

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

Complaint no. : 1016 of 2018
Order reserved on: 01.02.2023
Order pronounced on: 07.03.2023

1. Mr. Roop Lal Aggarwal
2. Mrs. Sudha Aggarwal
Both RR/o: - B-002, Raheja Atlantis, Sector- 31, NH-8,
Gurugram - 122001

Complainants

Versus

M/s Raheja Developers Limited.
Reg. Office: - W4D, 204/5, Carriapa Marg, Near Keshav
Kunj, Western Avenue, Sanik Farms, New Delhi- 110062
Corporate office at: - 406, 4th floor, Rectangle One, D-4,
District Center, Saket, New Delhi- 110017

Respondent

CORAM:

Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member

APPEARANCE:

Sh. Roop Lal Aggarwal (Advocate)
Sh. Garvit Gupta (Advocate)

Complainants
Respondent

ORDER

1. This complaint 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 Atlantis", Sector 31&32A, Gurugram,
2.	Project area	10.2875 acres
3.	Nature of the project	Group Housing colony
4.	DTCP license no. and validity status	122 of 2004 dated 21.09.2004 valid up to 20.09.2024
5.	Name of licensee	The Govt. Employees Co-op House Building Society Ltd.
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	B-002, ground floor, tower/block- B (Page no. 20 of the complaint)
8.	Unit area admeasuring	270.10 sq. ft.



		(Page no. 148 of the complaint)
9.	Date of execution of flat buyer's agreement	19.09.2014 (Page no. 147 of the complaint)
10.	Possession clause	4. Possession 4.2 <i>That the Developer shall endeavor to give possession of the Apartment to the purchaser within thirty (30) months from the date of the execution of the flat buyer Agreement, but subject to force majeure circumstances, reasons beyond the control of the Developer. The Developer on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Apartment to the Purchaser for his/her occupation and use and subject to the Purchaser having complied with all the terms and conditions of flat buyer Agreement. In the event of his/her failure to take over and/or occupy and use the apartment provisionally and/or finally allotted within 60 days from the date of intimation in writing by the Developer, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to</i>



		<i>compensation @ Rs.5/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."</i> (Page no. 154 of the complaint)
11.	Due date of possession	19.03.2017 [Note: - 30 months from date of flat buyer's agreement i.e., 19.09.2014]
12.	Basic sale consideration as per BBA at page no. 166 of complaint	Rs.1,00,16,963.60/-
13.	Amount paid by the complainants	Not mentioned
14.	Occupation certificate /Completion certificate	26.05.2008, 08.03.2010, 19.01.2011 [Page no. 132 to 135 of the complaint]
15.	Offer of possession	Not annexed
16.	Date of execution of conveyance deed	13.05.2016

B. Facts of the complaint

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



- i. That the group housing project has been divided into two parts, one share measuring 3 acres consisting of 165 flats belongs to owner of land. The Government Employees Cooperative House Building Society Ltd and remaining land measuring 7.2875 acres consisting of 271 flats in Towers A, B, C, D, E, F along with 7 Villas belong to respondent.
- ii. That the approval of building plans was given by authorities in the year 2005, and approved drawings passed by government authorities showing the location of community centre and commercial facilities.
- iii. That the complainants are the allottee of flat no. B-002, Raheja Atlantis, Sector 31, NH- 8, Gurugram and conveyance deed was made and registered before Sub Registrar, Gurugram for flat measuring 308.54 sq. mtrs. (3319.91 sq. ft.) vide conveyance deed no.4253 dated 13.5.2016 for a sum of Rs.89,01.010/- besides making payment of EDC/IDC, PLC, car parking, IBMS (Interest Bearing Maintenance Services) and other charges.
- iv. That besides above, they have paid PLC of Rs.5,80,500/-, EDC Rs.5,22,450/- and covered parking Rs.4,00,000/- and IBMS Rs.1,93,500/- i.e., total sale consideration is Rs.98,23,474/-. The break-up of the payment is shown in annexure-A annexed with agreement to sell.



- v. That Director General, Town & Planning, Haryana, Chandigarh charged EDC and IDC over the entire project as per acre. EDC/IDC collected from the customer/allottees were payable to government authorities and therefore, no part of EDC/ IDC was to be retained by the respondent. Due to collaboration agreement with the owners of land/ Society, the Society made terms and conditions and payment of EDC and IDC by the builder, but the promoter/ builder played foul game cleverly charged excess EDC/IDC from the customers/ allottees of share of builder known as Raheja Atlantis on the basis of super area but payable per gross acre. By doing so, the builder committed cheating and fraud with the customers/allottees including the petitioners. By doing so, it charged total EDC /IDC of the entire project from builder share known as Raheja Atlantis from the customers/allottees.
- vi. That the respondent/builder/promoter charged total EDC/IDC from the project known as Raheja Atlantis from the allottees and did not collect EDC/IDC payment from the Society area. The deposit of EDC/IDC collected from the allottees is matter of investigation. The respondent-promoter is hiding true and correct facts of payment of EDC/IDC to government authorities.
- vii. As per agreement LC-IV, executed with the authorities, EDC was charged @ Rs.78.46 lakhs per gross acre payable in installment and therefore, cannot charged more EDC from the allottees then the



