

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

Complaint no. : 1882 of 2018
First date of hearing : 29.08.2019
Date of decision : 29.08.2019

1. Mr. Ravindra Gupta
2. Mr. Shrikant Gupta
R/o E-204, Power Grid Township,
Sector 43, Gurugram.

Complainants

Versus

1. M/s Today Homes & Infrastructure Pvt.
Ltd.,
Regd. Office: Statesman House, 8th floor
Barakhamba Road, New Delhi - 110001.
Also at: Callidora Marketing Site, Sector-73,
Behind DPG College, Subhash Chowk to
Hero Honda Road, Gurugram - 122001.
Also at: Upper Ground Floor 8 to 9, Pragati
Tower, Rajendra Place, New Delhi-110008.
2. Mr. Mordhawaj Singh
Mr. Vikramjit Singh
Mr. Ram Narayan Singh
Mr Bhim Singh
(All owners of land measuring 21.55 acres
situated within Revenue Estate of Village
Behrampur, Sector 73, Gurugram.)

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

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LEGAL ASSISTANT

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APPEARANCE:

Shri Sushil Yadav

Advocate for the complainants

Shri Satya Prakash Singh

AR on behalf of the respondents

ORDER

1. A complaint dated 20.11.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2016 by the complainants Mr. Ravindra Gupta and Mr. Shrikant Gupta, against the promoter M/s Today Homes & Infrastructure Pvt. Ltd. and Others, on account of violation of the clause 21 of the agreement to sell executed on 01.06.2013 in respect of unit described below in the project 'Canary Greens' located at Sector 73, Gurugram for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid.*

2. Since the agreement to sell was executed on 01.06.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided

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to treat this complaint as an application for non- compliance of statutory obligation on the part of promoter under section 34(f) of the Act ibid.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	'Canary Greens' Sector-73, Sohna Road, Gurugram, Haryana.
2.	RERA registered / not registered	Not registered
3.	Nature of real estate project	Group housing colony
4.	Total area of the project	21.55 acres
5.	Allotted unit no.	03, 17 th floor, tower T1
6.	Unit measuring area	1,275 sq. ft.
7.	Date of execution of agreement to sell	01.06.2013
8.	Total consideration as per payment plan annexed with the said agreement	Rs.80,25,500/- (page no. 28 of the complaint)
9.	Total amount paid by the complainants	Rs.70,96,363/- (as per receipts page no. 33 to 44)
10.	Payment plan	Construction linked plan (Page no. 28 of complaint)
11.	Due date of delivery of possession as per clause 21 of the said agreement i.e. possession to be delivered within 36 months from the date of execution of agreement (01.06.2013) plus 6 months grace period.	01.12.2016
12.	Delay in handing over possession till date of decision	2 years 8 months 27 days



	i.e. 29.08.2019	
13.	Penalty clause as per clause 21 para 2 agreement to sell dated 01.06.2013	Rs.5/- per sq. ft. per month for the period of delay after expiry of grace period of 6 months from the stipulated date for delivery of possession.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants. An agreement to sell dated 01.06.2013 is available on record for the aforesaid unit. As per clause 21 of the agreement dated 01.06.2013, possession of the said unit was to be delivered by 01.12.2016. The respondents have neither delivered the possession of the subject unit to the complainants nor paid the compensation at the rate of Rs. 5/- per sq. ft. per month for every month of delay, as per terms of the said agreement. Therefore, the promoters have not fulfilled their committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. Notice w.r.t. reply to the complaint were issued to the respondents on 22.11.2018, 05.12.2018 and 19.12.2018. However, the respondent has not filed reply till date. The case



came up for hearing on 29.08.2019. The respondent through its authorised representative appeared on 29.08.2019.

Brief facts of the complaint

6. Briefly stated, the facts of the complaint are that the respondents gave advertisement in various leading newspapers about their forthcoming project named "Canary Green", Sector-73, Sohna Road, Gurugram promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promises and undertakings given by the the respondents in the advertisements, Ravinder Gupta and Shrikant Gupta, booked a flat measuring 1275 sq. ft. in aforesaid project of the respondents for total sale consideration of Rs.80,25,500/- which includes BSP, car parking, IFMS, club membership, PLC etc. The complainants made total payment of Rs.70,96,363/- to the respondents vide different cheques on different dates.

7. The complainants submitted that as per the agreement to sell dated 01.06.2013, the respondents had allotted a unit/flat no. 03, 17th floor, tower-T1 having super area of 1,275 sq. ft. to the complainants. As per clause 21 of the said agreement to

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sell, the respondents had agreed to deliver the possession of the flat within 36 months from the date of signing of the agreement to sell dated 01.06.2013 with an extended period of six months.

8. The complainants submitted that they regularly visited the site but were surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainants. Despite receiving 95% approximately payments on time and repeated requests and reminders over phone calls and personal visits of the complainants, the respondents have failed to deliver the possession of the allotted flat to the complainants within stipulated period.

9. The complainants alleged that the construction of the block in which the flat was booked with a promise by the respondent to deliver the flat by 01.12.2015 but was not completed within time for the reasons best known to the respondents which clearly shows that the ulterior motive of the respondents was to extract money from the innocent people fraudulently.

