

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

Complaint no. : 960 of 2019
First date of hearing: 19.08.2019
Date of decision : 26.08.2019

1.Mr. Sumit Garg
2.Mrs. Swasti Garg
R/o. F No. D-403, Ratnam Apartments I,
Behind 4D Square Mall, Motera, Ahemdabad- **Complainant**
380005, Gujarat

Versus

✓
M/s Today Homes and Infrastructure Pvt.
Ltd.
Regd. Office: Statesman House, 8th Floor
Barakhamba Road, New Delhi-110001
Second Address: Upper Ground floor 8 to 9
Pragati Tower, Rajendra Place, New Delhi- **Respondents**
110008

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

APPEARANCE:

Shri Sushil Yadav

Advocate for complainants

Shri Amit Singh Advocate and

Advocate along with authorised

Shri Naveen Jakhar

representative for respondent

N.K.Goel
26.8.19



EX PARTE ORDER

1. The present complaint relates to an agreement to sell dated 23.07.2011 executed between one M/s Responsive Finance and Estate (predecessor -in- interest of the complainants) and the respondent/s-promoter which was later on endorsed in the name of the complainants, in respect of apartment/unit measuring 1275 sq. ft. super area bearing unit no. 07,12th floor, Block/Tower no. T1 (hereinafter referred to as flat) in the project, namely, "Canary Greens" situated in Sector 73, Gurugram which is not registered with this Authority. The total consideration is Rs.55,84,875/- which includes BSP, car parking, IFMS, Club membership, etc. as per the agreement to sell dated 23.07.2011.

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.	07, 12 th floor, tower no. T1 (as per agreement to sell) page no. 26
5.	Flat measuring	1275 sq. ft.
6.	DTCP licence no.	Not available
7.	RERA registered/ not registered	Not registered

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8.	Date of execution of agreement to sell	23.07.2011 (Pg.15 of the complaint)
9.	Payment plan	Construction linked payment plan
10.	Basic sale price	Rs. 46,53,750/-
11.	Total sale consideration as per the agreement	Rs.55,84,875/-
12.	Total amount paid by the complainant till date	Rs. 50,37,241/- (Pg. 07 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)	23.01.2015
14.	Delay in handing over possession till date	Continuous
15.	Penalty clause as per agreement to sell dated 23.07.2011	Clause 23 of the agreement prescribes rate i.e. Rs.5/- per sq. ft per month for the entire period of such delay

3. The complainants till date have paid an amount of Rs. 50,37,241/- 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 complainants within 36 months from the date of execution of this agreement with the additional grace period of 6 months.

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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 and not handing over the possession on time despite even after collecting 95% of the total consideration. The complainants' flat was booked with a promise by the respondent to deliver the flat by 23.01.2015 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 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 the amount in terms of financial charges comes to approximately 2% per annum rate

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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 complainants have stated that they do not intend to withdraw from the project.
8. Issues raised by the complainants are as follows:
 1. "Whether the developer has 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 respondent/developer is very higher i.e. 18% which is unjustified and not reasonable?"
 5. Whether complainants are entitled for any other relief?"

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Reliefs sought:

1. "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 via speed post and on email address i.e. 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. Shri Amit Singh, Advocate alongwith Shri Naveen Jakhar, claiming himself to be authorised representative of the respondent appeared but Shri Jakhar failed to file the authority letter. Hence, appearance on behalf of 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: -

9. **All issues:-** As per the sufficient and unchallenged documentary evidence filed by the complainants on the record and more particularly the agreement to sell (Page 15-33 of the complaint), there is every reason to believe that vide



agreement to sell dated 23.07.2011 the respondent had agreed to handover the possession of the subject unit 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 23.01.2015. However, the respondent has failed to offer the possession till date even after a delay of more than 3 and a half year approximately. 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 and hence it must be considered as "on going project" and covered under the provisions of the Act and the Rules framed thereunder. Hence, in the considered finding of this Authority this is in violation of the terms and conditions of the agreement to sell dated 23.07.2011 and also violation of section 11(4)(a) of the Act.

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

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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: -

10. 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:-

11. 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 23.01.2015 till the date of this order within a period of 90 days from this order and to continue to pay interest at the said rate month by month by the 10th day of each succeeding English calendar month till the date of delivery of possession of the said flat bearing no. 07, 12th floor, tower-T1 in the project, namely, "Canary Greens" situated in Sector 73, Gurugram to the complainants. The respondent shall make all out efforts to complete the project and hand over the physical possession of the subject unit to the complainants at the earliest possible opportunity.

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

13. The complaint stands disposed of accordingly.

14. The case file be consigned to the registry.

M. N. Goel
N.K.Goel

26.8.19

(Former Additional District and Sessions Judge)

Registrar-cum-Administrative Officer (Petitions)

(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
(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