

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

Complaint no. : 1771 of 2018
First date of hearing: 14.05.2019
Date of decision : 11.09.2019

Naju Medhi
R/o: GH-5, 10B, Orchid Gardens, Suncity,
Sector-54, Gurugram.

Complainant

Versus

M/s Today Homes and Infrastructure Pvt. Ltd.
Regd. Office: Statesman House, 8th Floor,
Barakhamba Road, New Delhi-110001

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Sushil Yadav Advocate for the complainant
Shri Satya Prakash Singh Authorized representative on
behalf of the respondent

BRIEF

1. A complaint dated 18.12.2018 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 complainant Naju Medhi, against the respondent- promoter M/s Today Homes and

AUTHENTICATED
GURBACHAN KAUR
LEGAL OFFICER



Infrastructure Pvt. Ltd. , on account of violation of clause 21 of the agreement to sell dated 10.10.2011 in respect of allotted flat/unit no. T1/1507, 15th floor, tower no. T1 of the project namely, "Canary Greens" situated in Sector 73, Gurugram for not delivering the possession by due date which is in violation of obligations of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the agreement to sell dated 10.10.2011 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as an application for non-compliance of statutory obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. 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.	T1/1507, 15 th floor, tower no.T1
5.	Flat measuring	1275 sq. ft.
6.	DTCP licence no.	Not available
7.	RERA registered/ not registered	Not registered
8.	Date of execution of agreement to sell	10.10.2011(Pg. no. 14 of the complaint)



9.	Payment plan	Construction linked payment plan(Pg. no. 28 of the compliant)
10.	Total sale consideration(as alleged by the complainant)	Rs.55,84,875/- (Pg. no. 7 of the complaint)
11.	Total amount paid by the complainant till date(as alleged by the complainant)	Rs. 46,93,510/- (Pg. no. 7 of the complaint)
12.	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)	10.04.2015
13.	Delay in handing over possession till date 11.09.2019	4 years 5 month
14.	Penalty clause as per agreement to sell dated 10.10.2011	Clause 21 of the agreement i.e. Rs.5/- per sq. ft per month for the entire period of such delay

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An agreement to sell dated 10.10.2011 is available on record for the aforesaid unit. The possession of the said unit was to be delivered by 10.04.2015 as per the agreement dated 10.10.2011. The promoter by not delivering the possession of the unit till date has failed to fulfil its obligation under section 11(4)(a) of the Act *ibid*.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance.

The case came up for hearing on 14.05.2019, 07.08.2019 and 11.09.2019. The reply has been filed by the respondent has been perused by the authority.

Facts of the complaint: -

6. The complainant submitted that the respondent gave advertisement in various leading newspapers about the forthcoming project named "Today Canary Greens", Sector-73, Sohna Road, Gurugram promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements, Mr. Subodh Purohit, booked a flat measuring 1275 sq.ft. in aforesaid project of the respondent for total sale consideration of Rs.55,84,875/- which includes BSP, car parking, IFMS, club membership, PLC etc. Thereafter, the complainant with the consent and permission of the respondent got endorsed the said flat in his name.
7. The complainant submitted that he has made payment of Rs. 46,93,510/- to the respondent vide different cheques on different dates.
8. The complainant submitted that as per agreement to sell, the respondent had allotted a flat bearing no.1507 in tower-T1

having super area of 1275 sq. ft. to the complainant. As per para no.21 of the said agreement, the respondent had agreed to deliver the possession of the flat within 36 months from the date of signing of the agreement dated 10.10.2011 with an extended period of six months.

9. The complainant submitted that he regularly visited the site but was surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the tower without completing the work and handing over the possession on time. Despite receiving of 95% approximately payments on time for all the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted flat to the complainant within stipulated period.
10. The complainant submitted that the complainant's flat was booked with a promise by the respondent to deliver the flat by 10.04.2015 but was not completed within time for the reasons best known to the respondent; which clearly shows that

ulterior motive of the respondent was to extract money from the innocent people fraudulently.

