Note:** as per clause 23 of the said agreement, the due date of handing over possession is

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23.11.2017) but was not completed within the time as promised.

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

area of the flat to the complainants. 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 complainants have submitted that for failing to deliver possession the respondent will pay Rs.5/- per sq. ft. whereas the respondent charges interest @ 24% per annum on delayed payment which is illegal and unlawful.

7. The complainants have submitted that "as per the agreed payment plan in the builder buyer agreement, the balance amount from the total consideration was to be paid on the offer of possession, but the respondent arbitrarily sent the demand notice on dated 25.01.2019, demanding rest of the balance amount, which is completely illegal and absurd which was supposed to be demanded only on the offer of possession.



Moreover, in the same demand letter the respondent is changing the other payment charges which are purely illegal and absurd and was not part of the original builder buyer agreement. The complainant has paid the amount at the time of buying and balance was supposed to be paid on the offer of possession which is clearly written on the payment plan."

8. Hence, this complaint.
9. An application for amendment of the complaint has been filed wherein the complainant has stated that they do not intend to withdraw from the project.
10. Issues raised by the complainant are as follows:
 1. "Whether the respondent/firm is not completing the construction. It could be seen here that the respondent has incorporated the clause is one-sided buyer agreement which is unjustified?"
 2. That flat has not been handed over to the petitioner till today and there is no reasonable justification for the delay?"
 3. The interest cost being demanded by the respondent/developer is very higher i.e.24% which is unjustified and not reasonable?"

10. Reliefs sought:

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1. Direct the respondents to handover the possession of the flat along prescribed interest from the date of promissory date of the flat in question;
2. Direct to withdraw the illegal and absurd demand notice dated 25.01.2019 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 preferred not to put the appearance and 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.

Reply filed on behalf of the respondent thereafter has been taken on record subject to all just exceptions. Arguments are heard.

Issue wise findings of the authority: -

11. **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 annexure-I), there is every reason to believe that vide agreement to sell dated 23.05.2014 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 unit to the complainants on or before 23.11.2017. On date of filing of complaint, the project was still not complete. Hence, it must be held to be "on going project" and thus covered under the provisions of the Act and the Rules framed thereunder. However, the respondent has failed to offer the possession till date even after a delay of more than one year approximately, for which delay the complainants are entitled to delay possession charges though the submission on behalf of the respondent is that the delay in handing over the possession of the subject unit was due to certain unavoidable reasons such as disputes with the earlier contractor, closure of brick kilns and demonetisation which reasons are neither reasonable nor acceptable. Hence, it is held that there being a delay of more than one year in offering the possession of the



subject flat to the complainants 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).

12. Hence, in the opinion of this Authority, the complainants are entitled to interest on 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 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 @24% per annum.

13. So far as the notice dated 25.01.2019 is concerned, the complainants shall make and the respondent shall demand the remaining amount in instalments as per the schedule prescribed in agreement to sell.

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*

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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 Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to pay delayed possession charges at the prescribed rate of interest of 10.45% per annum with effect from the committed date of delivery of possession i.e. 23.11.2017 till 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

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handing over of the possession of the subject apartment to complainants.

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.


21.8.19
(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)

Dated:21.08.2019