



**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

**CEEDINGS OF THE DAY**

Day and Date	Monday and 26.08.2019
Complaint No.	407/2018 Case titled as Varun Yadav & Anr. vs Today Homes And Infrastructure Limited
Complainant	Varun Yadav & Anr.
Represented through	Shri Sushil Yadav Advocate
Respondent	Today Homes And Infrastructure Limited
Respondent Represented	None for the respondent
Last date of hearing	2.8.2019
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

Arguments heard.

It is pertinent to point out here that the matter has been finally decided vide order dated 17.10.2018. As per order dated 2.5.2019 passed by the Hon'ble Real Estate Appellate Tribunal, Chandigarh, the relevant para of which is as under:-

*"It is made clear that this order of ours will not apply to the orders directions and decisions, which has already attained finality".*

More-over, the Local Commissioner report dated 20.2.2019, who was appointed by the authority on the request dated 21.12.2018 submitted by the respondent, has also been considered wherein it has been specifically mentioned that physically about 46% construction work has been completed at site. The above progress report is not inconsonance with the claim of the



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
नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा


respondent that more than 75% work is complete at site. Therefore, the request of respondent for rectification of order dated 17.10.2018 on this pretext cannot be conceded to at this late juncture when the order pronounced on 17.10.2018 has already attained finality.

By virtue of all portents of law, the matter has reached finality and is res-judicata and cannot be re-opened at a subsequent stage. The report of LC at a subsequent stage is not relevant in the present case.

Application filed by the applicant for rectification of the order dated 17.10.2018 is not maintainable and the prayer made by the applicant is declined.

Order dated 2.5.2019 passed by the learned Appellate Tribunal in appeal No. 6 of 2018 titled as Sameer Mahawar versus MG Housing Pvt Ltd which defines the jurisdiction of the Authority. Since order dated 17.10.2018 was passed much prior to the pronouncement of order dated 2.5.2019 of the learned Appellate Tribunal, as such this order is beyond the pale of order dated 2.5.2019 and thus has attained finality. File be consigned to the registry.

  
Samir Kumar  
(Member)  
26.08.2019

  
Subhash Chander Kush  
(Member)

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

**Complaint No. : 407 of 2018**  
**Date of first hearing : 07.08.2018**  
**Date of Decision : 29.10.2018**

1. Mr. Varun Yadav  
2. Smt. Mudita Aeron  
R/o B-112 Kendriya Vihar Sector 56  
Gurgaon  
Permanent Address: 16, Hillside Court,  
Crescent Road, Kingston upon Thames KT2  
7RH, United Kingdom

**...Complainants**

Versus

M/s Today Homes & Infrastructure Limited  
Regd. office: Statesman House,  
8<sup>th</sup> floor, Barakhamba Road,  
New Delhi- 110001  
Also at Callidora Marketing Site, Sector-73,  
Behind DPG College, Subhash  
Chowk to Hero Honda Road, Gurgaon -  
122001

**...Respondent**



**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sushil Yadav

Advocate for the complainants

Shri Naveen Jakkar

Assistant Manager (Legal) on  
behalf of the respondent

Shri Arun K. Yadav

Advocate for the respondent

**ORDER**

1. A complaint dated 08.06.2018 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, 2017 by the complainants Mr. Varun Yadav and Smt. Mudita Aeron, against the promoter M/s Today Homes and Infrastructure Limited, on account of violation of clause 23 of the agreement to sell executed on 23.10.2012 for unit no. T1/0406 on the 4<sup>th</sup> floor of tower no. T1 in the project "Callidora" for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.
2. The particulars of the complaint are as under: -

1.	Name and location of the project	"Callidora" in Sector 73, Gurugram
2.	Unit no.	T1/0406
3.	Project area	11.794 acres
4.	Nature of real estate project	Group housing colony
5.	Registered/ not registered	<b>Not registered</b>
6.	Date of booking	29.01.2011
7.	Date of agreement to sell	23.10.2012
8.	Total consideration	Rs. 62,15,887/- (as per agreement to sell-pg. 40)
9.	Total amount paid by the complainant	Rs. 57,53,203/- (92.5% approx..)



10.	Payment plan	Construction linked plan
11.	Date of delivery of possession	Clause 23 – 36 months from date of agreement (23.10.2012) + 6 months grace period i.e. 23.04.2016
12.	Delay of number of months/ years upto 29.10.2018	2 years 6 months
13.	Penalty clause as per agreement to sell dated 23.10.2012	Clause 23, para 2- Rs. 5/- per sq. ft. per month

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. An agreement to sell dated 23.10.2012 is available on record for unit no. T1/0406 according to which the possession of the aforesaid unit was to be delivered by 23.04.2016. The promoter has failed to deliver the possession of the said unit to the complainants. Therefore, the promoter has not fulfilled his committed liability till date.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 07.08.2018. The case came up for hearing on 07.08.2018, 18.09.2018, 28.09.2018 and 29.10.2018. The reply has been filed on behalf of the respondent on 09.08.2018.