amount payable to Government authorities. But the promoter /builder has charged @ Rs.135/- per sq. ft. as EDC and Rs.45/- per sq. ft. as IDC on super area instead of per acre. The promoter /builder has loaded more than 30% super area than the carpet area.

- viii. The respondent-promoter has unnecessarily stopped paying interest to allottees since 2014. The respondent/promoter has collected 30% more EDC/IDC i.e., Rs.1,56,735/- which was computed on total EDC Rs.5,22,450/- The respondent/promoter was liable to pay the said amount along with 18% percent interest per annum. The respondent/promoter has collected Rs.1,93,500/- as IBMS for which he is liable to pay interest @9% per annum from 2014, i.e., Rs.1,21,905/-.
- ix. That besides above, the respondent/builder has committed various irregularities/illegalities in the group housing projects with the customer/allotees who purchased apartment/flat by collecting huge sale consideration running almost in crores for each flat. The respondent promoter applied criteria of super area instead of carpet area, thereby constructing more flats and sold excess area than permissible under law.
- x. That the promoter/builder shall be responsible for the maintenance and upkeep of all the services for five years from the date of issue of completion certificate. The promoter/builder



failed to transfer IBMS and community centre/club, commercial space to R.W.A. Therefore, it was partial transfer and failing which it is to be responsible for the maintenance.

- xi. The promoter/builder is an under obligation to refund the security deposit of Rs.20,000/- on account of gas facility from Indian Oil Corporation but currently the petitioners are not enjoying the said facility due to discontinuance of facility by R.W.A. and therefore, liable to refund the said amount.
- xii. The respondent charged Rs.130/- per sq. ft. for double insulated glass doors and windows but unable to install the same. The petitioners came to know that refund was made to few customers for double insulated glass doors and windows, but no such refund was made to the customer.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - i. The respondent/promoter has collected Rs.1,93,500/- as IBMS for which he is liable to pay interest @ 9% per annum from 2014 i.e., Rs.1,21,905/-.
 - ii. The respondent be directed to refund of Rs.130/- per sq. ft. for double insulated glass and window for 3320 sq. ft. the amount paid by the petitioners along with interest.



- iii. The respondent be directed to refund the security deposit of Rs.20,000/- on account of LPG gas facility from Indian Oil Corporation, ceased to exist long back ago along with interest.
 - iv. The respondent/promoter has collected 30% more EDC/IDC i.e., Rs.1,56,735/- computed on total EDC Rs.5,22,450/-. The respondent/promoter is liable to pay the said amount with 18% interest per annum.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent contested the complaint on the following grounds.
- I. The respondent contended that the project against which the instant complaint is made has received the occupation certificate in the year 2010. Thus, the present complaint is not maintainable before this authority by virtue of Rule 2(o)(ii) of Haryana Real Estate (Regulation and Development) Rules, 2017.
 - II. The physical possession has been handed over and deed of apartment has been executed in favour of the complainants on 13.05.2016. The respondent submitted that the complainants have been a member of the Raheja Atlantis Welfare Association i.e.,



RWA, and which has filed a case against it in National Consumer Disputes Redressal Commission, New Delhi as complaint no. 478 of 2015. The complainants are a party to such complaint filed against the respondent. The relief claimed in such consumer forum complaint is similar to the relief claimed in the instant complaint before this authority. Thus, the principle of double jeopardy bars instant complaint to be adjudicated upon. Moreover, it is a settled principle of law that when a matter is sub-judice before any competent court, then same cause of action cannot survive in any other court of law.

III. Thus, in view of the preliminary objections and in furtherance of various provisions of the Real Estate (Regulation and Development) Act, 2016 as well as principles of natural justice and equity, the instant complaint is not maintainable before this authority and the complaint is liable to be dismissed.

7. 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.

E. Jurisdiction of the authority

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



E. I Territorial jurisdiction

9. 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.

E. II Subject-matter jurisdiction

10. 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.

11. 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.

