



HARERA
GURUGRAM

Complaint No. 772 of 2019

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

Complaint no. : 772 of 2019
First date of hearing: 26.08.2019
Date of decision : 11.09.2019

Mr. Surender Mohan Lamba,
Address: 1612, Sector-15,
Panchkula-134113, Haryana

Complainant

Versus

M/s Today Homes and Infrastructure Pvt. Ltd.
Regd. Office: Statesman House, 8th Floor
Barakhamba Road, New Delhi-110001
Also at: UGF 8-9, Pragati Tower, Rajendra
Place, New Delhi-110008

Respondent

CORAM:

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 Sandeep Yadav

Shri Amit Singh

Advocate for the complainant

Advocate for the respondent

EX PARTE (ORDER)

1. The present complaint relates to an agreement to sell dated 05.12.2012 executed between one Shri Manjeet Singh (predecessor of the complainant) and the respondent-promoter in respect of apartment/unit measuring 1622 sq. ft. super area bearing no. T4/0903, 09th floor, Tower no. 4 (in short the subject flat) of the project, namely, "Callidora" situated in Sector 73, Gurugram which is not registered with this Authority for a basic sale price of Rs.64,62,048/- and other charges totalling to Rs.77,76,186/- and the complainant opted for construction linked plan, though according to him the booking was made in the year 2011. The said Shri Manjeet Singh later on transferred the same in the name of the complainant which was acknowledged by the respondent.
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	Group housing colony
3.	RERA registered / not registered	Not registered
4.	Total area	33.22 acres
5.	Unit/ Villa no.	T4/0903, 09th floor, Tower no. 4
6.	Unit measuring	1622 sq. ft



7.	Date of execution of agreement to sell	05.12.2012
8.	Total consideration	Rs. 77,76,186/- (page 54)
9.	Amount paid by the complainant till date	Rs. 76,45,278.63 as per receipts attached
10.	Payment plan	Construction linked plan [Page 54 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.	05.06.2016
12.	Delay in delivering possession till date of decision	Continuing
13.	Offer of possession	Not offered

3. The complainant till date has paid an amount of Rs.76,45,278.63 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 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

Decision
11-9-19



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. The complainant's flat was booked with a promise by the respondent to deliver the flat by 05.06.2016 but was not completed within the time as promised.

5. According to the complainant, 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 complainant by not providing the possession of the flat even after a delay from the agreed possession plan.
6. The complainant has submitted that for failing to deliver possession the respondent will pay Rs.5/- per sq. ft. whereas the respondent charges interest @ 24% per annum on delayed payment which is illegal and unlawful.
7. An application for amendment of the complaint has been filed wherein the complainant has stated that he does intend to withdraw from the project.

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8. Issues raised by the complainant are as follows:

1. Whether the petitioner/ complainant is entitled for possession of the flat?
2. Whether the respondent has violated the terms and conditions of agreement to sell dated 05.12.2012?
3. Whether the respondent has received the payment of Rs.76,45,278.63 from the buyer?
4. Whether the complainant is entitled for penalty for delayed possession?

10. Reliefs sought:

1. Direct the respondent to handover the possession of the flat to the complainant;
2. Direct the respondent to make the penalty amount of delayed possession to the complainant;

Notice of the complaint has been issued to the respondent via speed post and on email address contact@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. Accordingly, the Authority is left with no other

Handwritten signature and date
11-9-19



option but to decide the complaint ex-parte against the respondent.

Issue wise findings of the Authority: -

11. **All issues:-** As per the sufficient and unchallenged documentary evidence filed by the complainant on the record and more particularly the agreement to sell (copy annexed-P/5), there is every reason to believe that vide agreement to sell dated 05.12.2012 the respondent had agreed to handover the possession of the subject unit 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 complainant on or before 05.06.2016. On the date of filing of complaint, the project was still not complete. Hence, it must be held to be "on going project". However, the respondent has failed to offer the possession till date even after a delay of more than 3 years approximately, for which delay the complainant is entitled to delay possession charges. Hence, it is held that there being a delay of about 3 years in offering the possession of the subject flat to the complainant this is in



violation of the terms and conditions of the agreement to sell 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 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 10.40% 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: -

13. 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.

Decision and directions of the Authority: -

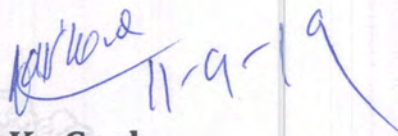
14. The Authority exercising its power under section 37 of the Real Estate (Regulation & Development) Act, 2016 and as prescribed in proviso to Section 18(1)(b) of the Act read with Rule 15 Haryana Real Estate (Regulation & Development) Rules, 2017 hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.40% per annum with effect from the committed date of delivery of possession i.e. 05.06.2016 till the date of this order within a period of 90 days and to continue to pay the charges month by month by the 7th day of each succeeding English calendar month till the actual handing over of the possession of the subject apartment to complainant.

15. Since the project is not got registered, so the Authority has decided to take suo moto cognizance of this fact and direct the registration branch to initiate 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.

16. The complaint stands disposed of accordingly.
17. The case file be consigned to the registry.


N. K. Goel


(Former Additional District and Sessions Judge)

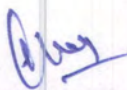
Registrar -cum- Administrative Officer (Petition)
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Development) Act, 2016.

Dated: 11.09.2019

5. 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: 11.09.2019

Judgement uploaded on 20.09.2019