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10. The complainants submitted that due to this omission on the part of the respondents, they have been suffering from disruption on their living arrangement, mental torture, agony and also continues to incur severe financial losses. As per clause 23 of the said agreement, it was agreed by the respondents that in case of any delay, the respondents shall pay to the complainants a compensation @ Rs.5/- per sq. ft. per month of the super area of the flat for the period of delay. It is however, pertinent to mention here that such a clause of compensation at such a nominal rate of Rs.5/- per sq. ft. per month for the period of delay is unjust and the respondents have exploited them by not providing the possession of the flat even after a delay from the agreed possession plan. It could be seen here that the respondents have incorporated the clause in one sided agreement to sell and offered to pay a sum of Rs.5/- per sq. ft for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondents charge 18% per annum interest on delayed payment.



11. The complainants submitted that on the ground of parity and equity, the respondents should also pay the same rate of interest. Therefore, the respondents are liable to pay interest on the amount paid by the complainants from the promised date of possession till the flat is actually delivered to them. Hence, the complainants have filed the present complaint before this authority.

Issues to be decided

12. The complainants raised the following issues:

- i. Whether the developer has violated the terms and conditions of the agreement to sell?
- ii. Whether the complainants are entitled for possession along with prescribed interest for delay in possession?
- iii. Whether the respondents should complete the construction as soon as possible and there is no reasonable justification for the delay?
- iv. Whether interest cost being demanded by the respondents/developer is very higher i.e. 18% which is unjustified and not reasonable?

Reliefs sought

13. The complainants are seeking the possession of the flat along with prescribed interest per annum from the date of booking of the flat in question.

Determination of issues

After considering the facts submitted by the complainants and perusal of record on file, the issue wise findings of the authority are as under-

14. With respect to the **first, second and third issue** raised by the complainants, the authority came across that as per clause 21 of the agreement to sell dated 01.06.2013, the possession of the allotted unit was to be delivered within a period of 36 months plus 6 months' grace period from the date of execution of agreement. The relevant portion of said clause is reproduced below:

"...the physical possession of the said unit is proposed to be delivered by the Company to the Allottee within 36 months from the date of execution of this agreement. The allottee further agrees that the Company shall additionally be entitled to a period of 6 months' grace period after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the company including but not limited to delays in obtaining the occupation certificate/completion certificate, etc., from the competent authority..."



Accordingly, the due date of delivery of possession in terms of the abovementioned clause comes out to be 01.12.2016 and the possession has been delayed by 2 years 8 months and 27 days till date of decision i.e. 29.08.2019. However, the respondents by not delivering the possession of the unit till date has breached the terms and conditions of the agreement to sell dated 01.06.2013 which is in violation of section 11(4)(a) of the Act *ibid*. As the promoters have failed to fulfil their obligation under section 11(4)(a) of the Act, the promoters are liable under section 18(1) proviso of the Act read with rule 15 of the Rules *ibid*, to pay interest to the complainants, at the prescribed rate i.e. 10.45% per annum, for every month of delay till the offer of possession.

15. With respect to the **fourth issue** raised by the complainants, the respondents are charging exorbitant interest at the rate of 18% per annum for the delayed payment by the complainants for the period of delay in terms of clause 8 of the said agreement. However, the delay compensation payable by the respondents @ Rs.5/- per sq. ft. per month for the period of delay as per clause 21 para 2 of the agreement

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to sell is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondents and are completely one sided as also held in para 181 of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)*, wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

Findings of the authority

16. 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 complainants 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. In the

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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.

17. As per clause 21 of agreement to sell dated 01.06.2013 for the unit in question, the possession was to be handed over to the complainants within a period of 36 months from the date of execution of this agreement i.e. 01.06.2013 + 6 months grace period which comes out to be 01.12.2016. The respondent has not delivered the possession of the unit to the complainants. As such, the complainants are entitled for delayed possession charges at the prescribed rate of interest i.e. 10.45% per annum w.e.f. 01.12.2016 as per section 18(1) proviso of the said Act for every month of delay, till offer of possession.

Decision and directions of the authority

18. After taking into consideration all the material facts the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondents in the interest of justice and fair play:

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- i. The respondents are directed to pay delay possession charges @ 10.45% p.a. on the amount paid by the complainants from the due date of delivery of possession i.e. 01.12.2016 till the date offer of possession.
- ii. The arrears of interest so accrued from due date till the date of order, so far shall be paid to the complainants within 90 days from the date of this order. Thereafter, monthly payment of interest at prescribed rate till the offer of possession shall be paid on or before 10th of each subsequent month.
- iii. Complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The promoter shall not charge anything from the complainants which is not a part of the agreement.
- v. The interest on the due payments from the complainants shall be charged at the prescribed rate of interest i.e. 10.45% by the promoter which is the same as is being granted to the complainants in the case of delayed possession.



19. The authority has decided to take suo-moto cognizance against the promoters for not getting the project registered and for that separate proceeding will be initiated under the Act. The registration branch is directed to take necessary action in this regard against the respondents. A copy of this order be endorsed to the registration branch.

20. The order is pronounced.

21. Case file be consigned to the registry.

(**Samir Kumar**)

Member

MEMBER

Dated: 29.08.2019

Judgement uploaded on 05.09.2019

(**Subhash Chander Kush**)

Member

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LEGAL ASSISTANT

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GURBACHAN KAUR
LEGAL OFFICER