

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

Complaint no. : 1050 of 2019
First date of hearing: 09.07.2019
Date of decision : 11.09.2019

1.Mr. Vivek Gobhil
2.Mr. Sailender Govil
R/o. H.No. B-51, Sector 11, Faridabad
Haryana

Complainants

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

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

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APPEARANCE:

Shri Sushil Yadav
Shri Satya Prakash Singh

Advocate for the complainant
Authorized representative for
the respondent company.

EX-PARTE ORDER

1. The present complaint filed on 13.03.2019 relates to an agreement to sell dated 01.04.2013 executed between the complainants and the respondent in respect of flat measuring 1640 sq. ft. super area bearing no. 0702, 07th floor, Tower no. T7 of 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. 69,40,360/- which includes BSP, car parking, IFMS, Club membership, etc. as per the agreement to sell dated 01.04.2013.
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.	0702, 07 th floor, 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	01.04.2013 (Pg.14 of the complaint)
9.	Payment plan	Construction linked payment plan
10.	Basic sale price	Rs. 57,46,560/-
11.	Total sale consideration as per payment plan page no. 28	Rs.69,40,360/-
12.	Total amount paid by the complainants till date	Rs. 64,80,966/- (Pg. 06 of the complaint)
13.	Due date of delivery of possession as per clause 15 of agreement to sell (36 months + 6 months' grace period from the date of execution of agreement) i.e. 01.04.2013 + 3years + 6 months	01.10.2016
14.	Delay in handing over possession till date	Continuous
15.	Penalty clause as per agreement to sell dated 01.04.2013	Clause 21 of the agreement prescribes compensation @ Rs.5/- per sq. ft per month for the entire period of delay

3. The complainants till date have paid an amount of Rs. 64,80,966/- 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

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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 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 01.10.2016 but the promise was not completed within the time as promised.

5. According to the complainants, as per clause 21 of the agreement to sell, 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 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.

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6. The complainants have submitted that the amount in terms of financial charges 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 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?

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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?"

9. **Reliefs sought:**

Direct the respondent 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 gurgaonsales@todayhomes.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 option but to decide the complaint ex-parte against the respondent. Accordingly the respondent has been proceeded exparte vide order dated 09.07.2019.

Reply to the complaint filed today has been taken on record subject to all just exceptions and is not being

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considered in view of the judgment reported as AIR 1964 SC 993.

Arguments heard.

Findings of the Authority on all the Issues: -

10. As per the sufficient and unchallenged documentary evidence filed by the complainants on the record and more particularly the agreement to sell (Page 14-26 of the complaint), there is every reason to believe that vide agreement to sell dated 01.04.2013 the respondent had agreed to handover the possession of the subject flat 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 flat to the complainants on or before 01.10.2016. However, the respondent has failed to offer the possession till date even after a delay of more than 2 and a half years approximately. Hence, 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.

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Hence, it must be considered as “ongoing project” and thus, covered under the provisions 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 buyer’s agreement dated 01.04.2013 and also violation of section 11(4)(a) of the Act.

11. 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 prescribed rate of interest of 10.40% per annum for every month of delay in terms of section 18(1)(b) proviso of the Act read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

Findings of the Authority: -

12. 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: -

13. The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 and as prescribed in proviso to Section 18(1)(b) of the Act read with Rule 15 of the Rules 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 01.10.2016 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. 0702, 07th floor, Tower No. T-7, in "Canary Greens" Sector 73, Gurugram to the complainants.
14. 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 necessary action against the



respondent under section 59 of the Act for violation of Section 3(1) of the Act. A copy of this order be endorsed to the registration branch.

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

N. K. Goel

(Former Additional District and Sessions Judge)

Registrar -cum- Administrative Officer (Petition)
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.

Dated: 11.09.2019

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