### **Facts of the complaint**

5. On 29.01.2011, the complainants booked a unit in the project named "Callidora" in Sector 73, Gurugram by paying an advance amount of Rs 15,24,825/- to the respondent. Accordingly, the complainant was allotted a unit bearing T1/0406 on 4th floor of tower no. T1.
6. On 23.10.2012, an agreement to sell was entered into between the parties wherein as per clause 23, the construction should have been completed within 36 months + 6 months grace period from the date of execution of agreement. However, till date the possession of the said unit has not been handed over to the complainants despite making all requisite payments as per the demands raised by the respondent. The complainants made payments of all instalments demanded by the respondent amounting to a total of Rs. 57,53,203/- as against the total consideration of Rs.62,15,887/-.
7. The complainants submitted that as per clause 23 of the flat buyer agreement to sell dated 23.10.2012, it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainants a compensation @ Rs.5/- per sq.ft. per month of the super area of the apartment/flat. It is however, pertinent to mention here that a clause of compensation at



such nominal rate of Rs.5/- per sq.ft per month for the period of delay is unjust. The respondent has incorporated the clause in one sided buyers agreement. If the amount in terms of financial charges is calculated, it comes to approximately @ 2% per annum rate of interest whereas the respondent charges 24% per annum interest on delayed payment.

8. As per clause 23 of the agreement to sell, the company proposed to hand over the possession of the said unit by 23.04.2016. The clause regarding possession of the said unit is reproduced below:

*“23-.....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 be additionally entitled to a period of 6 months grace period after the expiry of the said commitment period....”*

9. **Issues raised by the complainants**

The relevant issues as drawn out from the complaint are as follows:

- I. Whether the respondent has incorporated the clauses in a one-sided buyer agreement which is unjustified?
- II. Whether there is a reasonable justification for the delay?



- III. Whether the interest cost being demanded by the respondent/developer is very higher i.e.24% which is unjustified and not reasonable?

#### 10. Relief sought

- I. Direct the respondent to refund the amount of Rs. 57,53,203 /- along with interest @ 24% per annum on compounded rate from the date of booking of the flat in question till the possession is handed over by the respondent to the complainants.
- II. Direct the respondent to handover the possession of the respective flat to the complainants.

#### Respondent's reply

11. The respondent stated that the present complaint is not maintainable as the complainants are just an investor in the project and hence the present complaint is not maintainable. The complainants are presently residing in a posh colony at Gurugram and it is only for investment purpose that they have booked the unit in question i.e. T-1/0406 in project "Callidora", only to trade upon the unit either by re-selling the same in the market or by letting out on rent to earn a fixed rental income.





12. The respondent submitted that the complainants have already defaulted in the payment of demands as per the payment plan opted by complainants. Therefore, the complainants have no right to file this instant complaint before the hon'ble authority.
13. The respondent submitted that a substantial amount of more than Rs.150 crores has already been incurred by the opposite party for project on account of land cost, construction expenses, advance to contractors/suppliers, administration etc. and the project is nearing possession and the opposite party in its present estimates/ projections will start offering the possession to its esteemed customers of tower-1 in the project around starting of third quarter of 2019 ( subject to just exceptions and unforeseen events beyond the control of the company).
14. Respondent further submitted that the desired prayer of the complainants are completely beyond the purview of this hon'ble authority and in the given facts, no case of compensation is made out. That even otherwise, the power of awarding the compensation is vested upon the judicial officers only as per the provision of RERA Act. It is also relevant to bring into the knowledge of this hon'ble regulatory authority that the principal bench of UP Real Estate Regulation and



Development Authority, Lucknow has already passed the order in complaint no.1020172374 titled **MMN v. Jaiprakash Associates Ltd.** and Maharashtra Real Estate Regulation and Development authority has also given its view on the same in its final judgement in complaint no. CC0060000001358 vide its order dated 29.12.2017 that the compensation shall be decided by the adjudicating officer.

15. Respondent submitted that it is imperative to mention here that the respondent initially filed its application for RERA project registration qua project 'Callidora' before interim Real Estate Regulation and Development authority at Panchkula. However, the said application was not processed by the interim authority as after the publication of final HARERA Rules on 28.07.2017, the interim authority asked for a copy of valid license as granted by department of town and country planning. Now, after the passing of HARERA Regulations 2018, the respondent was asked to file a new application before HARERA Gurugram and accordingly a new application was filed by them for registration of its project before this hon'ble authority and same is presently pending since 30.04.2018.

