

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

Complaint no. : 1151 of 2018
First date of hearing: 08.02.2019
Date of decision : 02.05.2019

Shri. Harender Kumar
Jhankar Senior Secondary School,
Shikohpur Road, Residence area,
Gurugram: 122004.

Complainant

Versus

M/s Raheja Developers Ltd.
Registered office: W4D/204/5, Keshav
Kunj, Western Avenue, Cariappa Marg,
Sanik Farm, New Delhi: 110062.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri. Narender Yadav Advocate for the complainant
Shri. Kamal Yadav Advocate for the respondent

ORDER

1. A complaint dated 23.10.2018 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 Shri. Harender

Kumar against the promoter, M/s Raheja Developers Ltd. in respect of apartment/unit described below in the project “Raheja Revanta”, on account of violation of the section 11(4)(a) of the Act *ibid*.

2. Since, the agreement to sell has been executed on 17.05.2012 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 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 are as under: -
 - **Nature of the project:** Residential group housing colony
 - **DTCP license no:** 49 of 2011 dated 01.06.2011
 - **RERA Registered/Unregistered :** Registered (32 of 2017) dated 04.08.2017

1.	Name and location of the project	"Raheja Revanta ", Sector 78, Gurugram, Haryana
2.	Registered/Unregistered	Registered (32 of 2017) Dated 04.08.2017 (upto 5 years from the date of revised environment clearance)
3.	DTCP License no.	49 of 2011 dated 01.06.2011
4.	Payment plan	Construction linked
5.	Date of agreement to sell	17.05.2012
6.	Unit no.	A-204, 20 th floor, tower-A
7.	Area of unit	1621.390 sq. ft.
8.	Total consideration as per applicant ledger dated 17.07.2018	Rs 1,13,22,824/-
9.	Total amount paid by the complainant as per applicant ledger dated 17.07.2018	Rs. 1,05,74,569/-
10.	Due date of possession clause 4.2 - within 48 months in respect of "surya tower" from the date of execution of agreement to sell + 6 months grace period	17.11.2016 Note: (the complainant booked an apartment in Surya tower as per alleged by the respondent in reply)
11.	Delay in offering possession till date	2 years 5 months 15 days
12.	Penalty as per clause 4.2	Rs.7 per sq. ft' of super area

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 is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 17.11.2016. The respondent has not delivered the possession of the said unit as on date to the purchaser. Therefore, the promoter has not fulfilled his committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. Accordingly the parties appeared on 08.02.2019. The reply filed on behalf of the respondent has been perused.

FACTS OF THE CASE:

6. The complainant submitted that the complainant was in a dire need of an accommodation in Gurugram of their own as after shifting from their native village, he has been living in a rental accommodation at Gurugram for the past couple of years.
7. The complainant submitted that after visiting various places in Gurugram in search of a good accommodation the complainant

came into contact with the respondents company officials, where it was informed to the complainant that the respondents company in planning to build a residential accommodations in sector 78, Gurugram and on-going through the attractive brochure, the payment plan and assurance given by the officials of the respondents company regarding constructing of various projects in Gurugram and other districts of Haryana within the stipulated period and the reputation of the respondents company, the complainant decided to have an accommodation in the respondents company project.

8. The complainant submitted that accordingly the complainants booked a unit/floor at the respondent company project i.e. Revanta in Sector-78 and on payment of Rs. 95,25,666 lakhs as basic sale price, the complainant was allotted a unit bearing no. A-204 on 20th floor, tower a having an area measuring 1621.3 sq. ft.
9. The complainant submitted that on depositing the amount as per the payment plan opted by the complainants time to time, an agreement to sell was executed between the complainants

and the respondent company through its authorised signatory Shri. Sarveshwar on 17.05.2012 carrying all the details of terms and conditions which were to be complied by the complainant time to time as well as the respondent company.

