

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

**Complaint no. : 626 of 2019**

**First date of hearing: 19.08.2019**

**Date of decision : 26.08.2019**

Mr. Ripu Daman Singh

R/o. I-704, Akme Ballet, Doddankundi,  
Bangalore - 560037.

**Complainant**

**Versus**

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

**Regd. Office:** Statesman House, 8<sup>th</sup> Floor  
Barakhamba Road, New Delhi-110008.

**2<sup>nd</sup> Address:** Upper Ground Floor 8 to 9,  
Pragati Tower, Rajendra Place,  
New Delhi - 110008.

**Respondent**

**CORAM:**

**N. K. Goel**

(Former Additional District and Sessions Judge)

Registrar -cum- Administrative Officer (Petition)  
Haryana Real Estate Regulatory Authority, Gurugram

(Authorised by resolution no. HARERA,

GGM/Meeting/2019/Agenda 29.2/Proceedings/16<sup>th</sup> July 2019) under  
section 81, Real Estate (Regulation and Development) Act, 2016

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**APPEARANCE:**

Shri Sushil Yadav

Shri Amit Singh and Shri

Naveen Jhkhhar

Advocate for the complainant

Advocate for the respondent

alongwith authorised  
representative

**EX PARTE (ORDER)**

1. The present complaint relates to an agreement to sell dated 10.05.2012 executed between one Mr. Neeraj Khurana (hereinafter referred to as original purchaser) and the respondent-promoter in respect of apartment/unit measuring 1275 sq.ft. super area bearing no. T1-1502,15th floor, Tower no. T1 (hereinafter referred to as the subject flat) in the project namely, "Canary Greens" situated in Sector 73, Gurugram and the same is not registered with this Authority which was later on endorsed in the name of the complainant. The total consideration is Rs. 73,43,800/- which includes BSP, car parking, IFMS, Club membership, etc. as per the agreement to sell dated 10.05.2012.

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

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4.	Apartment/unit no.	T1- 1502, 15 <sup>th</sup> floor, tower no. T1
5.	Flat measuring	1275 sq. ft.
6.	DTCP licence no.	Not available
7.	RERA registered/ not registered	<b>Not registered</b>
8.	Date of execution of agreement to sell	10.05.2012 ( <b>Pg.14 of the complaint</b> )
9.	Payment plan	Construction linked payment plan
10.	Basic sale price	Rs. 46,53,750/-
11.	Total sale consideration as per the agreement	Rs. 73,43,800/-
12.	Total amount paid by the complainant till date	Rs. 49,31,230/- (Pg.7 and 46 of the complaint)
13.	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)	<b>10.11.2015</b>
14.	Delay in handing over possession till date	Continuous
15.	Penalty clause as per agreement to sell dated 10.06.2012	Clause 21 of the agreement prescribes rate @ Rs.5/- per sq.ft per month for the entire period of such delay

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3. The complainant till date has paid an amount of Rs. 49,31,230/- 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.
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 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% of the total consideration. The complainant's flat was booked with a promise by the respondent to deliver the flat by 10.11.2015 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 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 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 the amount in terms of financial charges comes to approximately 2% per annum rate of interest whereas the respondent charges interest @ 18% per annum on delayed payment. 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.

7. 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.

**8. Issues raised by the complainant are as follows:**

1. "Whether the developer has violated the terms and conditions of the flat buyer agreement?"

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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. which is unjustified and not reasonable?
5. Whether complainants are entitled for any other relief?"

**9. 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 through speed post and on email address [gurgaonsalestodayhomes.co.in](mailto:gurgaonsalestodayhomes.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. Shri Amit Singh Advocate alongwith Shri Naveen Jakhar, claiming himself to be the authorised representative of the

respondent has appeared but Shri Jakhar failed to file the authority letter. Hence, appearance on behalf of the respondent is neither proper nor legal. Accordingly, the Authority is left with no other option but to decide the complaint ex-parte against the respondent.

**Issue wise findings of the Authority: -**

**10.All issues:-** As per the sufficient and unchallenged documentary evidence filed by the complainant on the record and more particularly the agreement to sell (Page 14-26 of the complaint), there is every reason to believe that vide agreement to sell dated 10.05.2012 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 10.11.2015. However, the respondent has failed to offer the possession till date even after a delay of more than 3 and a half years approximately. Hence, on the date of coming into force of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) the project in question was not complete. Hence, this must be



treated as "ongoing project" and thus covered under the provisions of the Act and the Rules framed thereunder. In the considered finding of this Authority act of the respondent is in violation of the terms and conditions of the buyer's agreement dated 01.11.2012 and also violation of section 11(4)(a) of the Act.

11. 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: -**

12. 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

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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:-**

13. 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 (10.11.2015) till date within a period of 90 days from this order and to continue to pay interest at the said rate month by month by the 10<sup>th</sup> day of each succeeding English calendar month till the date of delivery of possession of the said flat bearing no. T1- 1502, 15<sup>th</sup> floor, Tower no. T1 in the project "Canary Greens", Sector 73, Gurugram to the complainant.

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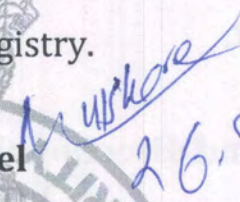


14. Since the project is not registered, so the Authority has decided to take suo moto cognizance of this fact and directed the registration branch to initiate necessary action against the respondent under section 59 for violation of section 3 of the Act.

A copy of this order be endorsed to the registration branch.

15. The complaint stands disposed of accordingly.

16. The case file be consigned to the registry.

  
**N. K. Goel**

(Former Additional District and Sessions Judge)

Registrar-cum- Administrative Officer (Petition)

Haryana Real Estate Regulatory Authority, Gurugram

(Authorised by resolution no.

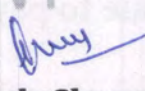
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Dated: 26.08.2019

Order ratified by the Authority as above.

  
**(Samir Kumar)**

Member

  
**(Subhash Chander Kush)**

Member

**(Dr. K.K. Khandelwal)**

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.08.2019

Judgement uploaded on 05.09.2019