11. The complainant submitted that due to this omission on the part of the respondent, the complainant has been suffering from disruption on his living arrangement, mental torture, agony and also continues to incur severe financial losses. This could have been avoided if the respondent had given possession of the said flat on time. As per clause 23 of the said agreement it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.5/- per sq.ft. per month of the super area of the flat. It is however, pertinent to mention here that 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 respondent has exploited the complainant by not providing the possession of the flat even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyers agreement 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 respondent charges 18% per annum interest on delayed payment.

12. The complainant submitted that on the ground of parity and equity, the respondent should also be subjected to pay the same rate of interest. Hence, the respondent is liable to pay interest on the amount paid by the complainant from the promise date of possession till the flat is actually delivered to the complainant.

Issues to be decided:

13. Issues raised by the complainant are as follows:
- i. Whether the developer has violated the terms and conditions of the agreement to sell?
 - ii. Whether the complainant is entitled for possession along with prescribed interest for delay in possession?
 - iii. Whether interest cost being demanded by the respondent / developer is very higher i.e. 18% which is unjustified and not reasonable?

14. Reliefs sought:

The complainant is seeking the following reliefs:

- i. 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.
- ii. Pass any other directions as this hon'ble authority may deem fit and proper in the facts and circumstances of the case.

Respondent's reply: -

15. The respondent submitted that the opposite party is a company involved in the business of real estate development in Gurugram, Haryana. The respondent is a financially stable company that is not in default of its financial obligations. It is stated that the respondent is a solvent company and has the capacity both in terms of infrastructure and financial resources to complete its project "Canary Greens".
16. The respondent submitted that the agreement to sell was executed between the respondent and original allottee on 10.10.2011. Clause 38 of the agreement provides that all disputes between the respondent and allottee to be resolved through arbitration to be held in Delhi. The complainant is

the Act provides for exclusive jurisdiction to this hon'ble regulatory authority or takes away the right of parties to render jurisdiction in an arbitration tribunal.

17. The respondent submitted that the relief sought by the complainant is that of possession of the flat along with interest per annum from the date of booking of the flat. It is submitted that the relief of possession cannot be granted as the project / unit (T-1/1507) is at final stages of construction and the respondent shall deliver the possession of the unit in question within 12 months from the date of filing of this reply. It is also submitted that work in the said project is going on in full swing and possession related activities has already been started in some of the towers. It is submitted that the relief of interest per annum from the date of booking cannot be granted as the RERA under section 18 envisages interest only for period of delay, until withdrawal from the project has been sought. Furthermore, RERA renders this hon'ble regulatory authority without the jurisdiction to determine compensation / interest, by virtue of section 71.

18. The respondent submitted that it is imperative to mention here that the answering respondent had initially filed its application for RERA project registration qua project — "Canary Greens" before interim Real Estate Regulatory



Authority at Panchkula. However, the said application was not processed by the interim authority as after the publication of final HRERA Rules on 28.07.2017. The interim authority insisted that we have to submit the copy of valid license (license no. 03/2009) as granted by the Department of Town and Country Planning. Now, after the passing of Haryana Real Estate Regulatory Authority, Gurugram (Registration of Projects) Regulations 2018, the respondent was asked to file a new application before HARERA, Gurugram and accordingly a new application was filed by the respondent for registration of its project before this hon'ble authority and same is presently pending since 30.04.2018.

19. The respondent submitted that the opposite party, since 10.10.2011, faced numerous market considerations arising as a consequence of orders from Court of Law and policies of Government, while making an endeavour to complete the project within the proposed time frame, some of which are identified herein-below .

- The work at the site had been seriously hampered as disputes had arisen with the earlier contractor who was appointed to complete civil and other works in 'Today Canary Green's'. The ongoing work could not be

completed by the said contractor within time stipulated. The said contractor abandoned the work / project site which lead to the delay in the execution of the project in time. The delay on account of the said contractor was beyond the control of the respondent and not on its account. As a result of the continuous delay and non-mobilization of the work force and non-completion of the work in time, the respondent was forced to terminate the contract of the first contractor and new contractor was appointed to complete the project.

- There was the closure of brick kilns due to the norms of procuring permission from Ministry of Environment and Forest. This issue was also highlighted in the media. It is stated that the delay in the construction of the project was due to the non-availability of the raw materials , which is also included in the force majeure events in clause 22.
- The progress of the project also significantly got delayed due to demonetization policy dated 08.11.2016 which resulted in slow down/ suspension of the real estate



projects for regression in various support business / companies and agencies including the supply industry and transportation industry. The Government's unexpected demonetization policy dated 08.11.2016 put a severe dampener on the regular supply of materials for the project in question in view of the financial crunch.

