

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

**Complaint No. : 206 of 2018**  
**First date of hearing : 30.05.2018**  
**Date of Decision : 23.04.2019**

Ms. Kiran Shukla, D/o Mr. Birendra Shukla,  
R/o. Flat no. 707, Saksham Apartment,  
Plot no. 40B,  
Sector-10, Dwarka, New Delhi-110075.

**Complainant**

Versus

M/s.Raheja Developers Ltd.  
**Address:** -Keshav Kunj, Carlappa Marg,  
Western Avenue, Sainik Farm,  
New Delhi- 110062.

**Respondent**

**CORAM:**

Shri Samir Kumar

**Member**

Shri Subhash Chander Kush

**Member**

**APPEARANCE:**

Mr. Kiran Shukla : Complainant in person

Sh. Kamal Dahiya: Advocate for the respondent.

**ORDER**

1. A complaint dated 27.04.2018 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 Ms. Kiran Shukla, against the promoter M/s Raheja Developers on account of alleged rectification of construction and delay in carrying out the construction which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

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

1.	Name and location of the project	"Raheja's Vanya", Sector 99A, Gurugram, Haryana.
2.	Flat/apartment/unit no.	A- 112
3.	Admeasuring super area of the unit	1751.53 sq. ft.
4.	RERA registered/not registered	Registered vide Regd. No. 7 of 2017 (Phase I Gulmohar Tower and 8 of 2017 Phase III Palash Tower)
5.	DTCP license no. (Annx R/2)	64 of 2013 dated 20.07.2013 and no. 72 of 2014 dated 01.08.2014
6.	Nature of real estate project	Residential group housing colony <b>(Annx R/2)</b>
7.	Date of execution of Buyer's Agreement	Agreement not executed
8.	Payment Plan	Construction linked payment plan
9.	Total consideration as per the statement of accounts <b>(Annx R5)</b>	Rs. 90,65,551/-
10.	Total amount paid by the complainant till date <b>(Annx R5)</b>	Rs. 7,30,000/- ( i.e. 22.66% of the total consideration )
11.	Due date for delivery of possession as per clause 18 of the application form.	48 months + 6 months' grace period from the date of execution of agreement. <b>(Pg.27 of the reply)</b>

	<i>Note – Builder buyer's agreement has not been executed between the parties, so the date for delivery of possession cannot be ascertained.</i>	
12.	Delay in handing over possession till date	No Delay
11.	Date of cancellation of booking by the respondent	29.05.2018 <b>(Annx R5)</b>

3. The details provided above have been checked as per records available in the case file which have been provided by the complainant and the respondent.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel appeared on 30.05.2018. The case came up for hearing on 30.05.2018, 12.07.2018, 06.09.2018, 18.09.2018, 28.09.2018, 26.10.2018, 29.11.2018, 10.01.2019, 12.02.2019 and 23.04.2019. On 12.07.2018, the case was dismissed in default for non-appearance, but it was restored on 03.08.2018 as per the directions of the authority and fresh notice was served on the respondent. The reply has been filed on behalf of the respondent on 30.05.2018 which has been perused by the authority.

### **Facts of the complaint-**

5. Briefly stated, facts relevant for the disposal of present complaint as per the complainant's version are that on 02.03.2017, the respondent issued an advertisement in newspaper and other media inviting application for purchase of plot/flat/apartment/shops in their project, namely 'Raheja's Vanya', located at sector - 99A, Gurugram, Haryana. Lured by the said advertisement of the respondent, complainant decided to book a unit in the said project and submitted the application form with the respondent on 02.03.2017. The complainant alongwith application form paid Rs. 7,30,000/- as advance money to the respondent which was duly acknowledged by the respondent's representative. It was alleged by the complainant that Mr. Gaurav, sales manager of the respondent has assured earning of Rs. 1500/- or more per square yard. The respondent has served demand letters dated 20.07.2017 for Rs. 11,75,673/-; dated 04.08.2017 for Rs. 11,77,080/-; dated 08.08.2017 for Rs.25,02,335/-. It was stated by the complainant that due to implementation of GST the prices of property have increased and she (complainant) being the single mother having limited resources could not have been able to arrange huge amount as demanded by the

respondent time and again. She was misguided by the officers of the respondent company and fell into prey. Complainant vide letter dated 08.12.2017 explained her difficulties to the respondent and sought refund of the paid amount. On getting no fruitful response, the complainant has filed the present complaint.

**Note - Buyer's Agreement was not executed between the parties.**

**Issues to be determined: -**

1. Whether the promoter has demanded more money than agreed in the agreement without providing any additional facilities or without any justification?
2. Whether the construction work has not yet started and there is no sign that the construction work will start in near future?
3. Whether the interest cost being demanded by the developer is unreasonable?
4. Whether the petitioner is not satisfied with the service and statements given by staff of respondent and whether the respondent's officials have misguided their clients and made false promises?

**Reliefs sought:-**

- i. The petitioner's original seniority/customer ID No. fappvan/00030/16-17 for allotment of the developed flat/plot/building/apartment no. 112, in the same project i.e. Raheja's Vanya at sector -99A, Gurugram, Haryana; OR
- ii. Deposit of Rs. 7,30,000/- should be refunded to my client as soon as possible.
- iii. Any other compensation, HRERA deems adequate and legitimate and is available to other customers.