10. The complainant submitted that as per one of the terms and conditions of the said agreement to sell dated 17.05.2012 it was agreed and settled that the possession of the said unit shall be handed over to the complainants within a stipulated period of 36 months from the date of sanctioning of the building plans or execution of floor buyers agreement whichever is later. It was further agreed and settled that the respondent company shall additionally be entitled to a period of 6 months after the expiry of said commitment period to allow for filing and pursuing the occupancy certificate etc. Hence from the above said clause as mentioned in para 4.2 of agreement to sell dated 17.05.2012, the respondent company was duty bound to handover the physical possession of the above said unit to the complainant positively up to November 2015 and it was told that till date they have not delayed completion of any project.

11. The complainant submitted that the complainant without making any kind of delay always deposited the amount as per the payment plan opted by the complainant immediately on receipt of letters from the respondent company and in total the complainants paid an amount of Rs.1,05,74,569/- which has also been admitted and acknowledged by the respondents company officials. Hence the complainant has already paid almost the whole basic sale price of the above said unit which is Rs. 95,25,666/-.
12. The complainant submitted that from the above said timely payment made by the complainant in the respondent company leaves no iota of doubt that the complainant have been very sincere and honest while complying the terms and conditions of the letter of allotment as well as that of buyers agreement.
13. The complainant submitted that on account of not constructing the above said unit within the stipulated period of 36 months and even after taking grace period of 180 days(6 months) the complainant kept on requesting the respondent company's officials to complete the construction as early as possible.

14. The complainant submitted that on date 10.08.2018 the complainant visited the site in order to see whether the unit applied by the complainant is ready to occupy or not but the complainants stunned to know that the unit booked is altogether different which the complainant tried to show the respondent.

ISSUES RAISED BY THE COMPLAINANT:

15. The following issue is raised by the complainant:
- i. Whether or not the respondent has violated the terms and conditions of the agreement to sell thereby delaying possession and is entitled for the interest for the same?

RELIEF SOUGHT:

16. In view of the above, complainants seeks the following relief:
- a. To handover the physical possession of the booked unit no. A-204 on 20th floor, tower-A to the complainant on completing repairs and renovation and being fit for living conditions immediately.
 - b. To permit the complainant to deposit the amount as per the letter of allotment and agreement to sell dated 17.05.2012

- i.e. 10% of BSP+ IFMS+ PBIC+ stamp duty + registration charges+ administrative charges.
- c. To pay the amount as detailed in para G of brief facts of the complaint on account of not handing over the possession of the unit bearing no. A-204 on 20th floor, tower-A to the complainant within 36 months and thereafter further taking 180 days of grace period by the respondent i.e. positively by November-2015.
- d. The complainant be also awarded an amount of Rs 50,000/- towards litigation expenses of present complaint.
- e. Any other relief which this hon'ble authority deem fit and proper.

RESPONDENT REPLY:

17. The respondent submitted that the complaint filed by the complainant before the Ld. Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before this Ld. Authority as the reliefs

being claimed by the complainant cannot be said to even fall within the realm of jurisdiction of this Ld. Authority.

18. The respondent submitted that the respondent's project is a group housing project i.e. Revanta which is situated in Sector-78, Gurgaon. The said project has two components, one is towers Tapas and another is Surya tower and is the most iconic and tallest structure of Haryana. The instant complainant had booked an apartment in Surya Tower of the said project on which he was allotted with unit no. A-204, tower A having a super area 1621.390 Sq. ft.
19. The respondent submitted that it is pertinent to mention that the respondent had always complied with laws and after the enforcement of RERA Act, 2016, the respondent company applied for the registration of the said project. The said project is registered under RERA with registration no. 32 of 2017 dated 04.08.2017.
20. The respondent submitted that it is humbly submitted that the agreement was executed between the complainant and the respondent on 17.05.2012. As per clause 4.2 of the agreement,

in case of Surya tower the possession was to be handed over after providing of necessary infrastructure specially road, sewer and water in sector /to the complex by the Government and subject to force majeure conditions or Government inaction etc.

