

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

**Complaint no. : 1910 of 2018**  
**First date of hearing : 26.02.2019**  
**Date of decision : 14.03.2019**

M/s Associated Retail (India) Pvt Ltd  
(Through its director Naresh Garg)

**Registered office :** 215/10178, Ravindra  
Plaza, Abdul Aziz Road, WEA Karol Bagh,  
New Delhi

**Complainant**

Versus

M/s Today Homes & Infrastructures  
Pvt. Ltd.,

**Office at:** Statesman House, 8<sup>th</sup> floor,  
Barakhamba Road, New Delhi-110001.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sandeep Chaudhary proxy Advocate for the complainant  
counsel for Shri Gaurav  
Dahiya, Advocate  
Shri Naveen Jakkar, Assistant Advocate for respondent  
Manager (Legal)



**EX-PARTE ORDER**

1. A complaint dated 15.05.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read

with section 71 of the Haryana Real Estate (Regulation and Development) Act, 2016 by the complainant M/s Associated Retail (India) Pvt Ltd, against M/s Today Homes & Infrastructures Pvt Ltd, for the unit described below in the project "Callidora" for altering the terms unilaterally.

2. Notices w. r. t. hearing of the case were issued to the respondent on 01.12.2018, 20.12.2018 and 05.01.2019 for making his appearance. However, despite due and proper service of notices, the respondent did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does not want to pursue the matter before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings ex-parte and decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in his complaint
3. Since, the agreement to sell has been executed on 17.10.2012 i.e. prior to the commencement of the Real Estate (Regulation



and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016

4. The particulars of the complaint are as under: -

1.	Name and location of the Project	'Callidora' Sector-73, Gurugram, Haryana.
2.	RERA registered / not registered	<b>Not Registered</b>
3.	Unit/ Villa No.	T4/1404, 14 <sup>th</sup> floor
4.	Unit measuring	1622 sq. ft.
5.	Date of agreement to sell	17.10.2012
6.	Total consideration	Rs. 83,69,838/- (as per statement of accounts dated 13.01.2018)
7.	Total amount paid by the complainant till date	Rs. 78,54,985.40/- (as per statement of accounts dated 13.01.2018)
8.	Payment plan	Construction linked plan
9.	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.	<b>17.04.2016</b>
10.	Delay of number of months/ years till date	2 years 10 months 10 days



11.	Penalty clause (as per clause 23 of the agreement to sell)	Rs.5 per month per sq. ft for the period of delay.
-----	--	--

5. 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 17.10.2012 is available on record for the aforesaid unit. The possession of the said unit was to be delivered by 17.04.2016 as per the said agreement. Therefore, the promoter has not fulfilled his committed liability as on date.
6. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Despite service of notice, respondent failed to appear and file reply as directed. Thereafter, again notice was sent to respondent but despite service of notice the respondent neither appeared nor filed their reply to the authority and complaint. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte on the basis of the facts available on record and adjudge the matter in the light of the facts adduced by the complainant in its pleading. Therefore,



their right to file reply has been struck off and case is being proceeded ex-parte against the respondent.

### Facts of the case

7. The complainant submitted that the respondent company has been advertising themselves to be working with the mission to provide customers with a benchmark in the industry by adhering to the best in quality, design, delivery on commitment, honesty, transparency and value for money and further you had been advertising that the respondent company are coming up with a new project with the name and style of "Today Callidora" representing that the same is located in the most sought after rambling destination and shall turn out to be a retreat in the booming metropolis with all amenities and most sides of the project would be open and it shall be the right amalgamation of open space, nature, convenience and community.

8. The complainant submitted that believing in the above advertisements and specific representations of the respondent's representatives that the said project shall be delivered by the year 2015 to be true, the complainant



company for the personal use and occupation of its directors booked a residential unit in the said project named Callidora of the respondent at Sector 73, Gurugram.

9. The complainant submitted that an agreement to sell dated 17.10.2012 was executed between the parties wherein the respondent confirmed the allotment of unit bearing no. T4/1404 on the 14<sup>th</sup> floor of tower no. T4 having super area of 1622 sq. ft. in "Callidora" project at sector 73, Gurugram, for the basic sale consideration of Rs. 70,55,700/-.
10. As per the terms of the said agreement the said property was to be developed and delivered within 36 months from the date of the said agreement with a grace period of 6 months i.e. the respondent was obliged to deliver the possession of the said unit lastly by April, 2016.
11. The complainant submitted that accordingly, as per the initial booking, allotment and agreement to sell so executed the complainant in its readiness and willingness kept paying the instalments as and when called upon by the respondent and lastly by December, 2017 an amount of Rs. 78,54,985.40/- has been paid by the complainant to the respondent.



