

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

**Complaint no. :** 703 of 2019  
**First date of hearing:** 19.08.2019  
**Date of decision :** 26.08.2019

1. Mr. Ashish Galchhaniya  
2. Mrs. Mamta Kumawat  
Both R/o Plot no.7, Natraj Nagar, Sahkar  
Marg, Near Imli Wala Phatak,  
Jaipur-324001

**Complainants**

**Versus**

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

**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, the Real Estate (Regulation and Development)  
Act, 2016.

**APPEARANCE:**

Shri Sushil Yadav

Shri Amit Singh, Adv and Shri Naveen Jhkhara  
alongwith authorised representative

Advocate for the complainant

Advocate for the respondent

**EX PARTE (ORDER)**





1. The present complaint relates to an agreement to sell dated 03.04.2015 executed between the complainants and the respondent-promoter in respect of apartment/unit measuring 1622 sq. ft. super area bearing no. CDT501504, 15th floor, Tower no. T5 (in short the subject flat) in the project namely, "Callidora" situated in Sector-73, Gurugram and which is not registered with this Authority for a basic sale price of Rs.87,05,436.20 and other charges totalling Rs.96,38,474.20 and the complainants opted Instalment linked plan, though according to them the booking was made in the year 2015.
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	<b>Group housing colony</b>
3.	RERA registered / not registered	<b>Not registered</b>
4.	Total area	<b>33.22 acres</b>
5.	Unit/ Villa no.	CDT501504, 15th floor, Tower no. T5
6.	Unit measuring	1622 sq. ft
7.	Date of execution of agreement to sell	03.04.2015
8.	Total consideration	Rs. 96,38,474.20 (page 43) (annexure - II)
9.	Amount paid by the complainant till date	Rs. 49,50,853/- (including service taxes, page 43) (annexure - II)

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		and Rs.48,10,466/- as per complainant
10.	Payment plan	Instalment linked plan [Page 33 of complaint]
11.	Due date of delivery of possession. clause 23 - possession to be delivered within 36 months from the date of execution of agreement plus 6 months grace period.	03.10.2018
12.	Delay in delivering possession till date of decision	Continuing
13.	Offer of possession	Not offered

3. The complainants till date have paid an amount of Rs.48,10,466/- [49,50,853/- annexure - II at page 43] 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 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 03.10.2018 but was not completed within the time as promised.

5. According to the complainants, 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 of the apartment/flat. The clause of compensation at such nominal rate 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.

6. The complainants have submitted that if the amount is calculated in terms of financial charges comes to approximately 2% per annum rate of interest whereas the respondent charges interest @ 24% per annum on delayed payment. Complainants have 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 illegal and it was to be demanded on offer of possession. That

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in the same demand letter respondent has charged an amount of Rs.90,218/- towards delay payment charges which according to complainant is illegal and absurd as same is against the payment plan.

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 complainants have stated that they do not intent to withdraw from the project.

9. **Issues raised by the complainants 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. which is unjustified and not reasonable?"

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**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 through 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 the complainant. 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.

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

- 11. All issues:-** As per the sufficient and unchallenged documentary evidence filed by the complainants on the record and more particularly the agreement to sell (copy annexed-I), there is every reason to believe that vide agreement to sell

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dated 03.04.2015 the respondent had agreed to handover the possession of the subject flat to the complainants 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 03.10.2018. 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 8 months approximately for which delay the complainants are entitled to delay possession charges. The submission raised on behalf of the respondent that the project could not be completed within time due to the disputes having arisen between the previous contractor and the respondent, closure of brick kilns and demonetisation is without any force and is rejected. Hence, it is held that there being a delay of about 8 months in offering the possession of the subject flat to the complainants this is in violation of the terms and conditions of

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the buyer's agreement 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 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 or at Rs. 5/- per sq. ft. per month of the super area of the subject flat as stipulated in the agreement to sell.

13. Notice dated 29.01.2019 sent by the respondent to the complainant raising demand for payment of balance amount alongwith interest is illegal and against the terms and conditions of agreement to sell dated 03.04.2015 as the respondent cannot ask for making of payment of the balance amount before offering possession of the subject flat to the complainant. The letter is set aside.

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14. Further, it is suffice to say that the award of payment of compensation is outside the jurisdiction of the Authority and the complainants are at liberty to file an application before the adjudicating officer under Section 71 of the Act along with the enabling section, if they so desire.

**Findings of the Authority: -**

15. 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.

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**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-

(i) 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. 03.10.2018 till the date of this order within a period of 90 days and to continue to pay the charges month by month by the 7<sup>th</sup> day of each succeeding English calendar month till the actual handing over of the possession of the subject apartment to complainants.

(ii) Set aside the demand letter dated 29.01.2019.

17. 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 for violation of section 3 of the Act.

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18. The complaint stands disposed of accordingly.
19. The case file be consigned to the registry.
20. A copy of this order be endorsed to the registration branch.

**N. K. Goel** *N. K. Goel*  
26.8.19

(Former Additional District and Sessions Judge)

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

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under section 81, the Real Estate (Regulation and Development)  
Act, 2016.

Dated: - 26.08.2019

Order ratified by the Authority as above.

*[Signature]*  
**(Samir Kumar)**  
Member

*[Signature]*  
**(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