21. The respondent submitted that in the present complaint, the complainant is seeking refund along with interest. The prayer of the complaint should not be entertained by the Hon'ble Authority as the development of the project is in full swing and in progress. The project has been completed more than 75%. It is pertinent to mention that there been no delay in handing over the possession due to lack of infrastructure and circumstances which are beyond the control of the respondent. It is humbly submitted that the basic infrastructure has not been provided by the State Government Authorities such as roads, sewerage line, water and electricity supply in the sector where the said project is being developed. Till date no step for development of road, sewerage, lay down of water and electricity supply line has taken place. So due to various defaults and non-delivery of commitments made by the state agencies, the answering respondents is developing

the project on time and the progress on the project is as per the terms of agreement to sell. It is also submitted that as per article 4.2 of the agreement which was issued to the complainant, in case of Surya tower, the possession shall be handover within 48 months plus 6 months (grace period) from the date of execution of the agreement to sell is subjective and conditional. However, it was specifically mentioned in such agreement such stipulated period of delivery of possession shall start only after the necessary infrastructure especially road, sewer & water etc. are provided, in the sector by the Government. So, the complainant is making false allegations that the respondents were not in position to hand over the possession.

22. The respondent submitted that it is further submitted that the respondent had also filed RTI application for seeking information about the status of basic services such as road, sewerage, water and electricity. Thereafter, the respondent received the reply of such application from HSVP where it is clearly stated that no external infrastructure facilities were laid down by the concerned govt. agency/department.

Therefore, delay in delivery of said unit could not be attributed on the part of the answering respondent. State government agencies are contributory to such defaults, thus, they are vicariously liable for any compensation or penalty to be paid by respondents, if any.

23. The respondent submitted that it is pertinent to mention that without basic external infrastructure facilities such as hygienic water, roads, sewerage, allottees will suffer more if they take the possession of the apartment. The government agencies have failed miserably to provide essential basic infrastructure facilities, due to which answering respondents has been struck in situation, where delay in completing and handing over the project is causing force majeure where default/ delay of possession the terms of agreement becomes unintentional, qua delay in offer of possession.

24. The respondent submitted that respondent got the overhead wires shifted underground at its own cost and only after adopting all necessary processes and procedures and handed over the same to the HVPNL and the same was brought to the notice of District Town Planner vide letter dated 28.10.2014

requesting to apprise DGTCP, Haryana for the same. It is pertinent to mention that two 66 KV HT lines were passing over the project land which was intimated to all the allottees as well as the complainant. The respondent did his level best to ensure that complex is constructed in the best interest and safety of the prospective buyers. It is pertinent to mention that during such time when all such procedure and process were taking place, concurrently some amendments took place in Haryana Fire Safety Act, 2009 due to which it was further technically advised and mandated to have additional service floors/fire refuge area in the high rise tower as additional safety norms, to which the respondent complied in letters and spirit.

25. The respondent submitted that it is humbly submitted that the respondent through its application for allotment of apartment in the aforementioned project had clearly intimated in writing and had explained it detail about the status of infrastructure and its effect on the construction of the project. Further, the respondent also in the agreement to sell had again informed in writing to its all customers and complainant as well for

handing over the possession of apartment would start from the availability of the basic infrastructure.

26. The respondent submitted that it is pertinent to mention that as per clause 4.3 of the agreement to sell, the complainant understands and agrees that he shall not claim any compensation for delay due to non-provision of infrastructure facilities or consequent delay in handing over the possession of the apartment in the project since provision of connections by the government authorities is beyond the scope and control of the seller. For the reference, clause 4.3 of the terms and conditions of the agreement is reproduced hereunder:

“4.3 The said project falls within the new Master Plan of Gurgaon and the site of the project may not have the infrastructure in place as on the date of booking or even at the time of handing over of possession as the same is to be provided/ developed by the Government/ nominated agency. Since this is beyond the control of Seller, therefore, the purchaser shall not claim any compensation for delay in handing over the possession of the unit (s) in the Project.”