**Respondent's reply:-**

6. The respondent denies each and every allegation raised by the complainant in the captioned complaint. It was submitted by the respondent that there is no violation made by them under any of the provisions of RERA Act, 2016. The project was duly registered under RERA bearing registration number 7 of 2017 and 8 of 2017. It was further submitted by the respondent that booking amount was paid by the complainant vide cheques on two dates i.e. 06.03.2017 and 14.06.2017. Thereafter, the complainant has failed to make payment of further instalments as per the payment schedule despite various reminder letters of the respondent. Since the complainant has

defaulted in making payment of instalment, her booking of the unit was cancelled on 29.05.2018 in terms of clause 20.3 of the application form. Hence, the complaint is liable to be dismissed.

**Determination of issues :-**

7. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:
8. With respect to **the issues** raised by the complainant, the complainant has failed to adduce any evidence to prove that the respondent has demanded more money than agreed in the agreement. It also comes to our notice that complaint is totally silent as to whether any agreement for the allotted unit was executed between the parties or not. Otherwise also the complainant has failed to prove by any cogent evidence that there is a delay in construction of the project. The evidence produced by the respondent shows that the complainant has failed to pay the instalment amount as per the schedule despite repeated reminders from the respondent. So, her booking was cancelled on 29.05.2018 in terms of clause 20.3 of the application form. Clause 20.3 of the application is reproduced below –

*“... (i) In case the applicant(s) intending allottee(s) fails to make payments for 2 consecutive demands made by the company as per the payment plan annexed hereto, despite having been issued notice in that regard the applicant(s)/intending allottee(s) shall be liable to pay interest to the company on the unpaid amount at the rate specified in proposed agreement for sale.*

*(ii) In case of default by the applicant(s)/intending allottee(s) under the condition listed above, continues for a period beyond 3 consecutive months after notice from the company in this regard, the company shall cancel the allotment of the apartment in favour of the applicant(s)/intending allottee(s) and refund the balance amount paid by to it by the applicant(s)/intending allottee (s) after substitution of the equivalent amount from the next purchaser as the amount may have been gone into the construction or subject to provisions of balance in the escrow account without affecting the phase -1 of the project execution including compensation by deducting the earnest money, the applicable interest on delayed payment, if any, brokerage amount, other expenses and liabilities and proposed agreement shall thereupon stand terminated”.*

9. Since, the complainant has failed to make payment of instalment despite repeated reminders and service of final demand notice from the respondent on 09.10.2017. So, the



respondent has cancelled the booking on 29.05.2018 and offered Rs. 33,767/- as amount to be refunded. In this regard, as per regulation no. 11/RERA GGM Regulation 2018 dated 05.12.2018 which is reproduced below-

*“5. Amount of earnest money*

*.....In view of the facts and taking into consideration the judgements of Hon’ble National Consumer Disputes Redressal Commission (**DLF Ltd. v. Bhagwanti Narula- RP no. 3860 of 2014 decided on 06.01.2015**) and the Hon’ble Supreme Court of India(**Maula Bux v. Union of India; Indian Oil Corporation Ltd. v. Niofer Siddiqui & Ors.; Shakti Singh v. M/s. Bestech India Pvt. Ltd. and Balmer Lawrie Co. Ltd. v. Partha Sartha Sen Roy & Ors** ) , the authority is of the view that forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/pot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer.”*

Hence, in view of the discussion above forfeiture of more than 10% of the total sales consideration amount is not justified in the eyes of law.

**Findings of the authority: -**

10. 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 14.12.2018 issued by Town and Country Planning Department, 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.

11. A show cause notice dated 23.04.2018 has been served on the respondent Company on account of violation of provision of section 13 of the Act, as to how the respondent Company is entitled to accept more than 10% of the total cost of the apartment, plot or building, as the case may be, as advance payment or application fee from the allottee without first entering into a written agreement for sale. Shri Tarun Sharma – Manager Legal of the respondent Company is present and received show cause notice issued by the authority on 23.04.2019. Counsel for the respondent has filed reply on the said notice today. A copy of reply of show

cause notice be sent to the registration branch for taking necessary action in the matter.

12. Arguments heard. The complainant had booked a flat no. A-112, in the project "Raheja's Vanya", located at Sector 99 A, Gurugram by paying Rs. 6,25,000/- plus taxes which is equivalent to 22.66% of the total sales consideration (**Annexure R5**) as paid to the respondent, M/s. Raheja Developers Ltd. Later on, the complainant was not happy to continue with the project on account of certain reasons i.e. (i) she has limited resources and unable to pay the remaining balance, she has children to take care of them and the only earning member; (ii) being a single mother it is difficult for her to arrange such a big amount; (iii) she is misguided by the officer of the defendant company and fell into planned trap of the respondent company; and (iv) after implementation of GST, prices of the apartment/flat/shop/building have increased due to which the complainant is unable to pay the earlier amounts due. However, the respondent sent her a buyer's agreement for signatures which was never signed and returned to the respondent.
13. Complainant has moved an application with the respondent with the request to wriggle out from the project

as per section 12 of the Real Estate (Regulation and Development) Act, 2016, as such, the authority considering the matter on merits directs the respondent to refund the amount deposited by the complainant alongwith prescribed rate of interest as per section 18(1) proviso of the Act ibid.

**Decision and directions of the authority: -**

14. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions in the interest of justice and fair play: -

- The respondent is directed to refund the amount deposited to the complainant alongwith prescribed rate of interest @ 10.70% per annum from the date of cancellation of booking i.e. within 90 days from the date of this order.

15. The order is pronounced.

16. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: - 23.04.2019

Judgement uploaded on 02.05.2019



**HARERA**  
GURUGRAM