

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

Complaint no. : 2393 of 2018
First date of hearing: 05.08.2019
Date of decision : 06.09.2019

Juanita Aurelia Lazaro
R/o B-116, 3rd Floor, Rose Wood City,
Sector 49, Gurugram, Haryana

Complainant

Versus

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

Respondent

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 U/s 81 of the Real Estate (Regulation and Development)
Act, 2016}

APPEARANCE:

Shri Sushil Yadav

Advocate for the complainant

Shri Satya Prakash Singh

Authorised representative on the
behalf of respondent company



EX PARTE (ORDER)

1. The present complaint relates to an agreement to sell dated 31.10.2012 executed between the complainant and the respondent in respect of flat measuring 1640 sq. ft. super area bearing no. 0301 in Tower no. T7 in the project, namely, "Canary Greens" situated in Sector 73, Gurugram (in short, the subject flat). The said project is not registered with this Authority. The total consideration is Rs. 70,22,360/- which includes BSP, car parking, IFMS, Club membership, PLC etc. as per the agreement to sell dated 31.10.2012.
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.	0301 in Tower no. T7
5.	Flat measuring	1640 sq. ft.
6.	DTCP licence no.	Not available
7.	RERA registered/ not registered	Not registered
8.	Date of execution of agreement to sell	31.10.2012
9.	Payment plan	Construction linked payment plan
10.	Total sale consideration as per payment plan	Rs.70,22,360/-



11.	Total amount paid by the complainant till date	Rs. 68,13,085/-
12.	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) i.e. 31.10.2012	31.04.2016
13.	Delay in handing over possession till date	Continuing
14.	Penalty clause as per agreement to sell dated 31.10.2012	Clause 21 of the agreement prescribes compensation @ Rs.5/- per sq. ft per month for the entire period of delay

3. The complainant till date has paid an amount of Rs.68,13,085/- 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 complainant within 36 months from the date of execution of this agreement with the additional grace period of 6 months after expiry of the said commitment period.

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 queries of complainant. The complainant has further stated

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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% approximately of the total consideration. The complainant's flat was booked with a promise by the respondent to deliver the flat by 31.04.2016 but the promise was not completed within the time as promised.

5. According to the complainant, as per clause 21 of the flat buyer agreement, in case of delay the respondent has 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 a 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 if the amount is calculated in terms of financial charges it comes to approximately 2% per annum rate of interest whereas the respondent charges interest @ 18% per annum on delayed payment and that on the ground of equity and parity the respondent should also be

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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 complainant has stated that he does not intend to withdraw from the project.

8. Several issues have been raised to be decided by this Authority by the complainant. However, on the basis of the facts pleaded in the complaint the only relevant issue to be decided is as follow: -

Whether the respondent is liable to pay delayed possession interest to the complainant? If so at what rate of interest and for what period?

The relief sought may be summarized as follow:-

To what amount the complainant to claim from the respondent on account of delay possession interest?

9. The notice of the complaint was issued to the respondent thrice even with penalty of Rs.5000 and Rs.10,000 with the direction to the respondent to file the reply firstly within 21 days and twice and thrice within 10 days. However, the

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respondent didn't file any reply within the stipulated period.

The respondent is accordingly proceeded ex-parte.

10. Today Shri Satya Prakash Singh (A.R) has appeared on behalf on respondent but has not filed the reply.

11. Argument are heard.

Findings of the Authority

12. The only prayer of the complainant is to award delay possession charges.

13. The copy of agreement to sell is placed on the file. The same is dated 13.10.2012, Clause 21 of this agreement to sell inter-alia provides that the respondent shall handover/deliver the possession of the subject flat to the complainant within 36 months from the date of execution of the agreement with a further grace period of 6 months to allow for unforeseen delays beyond the reasonable control of the respondent. Thus, the respondent was bound to handover/deliver the possession of the subject flat to the complainant on or before 31.04.2016. However, the respondent has failed to do so. Hence, the complainant is entitled to delayed possession interest at the prevalent rate of interest as provided under the



proviso to section 18(1)(b) of the Real Estate (Regulation and Development) Act, 2016 read with Rule 15 of the Haryana Real Estate (Regulation And Development) Rules, 2017 with effect from 31.04.2016 till the date of handing over the possession of the subject flat to the complainant and not at 18% per annum.

Jurisdiction of the Authority: -

14. 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: -

15. 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 10.40% per annum with effect from the due date of delivery of possession i.e. 31.04.2016 till date 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.- 0301 in Tower No. T7 in "Canary Greens", Sector-73, Gurugram, Haryana to the complainant. Respondent shall also deliver the possession of the subject flat to the complainant within 9 months from the date of this order.

16. 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 Real Estate (Regulation and Development) Act, 2016 for violation of Section 3(1) of the

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

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

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N. K. Goel

(Former Additional District and Sessions Judge)
Registrar -cum- Administrative Officer (Petitions)
(Haryana Real Estate Regulatory Authority, Gurugram)

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2016}

Dated: 06.09.2019

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: 06.09.2019

Judgement uploaded on 20.09.2019