



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

Complaint no. : 4906 of 2021
First date of hearing: 08.02.2022
Ordre reserved on: 14.12.2022
Order pronounced on: 01.03.2023

1. Mrs. Aditi Rajyalaxmi
2. Mr. Shivani Pratap Singh
Both RR/o: - Apartment No. C-804 and 12A, Sector-7,
Dwarka, New Delhi- 110075

Complainants

Versus

M/s Raheja Developers Limited.
Reg. Office: - 215-216, Rectangle One, D-4, District Center,
Saket, New Delhi- 110017

Respondent

CORAM:

Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member

APPEARANCE:

Sh. Yajur Bhalla (Advocate)
Sh. Garvit Gupta (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 08.12.2021 has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all



obligations, responsibilities and functions under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Raheja Atharva", Sector 109, Gurugram, Haryana
2.	Project area	14.812 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	257 of 2007 dated 07.11.2007 valid up to 06.11.2017
5.	Name of licensee	Brisk Construction Pvt. ltd and 3 others
6.	RERA Registered/ not registered	Registered vide no. 90 of 2017 dated 28.08.2017
7.	RERA Registered valid up to	28.02.2023 28.08.2022 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020.
8.	Unit no.	IF8-03, 2 nd Floor, Tower/block- IF 8 (Page no. 39 of the complaint)



9.	Unit area admeasuring	2102 sq. ft. (Page no. 39 of the complaint)
10.	Date of execution of agreement to sell	27.07.2011 (Page no. 36 of the complaint)
11	Allotment letter	27.07.2011 [Page no. 34 of the complaint]
12	Possession clause	4.2 Possession Time and Compensation <i>That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser within twenty-four (24) months from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and</i>



		<p><i>use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay.....”</i></p> <p>[emphasis supplied] (Page no. 45 of the complaint).</p>
13	Grace period	<p>Allowed</p> <p>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 24 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by July 2013. As per agreement to sell, the construction of the project is to be completed by July 2013 which is not completed till date. Accordingly, in</p>



		the present case the grace period of 6 months is allowed.
14	Due date of possession	27.01.2014 [Note: - 24 months from the date of agreement i.e., 27.07.2011 + 6 months grace period]
15	Basic sale consideration as per BBA at page 61 of complaint	Rs.99,92,679/-
16	Total sale consideration	Rs.1,00,67,171/- (As per applicant ledger dated 30.07.2020 page no. 75 of the complaint)
17	Amount paid by the complainant	Rs.89,06,990/- (As per applicant ledger dated 30.07.2020 page no. 75 of the complaint)
18	Occupation certificate	Not obtained
19	Offer of possession	Not offered
20.	Delay in handing over the possession till date of this order i.e., 01.03.2023	9 years 1 month and 2 days

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -



- i. That the complainants are allottees who have been cheated by the malpractices adopted by the respondent as stated to be a builder and is allegedly carrying out real estate development since many years. The respondent convinced with its lucrative promises to provide the complainants with a residential apartment in their project namely "Raheja Shilas" located at Sector 109, Gurugram, Haryana. The complainants desired their own home for the family and were allured by an enamored advertisement of the respondent and believed the plain words in utter good faith. The complainants were duped of their hard-earned monies in the name of development by the respondent by making several false promises to deliver the apartment in a time bound manner.
- ii. That the respondent largely published its real estate projects by way of various advertisements, both in print and electronic media, being allured by such representations, the complainants became interested in real estate scheme floated by the respondent in the name and style of project name "Raheja Shilas," located at Sector 109, Gurugram, Haryana and on the basis of alluring representation given, they applied for an apartment bearing no. IF8-03, 2nd Floor, Independent Floor 8, Tower/Block, having area approx. of 2102 sq. ft. for total consideration of approximately Rs.87,75,850/- excluding taxes in July 2011.



- iii. That at the time of accepting consideration from the complainants, the respondent showed very rosy picture about the aforesaid residential project and assured that said project would be equipped with all modern facilities of international quality and thus would be good residential project for abode purposes and the said project would be developed in scheduled time frame without any delay in project.
- iv. That in view of aforesaid underlying representations, the complainants showed inclination towards the project and booked aforesaid apartment with the respondent utilizing their life savings with the earnest belief of getting timely possession of the apartment. In pursuance of same, the complainants applied for allotment of the aforesaid apartment. Accordingly, the said unit was allotted to the complainants on 27.07.2011. A flat buyer agreement was executed between the complainants and respondent on 27.07.2011 with the agreed date of handing over of possession by 27.07.2013, excluding a grace period of six (6) months. Further, the respondent in view of the agreement agreed to compensate the complainant in the event there is a delay in the delivery of the possession of the apartment. As per clause 4.2 of the agreement, the respondent is liable to pay to the complainant's compensation @ Rs.7/- sq. ft. of the super area per month for the entire period of delay.



- v. That the allotment of apartment and agreement executed in respect of same were one sided contract's and were offered to the complainants as standard form of contract since they were supposed to sign on dotted lines of contract without any negotiation whatsoever. The respondent entered into standard form of contract with all the allottees of the project and except for change in date of allotment and description of apartment and other individual characteristics of apartment, all the allottees of project were always required to sign on dotted lines. The complainants and as well as all other allottees of the project had no say in matter of contractual terms and were offered on "take it or leave it basis". Thus, the terms of contract were heavily inclined towards the respondent detrimental to the interest of the complainants and as well to various other allottees who had signed the similar contract with the respondent. The various terms of contract are prima facie unfair and unreasonable and would shock the conscience of any court of law.
- vi. That one such instance of agreement being in favor of the respondent is drawn from a bare perusal of clause 4.2 and 3.15 of agreement wherein in case of delay in possession, the respondent was liable to compensate the complainants at a nominal rate of Rs. 7/- sq. feet of the super area per month whereas if they are being



in default on the payment of the installments, were subjected to penal interest @ 18% per annum.