20. The respondent submitted that the time period of 36 months was only proposed in the agreement to sell dated 10.10.2011 and it was subjected to events which were described in clause 22 of said agreement dated 10.10.2011. The respondent cannot be bound on to the same period without considering the circumstances which occasioned the delay in delivery of possession to the complainant.
21. The respondent submitted that respondent is a debt free company and the respondent has invested a huge sum of monies in this project and same is nearing possession. The respondent is arranging funds with great difficulties and even many customers of this project have stopped making payments of due instalments as per applicable construction linked payment plan and thus it will cause immense irreparable losses to company in case the order of payment of compensation is passed and the same are detrimental to the

interests of hundreds of allottees who are not in the litigation and are expecting the possession of their respective flats from the company at the earliest.

22. The respondent submitted that the authority was pleased to appoint a local commissioner Sh. Suresh Kumar Verma on 17.01.2019 for physical verification pertaining to the same project i.e, "Canary Greens". The report of the local commissioner was filed on 20.02.2019 before this hon'ble authority which submitted that the work has been completed physically about 46% approximately. It is submitted that the report was filed in the month of February which is much before the filing of this reply and since then almost 5 months have passed and it is submitted that the construction work has been completed much beyond the figure of 46% as was mentioned in the local commissioner's report. The same shall show and prove beyond doubt the progress made in the project and its advance stage of construction. It is, therefore, requested that the same may be taken into consideration for the purpose of adjudication of this complaint.

Determination of issues: -

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

23. **With respect to 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 annexure I), there is every reason to believe that vide the agreement to sell dated 10.10.2011, the possession of the flat was to be handed over within 36 months + 6 months grace period from the date of execution of agreement. Therefore, the due date of handing over the possession shall be computed from 10.10.2011. Accordingly, the due date of possession was 10.04.2015 and the possession has been delayed by 4 years 5 months till date of decision. Therefore, under provisions of proviso to section 18(1) respondent is liable to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. As the promoters have failed to fulfil his obligation under section 11(4)(a), the promoters are liable under section 18(1) proviso of the Act *ibid* read with rule 15 of the rules *ibid*, to pay interest to the complainant, at the prescribed rate, for every month of delay

till the handing over of possession. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.35% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. 10.04.2015 upto the date of offer of possession.

24. Further, suffice to say that the award of payment of compensation is outside the jurisdiction of the authority and the complainant is at liberty to file an application before the adjudicating officer under section 71 of the act along with the enabling section.

Findings of the authority: -

25. 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 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.

Arguments heard.

Brief facts leading to this complaint are that by virtue of clause 21 of the Builder Buyer Agreement dated 10.10.2011 for unit No. T1/1507, 15th floor, Tower-T1, in project "Canary Greens" Sector-73 Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of agreement i.e.10.10.2011 + 6 months grace period which comes out to be 10.4.2015. The respondent has failed to deliver the possession of the unit in time. Complainant has already paid Rs.46,93,510/- to the respondent against a total sale consideration of Rs.55,84,875/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.35% per annum w.e.f 10.4.2015 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the actual offer of possession.

Decision and directions of the authority:-

26. The authority exercising its power under section 37 of the Act hereby issues the following directions to the respondent:


- i. The respondent is liable to pay delay possession charges at the prescribed rate of interest @ 10.35% from the due date of delivery of possession i.e. 10.04.2015 till offer of possession to the complainant as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.
- ii. The arrears of interest accrued so far shall be reimbursed to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid on or before 10th of each subsequent month.
- iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period of possession.
- iv. The promoter shall not charge any amount/charges from the complainant which is not a part of the agreement to sell.


- v. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.35% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

27. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under the Act *ibid*. A copy of this order be endorsed to registration branch for further action in the matter.

28. The complaint stands disposed of accordingly.

29. The case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.09.2019

Judgement uplod on 15.10.2019

AUTHENTICATED
GURBACHAN KAUR
LEGAL OFFICER