F. Findings on the relief sought by the complainants.

F.1 The respondent/promoter has collected Rs.1,93,500/- as IBMS for which he is liable to pay interest @ 9% per annum from 2014 i.e., Rs.1,21,905/-

12. It is not disputed that a complaint bearing no. **478/2015** titled as ***Raheja Atlantis Apartment Owners Association Vs M/s Raheja Developers Limited*** is pending before the National Consumer Disputes Redressal Commission, New Delhi and the same is pending for adjudication. One of the complainant namely Roop Lal Aggarwal has been shown as a member of the society and his name shown is also there at S.No. 57, in the list of members of societies. The copy of complaint is filed in NCDRC by association of allottee is also attached in the present complaint at annexure R-1, which clearly shows that the same relief regarding refund of IBMS along with interest has also been sought before NCDRC.

13. As per article 6 of agreement executed between both the parties dated 19.09.2014, the complainants are liable to pay applicable charges on account of IBMS. The said clause of the agreement is reproduced hereunder: -

6.1 "..... *The Purchaser undertakes to join any society/ association of the Apartment owners and to pay any fees, charges thereof and complete such documentation and formalities as may be deemed necessary by the Developer in its sole discretion for this purpose. The Purchaser upon completion of the said Building agrees to enter into a Maintenance Agreement with the Developer or any association/body/*



condominium of Apartment owners or any other nominee/ agency/ association (s) or other body (hereinafter referred to as 'the Maintenance Agency') as may be appointed/nominated by the Developer from time to time for the maintenance and upkeep of the said plot / building and the Purchaser undertakes to pay the maintenance bills as raised by the Maintenance Agency from the date of the certificate for occupation and use granted by the competent authority on pro-rata basis irrespective of whether the Purchaser is in occupation of the Apartment or not. In order to secure due performance by the Purchaser in prompt payment of the maintenance bills and other charges raised by the Maintenance Agency, the Purchaser agrees to deposit, as per the schedule of payment and to the ways keep deposited with the Developer of the Maintenance Agency, nominated by the Developer, an Interest-Bearing Maintenance Security (TUMS) at the rate of Rs. 50/- per sq. ft. of the super area of the Apartment carrying a simple yearly interest as per the applicable rates on fixed deposits accepted by The State Bank of India at the close of each financial year ending on 31 March, In case of failure of the Purchaser to pay the maintenance bill or other charges on or before the due date, the Purchaser in addition to permitting the Developer/Maintenance Agency to deny him/her the maintenance services, also authorizes the Developer/Maintenance Agency to adjust in the first instance, the interest accrued on the IBMS against such defaults in the payments of maintenance bills and in case such accrued interest falls short of the amount of the default, the Purchase: further authorizes the Developer/Maintenance Agency to adjust the principal amount of the IBMS against such defaults. If due to such adjustments in the principal amount, the IBMS falls below the agreed sum of Rs. 50/- per sq. ft. of the super area of the said Apartment, then the Purchaser hereby undertakes to make good the resultant shortfall within fifteen (15) days of demand by the Developer/ Maintenance Agency."

14. This issue has already decided by the authority in the complaint no. 4031 of 2019 titled as **Varun Gupta Vs. Emaar MGF Land Limited**, Wherein the authority is of the opinion that the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFMS". However, the authority directs and passes an order that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain the account regularly in a very transparent manner. If any allottee of the project requires the



promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMS/IBMS, no amount can be spent by the promoter for the expenditure he is liable to incur to discharge his liability under section 14 of the Act.

15. Moreover, the same have also been agreed between the parties via agreement dated 19.09.2014, therefore the authority is of the view that the respondent is right to charge IBMS.

F. II The respondent is directed to refund of Rs.130/- per sq. ft. for double insulated glass and window for 3320 sq. ft. amounting to the sum paid by the petitioner for double insulated glass and window along with interest.

F.III The respondent be directed to refund the security deposit of Rs.20,000/- on account of LPG gas facility from Indian Oil Corporation cease to exist long back ago along with interest.

16. As per letter dated 30.05.2006, issued by the respondent/promoter to the resident of the project namely "Raheja Atlantis", Sector 31&32A, Gurugram regarding charges of Rs.20,000/- on account of LPG gas facility from Indian Oil and for installation of double glass and window @ Rs.130/- per sq. ft. On the documents and submission made by both the parties the authority has observed that there are no supportive documents in this regard that the said amount is paid or not. In the absence of any demand letter, statement of account and any receipt issued by the respondent in this regard no direction can be issued.

F. IV The respondent/promoter has collected 30% more EDC/IDC i.e., Rs.1,56,735/- which was computed on total EDC Rs.5,22,450/-. The respondent/promoter is liable to pay the said amount with 18% interest per annum.



17. As per payment plan annexed with the agreement executed between the parties dated 19.09.2014, the complainants were liable to pay EDC for an amount of Rs.5,22,450/-. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement.
18. Complaint stands disposed of.
19. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.03.2023


(Ashok Sangwan)

Member