- vii. That at this juncture, the complainants entered into a tripartite agreement with respondent and LIC housing Finance Ltd. where LICHFL sanctioned a housing loan of Rs.74,90,000/- to them for purchase of the above-mentioned apartment from the respondent in the project at Sector 109, Gurugram. Further, vide letter dated 29.08.2011, the respondent confirmed its "no objection" to the aforementioned loan from LICHFL to complainants for purchase of the apartment.
- viii. That even after receiving the entire consideration for the booked apartment along with the taxes, the respondent failed to deliver the possession by 27.11.2013. Despite repeated attempts and communications to contact the respondent and demand possession, the complainants received no clarity or representation as to the date of delivery of possession. The respondent merely kept the complainants in the dark, without any indication as to when the possession shall be delivered. Therefore, since 27.11.2013 (excluding grace period) when the possession was to be actually delivered, the respondent did not deliver possession or even assign a date of delivery of possession till October 2021 i.e., for 99 months (more than 8 years).



- ix. That such an inordinate delay of more than 99 months in the delivery of possession to the complainant/allottees is an outright violation of their rights under the provisions of the Act as well the agreement executed between both the parties. The complainants demand delay penalty in terms of section 18(1) read with section 18(3) of the Act, along with principles of justice, equity and good conscience.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- i. Direct the respondent to deliver the possession of the said unit along with interest @18% from the date of respective deposits till its actual realization.
 - ii. Direct the respondent to pay interest to the complainants in view of clause 4.2 of the agreement @ Rs.7/- per sq. ft. of the super area per month for the entire period of delay till offer of possession.
 - iii. Direct the respondent to pay the complainant a sum of Rs.1,00,000/- towards legal cost.
5. The respondent/promoter put in appearance through company's A.R & Advocate, and marked attendance on 08.02.2022, 21.04.2022, 02.11.2022, and 14.12.2022. Despite specific directions it failed to comply with the orders of the authority. It shows that the respondent is intentionally delaying the procedure of the court by avoiding to file



written reply. Hence, it's defence was ordered to be struck off for not filing reply despite multiple and adequate opportunities.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

D. Jurisdiction of the authority

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

D. II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made



thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

E. Findings on the relief sought by the complainant

- E. I Direct the respondent to deliver the possession of the said unit along with interest @18% from the date of respective deposits till its actual realization.
- E. II Direct the respondent to pay interest to the complainant in view of clause 4.2 of the agreement @ Rs.7/- per sq. ft. of the super area per month for the entire period of delay till offer of possession.
11. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

12. Article 4.2 of the agreement to sell provides for handing over of possession and is reproduced below:

4.2 Possession Time and Compensation

*"That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser within twenty-four (24) months **from the date of the execution of the Agreement to sell** and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. **However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above.** The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."*

13. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/ regulatory authority action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its



meaning. The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

14. **Admissibility of grace period:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 24 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by July 2013. As per agreement to sell, the construction of the project was to be completed by July 2013 which is not completed till date. It may be further stated that asking for the extension of time in completing the construction is not a statutory right nor has it been provided in the rules. Accordingly, in the present case, this grace period of 6 months cannot be allowed to the promoter at this stage.

15. **Payment of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate



as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

16. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
17. Taking the case from another angle, the complainant-allottees were entitled to the delayed possession charges/interest only at the rate of Rs.7/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period of such delay; whereas the promoter was entitled to interest @ 18% per annum compounded at the time of every succeeding installment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved persons, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the



legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered between the parties are one-sided, unfair, and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These type of discriminatory terms and conditions of the buyer's agreement would not be final and binding.

18. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 01.03.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
19. The definition of term 'interest' as defined under section 2(z a) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*



(ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

20. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.70%** by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

21. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent/builder is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 4.2 of the agreement to sell executed between the parties on 27.07.2011, the possession of the subject unit was to be delivered within 24 months from the date of execution of this agreement. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 27.01.2014. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/ promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the



complainants as per the terms and conditions of the agreement to sell dated 27.01.2011 executed between the parties. Further, no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at rate of the prescribed interest @ 9.50% p.a. w.e.f. 27.07.2011 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the rules.

E.III Direct the respondent to pay the complainant a sum of Rs.1,00,000/- towards legal cost.

23. The complainants are also seeking relief w.r.t. litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.2021-2022(1) RCR (c) 357*, held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation &



legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

F. Directions of the authority

24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 27.01.2014 till the handing over of possession of the allotted unit;
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- iii. The arrears of such interest accrued from 27.01.2014 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules;
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the

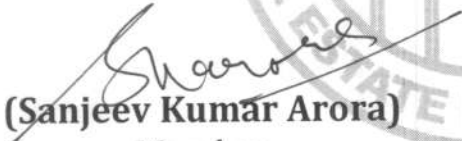


allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- v. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the concerned authority. The complainant w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
- vi. The respondent shall not charge anything from the complainants which is not the part of the agreement to sell.

25. Complaint stands disposed of.

26. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Ashok Sangwan)
Member

Dated: 01.03.2023