

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

Complaint no. : 838 of 2022
Date of complaint : 02.03.2022
Date of order : 25.10.2023

1. Sanjiv Dubey,
2. Anjana Dubey,
Both R/o: - A-001, Raheja Navodaya,
Sector-92, Gurugram-122505.
Complainant

Versus

Raheja Developers Limited.
Regd. Office at: W4D, 205/5,
Keshav Kunj, Western Avenue,
Cariappa Marg, Sainik Farms, New Delhi-110062.
Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Arjun Goel (Advocate)
Garvit Gupta (Advocate)

Complainant
Respondent

ORDER

1. The present 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 provision of the Act or the Rules and regulations made thereunder 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 Navodaya", Sector-92&95, Gurugram
2.	Project area	17 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP license no. and validity status	216 of 2007 dated 05.09.2007 valid till 04.09.2024
5.	Name of licensee	N.A. Buildwell Pvt. Ltd
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	A-001, ground floor, tower/block- A
8.	Unit area admeasuring	3100 sq. ft.
9.	Lawn area	1698 sq. ft.
10.	Allotment letter	24.03.2019
11.	Date of execution of agreement to sell	29.03.2019
12.	Possession clause	3. On payment of 95% of total price within stipulated time, possession will be offered to the buyer.
13.	Due date of possession	Cannot be ascertained
14.	Basic sale consideration as mentioned in the agreement to sell	Rs.1,08,25,000/-

15.	Total sale consideration as per payment plan	Rs.1,12,19,900/-
16.	Amount paid by the complainant	Rs.1,12,19,900/-
17.	Possession letter	14.04.2019
18.	Occupation certificate details	OC received dated 11.11.2016 for tower/block: - <ul style="list-style-type: none"> ➤ Block- B (ground + 1st floor + 15th floor) ➤ Block- C (ground + 1st floor + 15th floor) ➤ Block- D (ground + 1st floor + 15th floor) ➤ Block- E (ground + 1st floor + 15th floor) ➤ Tower- 1 (ground + 1st floor + 14th floor) ➤ Tower- 2 (ground + 1st floor + 6th floor) ➤ EWS Block - (ground + 1st floor + 6th floor) ➤ Community Building- II (ground + 1st floor)
19.	Legal notice sent by the complainant	21.10.2021

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the respondent company through advertisement promoted their housing project at Sector 92 Gurugram, under the name of "Raheja Navodaya". The complainants being impressed by the advertisements of the respondent, purchased an apartment bearing no. A-001, ground floor, having area of 3100 sq.ft. and 1698 sq.ft. lawn area with parking no. UB-54 vide agreement to sell dated 24.03.2019 in the said project for a total sale consideration of Rs.1,12,19,900/- and they have made full payment against the same.
- II. That the respondent promised that the possession of the aforesaid property will be handed over to the complainants by the month of

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April 2019 and the same was handed over to them on 14.04.2019 vide possession letter dated 14.04.2019.

- III. That the complainants bought a domestic lawn area for themselves with a different look and a luxury which was different in design from other buyers. The complainants are not able to enjoy the full possession of the abovesaid lawn area as the concept of lawn area was totally different which makes it very unique.
- IV. That the respondent did not make compliance to the clauses of the buyer's agreement and the possession of the complete property was not transferred on the promised time period to the complainants. The lawn area of 1698 sq. ft. has still not been demarcated and handed over to them till date even after a lapse of almost 3 years. It has now only been informed by respondent vide e-mail dated 14.12.2021, that it is possible to hand over only 1166 sq.ft. of lawn area and not 1698 sq.ft. as agreed to in the builder-buyer agreement, thus making the agreement null and void . The complainants had purchased the said property primarily due to the lawn area of 1698 sq.ft. and have thus been cheated.
- V. That the complainants on and after being deceived by the respondent company issued a legal notice, dated 21.10.2021 demanding return of the amount paid against the unit in question along with interest @ 18% p.a. However, no payment and reply was ever made by the respondent till date.
- VI. That due to the unending delay from the respondent, the complainants had to bear heavy losses.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- I. To refund the entire paid-up amount along with prescribed rate of interest.

D. Reply by the respondent.

5. Despite due service and putting in appearance through AR and advocates, the respondent company failed to file any written reply even after several opportunities given. Therefore, the defence of the respondent was struck off vide proceeding dated 12.07.2023.

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.

E. Jurisdiction of the authority

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

E.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.

E.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. Proviso to Section 11(4)(a) is reproduced as hereunder:

Section 11

.....
(4) The promoter shall-

(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;

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

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 complainant at a later stage.

F. Findings on the relief sought by the complainant.

F. I To refund the total amount paid by the complainant along with prescribed rate of interest.

11. The complainants intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Section 18(1) of the Act is reproduced below for ready reference.

"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.-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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."

(Emphasis supplied)

12. As per Section 18(1) of the Act, 2016, the promoter is liable to return the amount in respect of unit along with prescribed rate of interest if it fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or due to discontinuance of business. However, in the present case, ready to move-in property was allotted in their favour vide buyer's agreement dated 29.03.2019. Thereafter, possession of the unit was successfully taken over by the complainants vide possession letter dated 14.04.2019 and they are presently enjoying the peaceful possession of the property which is evident from the fact that the place of residence as provided by them in the present complaint is the same unit against which they have filed this complaint. The complainants contended that the lawn area of 1698 sq.ft. has still not been demarcated and handed over to them till date. Further, they claimed that the respondent vide e-mail dated 14.12.2021, told that it is possible to hand over only 1166 sq.ft. of lawn area and not 1698 sq.ft. as agreed in the builder-buyer agreement. However, it is evident from the possession letter dated 14.04.2019, that the possession of the unit in question having super area of 3100sq.ft. as well as lawn area of 1698 sq.ft. along with parking no. UB-54 was duly taken by the



complainants. Therefore, after considering the documents available on record as well as submissions made by the complainants, the Authority is of view that there is not even a single document on record to support their claim which can confirm and corroborate the said claim of the complainants. Moreover, the present complaint does not fall in any of the requisite conditions of Section 18 of the Act. Accordingly no case for refund is made out under section 18 of the Act read with rule 15 of Rules, 2017. Hence, the complaint is dismissed being devoid of merits.

13. Complaint stands disposed of.

14. File be consigned to registry.

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(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.10.2023

HARERA
GURUGRAM