However, the respondent miserably failed in delivering the possession of the said property.

12. The complainant submitted that the respondent failed to deliver the timely possession as assured and all the representations and assurances of the respondent companies have now turned all false and fraudulent and it is quite evident that the respondent have been wrongfully availing the monies of the complainant and the possession still looks distant and the construction of the project is far from completion.

13. The complainant submitted that the complainant had been repeatedly enquiring about the status of the project and the reasons for delay but to no avail against the economic might and superior position of the respondent companies as none from the respondent company's informs anything about the timelines of the project and the hard earned monies of the complainants and the representatives just keep passing the buck.

14. The complainant submitted that despite the complainant readiness and willingness to perform their obligations and



having paid a substantial amount already, as on date also, the construction is at a very slow pace and it shall at least take another 2-3 year time in completion of the project.

15. The complainant submitted that no other complaint or legal proceedings are pending before any court of law or forum between the parties.

16. The complainant also submitted that the cause of action for filing the present complaint is a subsisting and continuing one since April, 2016 as the respondent have committed gross breach of their obligations of development of the project.

#### **Issues to be decided**

17. The issues raised by the complainant are as follows :

- i. Whether the complainant is entitled to refund of the amount paid to the respondent company along with interest from the date of payment till refund?

or

Whether the complainant is entitled to the delay interest at the prescribed rate for the delay on a monthly basis till the date of delivery of possession?





- ii. Whether the respondent is liable to pay compensation for the delay caused in addition to the refund?

### Relief sought

18. The reliefs sought by the complainant are as follows :

- i) That the present complaint may kindly be allowed throughout with costs;
- ii) That the respondent be directed to refund the amount of 78,54,985.40/- paid by the complainant as per the statement of accounts along with interest at the rate of 18% from the date of payment till refund to the complainant
- or
- iii) That in the alternative, the respondent be directed to pay delay interest at the prescribed rate for every month of delay till the date of handing over of the possession to the complainant.



### Determination of issues

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

20. With respect to the **first issue**, refund is ascertained through the construction status. Keeping in view the present status of the project, the authority is of the view that giving refund at this stage will adversely affect the interest of other allottees who wish to continue. Therefore refund cannot be allowed.

21. The authority came across clause 23 of the agreement to sale. The clause regarding the possession of the said unit is reproduced below:

“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 additionally be entitled to a period of 6 months grace period after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the company including but not limited to delays in obtaining the occupation certificate/completion certificate, etc., from the competent authority.”

22. Accordingly, the due date of possession was 17.04.2016 and the possession has been delayed by 2 years 10 months and 10 days till date. The respondent is liable under section



16(a)(1) proviso to pay delay interest to the complainant, at the prescribed rate for every month of delay till the handing over of possession.

23. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month for the period of delay as per clause 23 of the agreement to sell is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (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.”

24. With respect to **second issue**, with regard to compensation, the complainant has made a statement before the authority



that complainant is not appearing for compensation and he reserves the right to seek compensation before the adjudicating officer.

### Findings of the authority

25. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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.
26. In the present case, the authority has observed that as per clause 23 of the agreement to sell dated 17.10.2012 for unit no. T4/1404 at 14<sup>th</sup> floor in project Callidora 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 to sell + 06 months grace period which comes out to be 17.04.2016. As per LC report dated 13.03.2019 only 50% work is complete. Complainant has



already paid Rs.78,54,985/- to the respondent against a total sale consideration of Rs. 83,69,838/-.

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

26. After taking into consideration all the material facts as adduced and produced by the complainant, 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 respondent in the interest of justice and fair play:

- (i) The promoter is directed to pay delay interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 17.04.2016 till the date the delivery of possession to the complainant.
- (ii) The arrears of interest accrued so far shall be paid 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 before 10<sup>th</sup> of subsequent month.



27. The order is pronounced.
28. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated : 14.03.2019

Judgement uploaded on 09.04.2019



**HARERA**  
GURUGRAM