16. The respondent submitted that though the above said stance of HARERA asking them to furnish the copy of valid license is



within the framework or rule 5(1) of HARERA but it completely overlooks the practical and existing ground reality prevalent in Gurugram and in the other parts of the state of Haryana where license is granted to one company and project development is done by more than one company in phases. The condition of having a valid license at the time of grant of registration is nowhere mentioned in the said Act or rules. Further, owing to the non-cooperation at the end of the licensee company, M/s Realtech Realtors Pvt. Ltd., the license has not been renewed and thus, this company should also be arrayed as a necessary and proper party as without hearing them, a proper adjudication of the case is not possible.

17. Respondent submitted that the desired prayer of refund with interest is not in conformity with the said Act and rules as there is no specific provision in either of these giving right to the complainants or any allottee to claim such relief. Such claim arises only in case the promoter has discontinued its business as a developer.

18. It is submitted that time is not of the essence of the contract and the delay is attributable to force majeure events which would at the most entitle the allottees to delay compensation. The work at the site had been seriously hampered as disputes



had arisen with earlier contractor who abandoned the work because of which the work could not be completed in the stipulated time. Other factors for the delay include closure of brick kilns due to environment norms and also the government demonetization policy which resulted in complete slow down of the real estate market. This delay was beyond the control of the respondent. Also, now the completion date for the project will be governed by the RERA registration granted by the authority. It has been already held by the Maharashtra High Court that the provisions of RERA are prospective in nature, so any liability of the respondent will start only once there is completion of the project as per the registration certificate which is yet to be granted by the authority.

19. In case the complainants seek cancellation of the allotment it will be subject to the terms and conditions of the agreement wherein there will be forfeiture of 20% basic sale price of the unit constituting the earnest money and the balance, if any will be refunded.

20. It is further submitted that under RERA, no distinction is made between ongoing project and future project. The combined reading of Section 3 and Section 13 of the RERA, 2016 clearly



shows that even for the ongoing projects afresh agreement between the parties had to be signed and till the time the same is not signed, no claim against the respondent can be succeeded.

### **Determination of issues**

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

21. With respect to **first issue** raised in the complaint, as per clause 23 of the agreement, in the event of failure to handover possession, the respondent shall pay to the allottee compensation @ Rs. 5/- per sq. ft. per month for the period of such delay. On the other hand, in case of delayed payment by the allottee, the respondent shall be entitled to an interest @ 24 % p.a. Thus, the respondent company being in a dominant position and the complainants having no say, the terms of the agreement are drafted mischievously by the respondent as in this case 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.”*

22. With respect to **second issue**, the respondent submitted in the reply that the reasons for delay include non-cooperation on the part of licensee company, disputes with the contractor, government demonetization policy and subsequent slowdown of the real estate market. However, these reasons do not justify the delay in handing over the possession.
23. With respect to the **third issue**, it has been emphasized above in para 21 that the charging of high interest @ 24% p.a. from the complainants is totally unjustified and unreasonable and the agreement has been drafted mischievously by the respondent.
24. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.



25. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

### **Findings of the authority**

26. **Jurisdiction of the authority-** The respondent admitted that as the project "Callidora" is located in Sector 73, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding 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.



27. As the possession of the flat was to be delivered by 23.04.2016 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.

28. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that the respondent submitted in the proceedings on 29.10.2018 that the construction of the project is 90% complete. However, the project is not registered with the authority and there is no valid license as on date. There is an inter se conflict between the licensee and the promoter, as a result of which there is no hope and scope for completion of the project. No committed date of delivery of possession can be ascertained in these circumstances. Thus, the authority is of the view that as such, there is no choice left with the authority but to order refund of the amount paid by the complainants to the respondent along with prescribed rate of interest @ 10.45 % per annum from the due date of delivery of possession, i.e. 23.04.2016 till actual realization of payment.

29. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) to pay interest





to the complainants, at the prescribed rate, for every month of delay till the handing over of possession.

### **Decision and directions of the authority**

30. 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:

- (i) The respondent is directed to refund to the complainants the principal sum of Rs.57,53,203/- paid by him on account of the failure of the respondent in handing over the possession by the due date of 23.04.2016.
- (ii) The respondent is directed to give interest to the complainants at the prescribed rate of 10.45% per annum on the amount deposited by the complainant for every month of delay in handing over the possession. The interest will be given from 23.04.2016 till the final realization of payment.



31. The complaint is disposed of accordingly.

32. The order is pronounced.

33. Case file be consigned to the registry. As the project is not registered, copy of this order be endorsed to the registration branch to initiate proceedings against the respondent.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**(Subhash Chander Kush)**

Member

Dated: 29.10.2018

Judgement uploaded on 09.09.2019



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