

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

Complaint no. : 1938 of 2022
Date of complaint : 02.05.2022
Date of decision : 27.09.2023

Ashok Bindumadhavan,
R/o: - Flat 353, Princess Park Apartments,
Plot 33, Sector 6, New Delhi-110075.

Complainant

Versus

M/s Raheja Developers Limited,
Reg. Office: - 401A, 4th floor, Bakshi House 40-41,
Nehru Place, New Delhi-110019.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Venkat Rao (Advocate)

None

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 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 complainant, 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	5 years from the date of revised environment clearances
8.	Unit no.	IF12A-01, ground floor, Tower/block-IF 12A (Page no. 42 of complaint)
9.	Unit area admeasuring	2152.64 sq. ft. (Page no. 42 of the complaint)
10.	Date of execution of agreement to sell	20.02.2010 (Page no. 37 of the complaint)
12.	Possession clause	<p>4.2 Possession Time and Compensation</p> <p><i>"That the company shall endeavors to give possession of the Apartment to the Allottee(s) within thirty-six (36) months in case of towers and Thirty (30) months in case of independent floor from the date of the execution of this Agreement and after providing necessary infrastructure in the sector by the Government, but subject to force majeure, circumstances and reasons beyond the control of the company....."</i></p> <p>[emphasis supplied] (Page no. 48 of the complaint)</p>

13.	Due date of possession	20.08.2012 [Note: - 30 months from the date of agreement i.e., 20.02.2010]
14.	Basic sale consideration as per BBA at page 64 of complaint	Rs.90,90,783/-
15.	Amount paid by the complainants	Rs.81,80,193/- (As alleged by the complainant at page no. 27 of the complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Delay in handing over the possession till filing of complaint i.e., 02.05.2022	9 years 8 months and 12 days

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That a real estate project named "Raheja's Shilas" having low rise independent floors at Sector-109, Gurugram came to the knowledge of the complainant through the marketing representatives of the respondent. The authorised representative of the promoter allured the complainant with the brochure, advertisements, stating special characteristics of the project and by making tall claim and assurances.
- II. That the complainant believing on such false representation and claims booked an independent floor bearing no. IF12A-01, on ground floor for a total sale consideration of Rs.90,90,783/- in the said project on 05.10.2009. Thereafter, on 20.02.2010 a flat buyer agreement was executed between the parties for the said apartment.
- III. That as per clause 4.2 of the agreement, the payments were to be made according to a construction linked plan and possession of the apartment was to be handed over within a period of 30 months from the date of execution of the said agreement which comes out on or



- before 20.08.2012, and if the company fails to complete construction and provide necessary infrastructure then a compensation of Rs.7/- per sq.ft. of the super area per month for entire period of delay was to be paid. However, no such payment has been made till date.
- IV. That in order to comply with the payment of the instalment for the respective apartment in the aforesaid project, the complainant had obtained a housing loan of Rs.75,00,000/- from LIC Housing Finance Limited on 30.03.2010 and since year 2010, the complainant has been paying monthly instalment of Rs.66,975/- without any delay against the same.
- V. That the respondent has failed to hand over the possession as per the terms of buyer's agreement. However, it has raised several demands without achieving the particular stage of construction which is in complete contravention to the agreed schedule of payment.
- VI. That since starting the complainant herein had been running from pillar to post for getting the possession of the apartment despite after being burdened under the monthly EMI's towards the loan sanctioned for the respective apartment.
- VII. That the complainant has always paid the instalment payments as and when demanded by the respondent, but the respondent being in dominant position has always taken advantage of the money deposited by him and has delayed the possession for almost six years.
- VIII. That the terms and the conditions provided under the agreement are one-sided, unfair and arbitrary in nature and are drafted merely to protect the interest of the respondent.
- IX. That the respondent had been evidently failed to provide possession even after taking considerable amount against the total sale consideration.

- X. That the complainant has made numerous requests and reminders for providing possession of the unit, but the same were left unanswered. Hence, as per above mentioned facts and averments, the complainant is entitled to receive interest on delay possession of the apartment as provided under the Act and any such amount for monetary loss and mental agony, hence the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- Direct the respondent to deliver the possession of apartment. (An application for amendment of relief was filed on 29.08.2022 and the same was allowed vide order dated 19.07.2023).
 - Direct the respondent to pay the compensation of Rs.10,00,000/- on account of mental agony, harassment and Rs.2,00,000/- on account of litigation charges to the complainant.
5. Despite due service and putting in appearance through AR, 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 19.07.2023.
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 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 complainant at a later stage.

E. Findings on the relief sought by the complainant

E.I Direct the respondent to deliver the possession of apartment.

11. In the present complaint, the complainant intends to continue with the project and is 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 company shall endeavors to give possession of the Apartment to the Allottee(s) within thirty-six (36) months in case of towers and **Thirty (30) months in case of independent floor from the date of the execution of this Agreement** and after providing necessary infrastructure in the sector by the Government, but subject to force majeure, circumstances and reasons beyond the control of the company....."

13. **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.

14. 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.



15. 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., 27.09.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.

16. The definition of term 'interest' as defined under section 2(za) 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;"

17. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.75%** by the respondent/promoter which is the same as is being granted to it in case of delayed possession charges.

18. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 28(a) of the agreement executed between the parties on 20.02.2010, the possession of the subject apartment was to be delivered within 30 months from the date of execution of buyer's agreement. Therefore, the due date of handing over possession was 20.08.2012.



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 complainant as per the terms and conditions of the buyer's agreement dated 20.02.2010 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 to the allottee.

19. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate is yet not obtained. The respondent shall offer the possession of the unit in question to the complainant after obtaining occupation certificate, so it can be said that the complainant shall come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given two months time from the date of offer of possession. This two months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 20.08.2012



till the expiry of 2 months from the date of offer of possession or actual handing over of possession, whichever is earlier.

20. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 20.02.2010 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 20.02.2012 till the date of offer of possession plus 2 months or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.75% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

E.II Direct the respondent to pay a compensation of Rs.10,00,000/- on account of mental agony, harassment, and Rs.2,00,000/- on account of litigation charges to the complainant.

21. The complainant is also seeking relief w.r.t. compensation and 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. (supra)*, has 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 complainant is advised to approach the



adjudicating officer for seeking the relief of compensation and litigation expenses.

F. Directions of the authority

22. 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 to the complainant against the paid-up amount at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 20.02.2012 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules;
- ii. The arrears of such interest accrued from 20.02.2012 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;
- iii. The respondent shall not charge anything from the complainant which is not the part of the agreement to sell.

23. Complaint stands disposed of.

24. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.09.2023