27. The respondent submitted that it is humbly submitted that the respondent is a law abiding person and is making all the efforts to complete said project within shortest time period. The complainant's unit falls in Surya tower which is expected to

complete by end of 2020 post which is expected and subject to good developing infrastructure such as sector road and laying providing basic external infrastructure such as water, sewer, electricity etc. as per terms of the application and agreement to sell executed. The handover formalities shall be initiated possession shall be offered once the basic infrastructure facilities will be provided by the state government. It is further submitted that the said project is on full swing but due to exceptional circumstances the respondent is forced to delay timing of possession of the said unit awaiting infrastructure.

DETERMINATION OF ISSUES:

28. After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the issue wise findings are as hereunder:

i. With respect to **first issue** raised by the complainant the authority came across that as per clause 4.2 of agreement to sell, the possession of the said apartment was to be handed over within 48 months from the date of the execution agreement plus 6 months grace period. In present case due

date of possession will be calculated from the date of execution of agreement to sell. The agreement to sell was executed on 17.05.2012. Therefore, the due date of possession comes out to be 17.11.2016 and the possession has been delayed by 2 years 5 months 15 days till the date of decision. Therefore, under section 18(1) proviso the respondent has to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1) is hereby allowed. 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 10.70% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. 17.11.2016 upto the date of offer of possession.

FINDINGS OF THE AUTHORITY:

29. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.
30. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices 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.
31. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.

32. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions of the Act and to fulfil its obligations.
33. The counsel for the respondent has stated that there are obligations of the Government as per the provisions of Haryana Development and Regulation of Urban Area Act, 1975 w.r.t provisions of external services like sewerage, Master plan roads, water supply, storm water drainage etc. for which the government has charged EDC/IDC and is obligated to provide such services so that the respondent could deliver the unit to the prospective buyers. However, government has not fulfilled its commitment for which they have charged EDC, IDC from the respondent.
34. Respondent is advised to file a representation separately in this respect and get directions from the RERA authority. The respondent has also cited the instructions of the Competition Commission of India (CCI) in case no.40 of 2017 case titled as Confederation of Real Estate Developers Association of India – NCR (CREDAI-NCR) versus Department of Town and Country

Planning, Government of Haryana given to the DTCP directing them to initiate steps for acquisition of land for the purposes of undertaking External Development Works for the provision of master services like water supply, sewerage, drains, roads, electrical works etc. in the area as per the Sohna Master Plan.

35. As per clause 4.2 of the agreement to sell dated 17.5.2012 for unit No.A204, tower-A, in project "Raheja Revanta" Sector 78, Gurugram, possession was to be handed over to the complainant within a period of 48 months from the date of execution of agreement to sell + 6 months grace period which comes out to be 17.11.2016.
36. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,05,74,569/- to the respondent against a total sale consideration of Rs.1,13,22,824/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.70% per annum w.e.f 17.11.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the date of offer of possession after obtaining occupation certificate from DTCP, Haryana.

DECISION AND DIRECTIONS OF THE AUTHORITY:

37. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation And Development) Act, 2016 hereby issue the following direction to the buyer in the interest of justice and fair play:

- i. The respondent is directed to pay interest at the prescribed rate of 10.70% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. 17.11.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the date of offer of possession after obtaining occupation certificate from DTCP, Haryana.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- iii. The respondent is directed not to charge anything from the complainant which is not the part of the agreement to sell.
- iv. The respondent is directed to charge interest on due payments from the complainant at the prescribed rate of interest i.e. 10.70% , which is same as is being granted in case of delayed possession.
- v. The arrears of interest so accrued @ 10.70% p.a. so far shall be paid to the complainant within 90 days from the date of this order. Therefore, monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
38. The order is pronounced.
39. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:02.05.2019

Judgement uploaded on 28.05.2019