

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

Complaint no. : 1162 of 2023
Date of complaint : 31.03.2023
Date of order : 04.01.2024

1. Sh. Vikas Pilonia
2. Smt. Pankaj Pilonia
Both R/o: H. No.-1389, Sector 13, Hisar-
125005.

Complainants

Versus

M/s Raheja Developers Limited.
Regd. Office at: W4D, 204/5, Keshav Kunj,
Western Avenue, Cariappa Marg, Sainik Farms,
New Delhi- 110062.

Respondent

CORAM:

Sh. Arun Kumar
Sh. Vijay Kumar Goyal
Sh. Sanjeev Kumar Arora

**Chairman
Member
Member**

APPEARANCE:

Sh. Jayant Sharma (Advocate)
Ms. Harshita Setia (Advocate)

**Complainants
Respondent**

ORDER

1. The present complaint has been filed by the complainants/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 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.No.	Particulars	Details
1.	Name of the project	"Raheja Vanya", Sector 99A, Gurugram, Haryana
2.	Project area	2.28 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	64 of 2013 dated 20.07.2013 valid upto 19.07.2017 72 of 2014 dated 01.08.2014 valid upto 31.07.2019
5.	Name of licensee	Smt. Ajit Kaur D/o Pritpal singh
6.	RERA Registered/Not Registered	8(a) of 2018 dated 01.02.2018 Valid upto 31.12.2022
7.	Unit no.	A-101, 10 th floor & tower-A (As per page no. 18 of the complaint)
8.	Unit area admeasuring	806.59 sq. ft. (Carpet Area) & 80 sq. ft. (Balcony Area) (As per page no. 18 of the complaint)
9.	Date of execution of agreement to sell	16.11.2017 (As per page no. 16 of the complaint)
10.	Possession clause	19. Possession of the apartment 19.1 <i>The Company agrees and understands that timely delivery of possession of/ the Apartment is the essence of the Agreement. The Company, based on the approved plans and specifications, assures to hand over possession of the Apartment in a period of 48 Months minus/plus 6 Months variable grace period ("Commitment Period") from the date of execution of the Agreement for sale and receipt of unless there is delay or failure due to delay in Govt. clearance or</i>

		<p>delay in NOCs & court injunctions or war, flood, drought, fire, cyclone, earthquake, delay in providing necessary external infrastructure such as laying of sewer/water supply line, road, electrification etc. or inadequacy or any other calamity caused by nature affecting the regular development of the real estate project ("Force Majeure"). If, however, the completion of the Project is delayed due to the Force Majeure conditions or any conditions causing delay which is not under the direct control of company then the Allottee agrees that the Company shall be entitled to the extension of time for delivery of possession of the Apartment, provided that such Force Majeure conditions are not of a nature which make it impossible for the Agreement for sale to be implemented.</p> <p style="text-align: right;">(Emphasis supplied)</p> <p>(As per page no. 27 of the complaint).</p>
11.	Due date of possession	16.05.2022 (48 months from the agreement to sell i.e., 16.11.2017 + 6 months grace period allowed being unqualified)
12.	Basic sale consideration	Rs.65,69,466/- (As per customer ledger page 42 of complaint)
13.	Total sale consideration	Rs.66,19,466/- (As per customer ledger page 42 of complaint)
14.	Amount paid by the complainants	Rs.45,00,519/- (As per customer ledger page no. 42 of the complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions: -

1. That the complainants have booked a unit bearing no. A-101, 10th floor, having carpet area of 806.59 sq. ft. super area in the project of

the respondent named "RAHEJA's VANYA" at Sector-99A, Gurugram. Thereafter an agreement to sell was executed between the parties on 16.11.2017 for a total sale consideration of Rs.66,19,466/- and the complainants have paid an amount of Rs.45,00,519/- against the same.

- II. That as per agreement dated 16.11.2017, the possession of the flat / apartment shall be handed over within 48 months and the same got expired on 16.11.2021. However, no possession has been handed over to complainants /allottees till date. There is already a delay of 15 months and the possession of the same is not expected soon as the project is not even constructed.
- III. That the complainants are already paying the interest on the loan amount that they have taken from ICICI BANK without any offer of possession by the respondent. The disbursal of loan amount to the respondent has already been stopped by the bank since the construction is already delayed and the same has been intimated to them by the bank. The complainants have already paid 60 % of the total consideration amount including GST, however the construction is still lagging far behind.
- IV. That the complainants are unable to disburse any amount raised by the respondent as the date of final possession with all amenities has already been expired, but the respondent keep asking for further payments.
- V. That the complainants are requesting to provide the delay possession charges against the said unit in question as the due date of possession has already been expired and to pay interest on the loan amount till the possession of the unitt is not offered as assured by the agreement to sell or in alternate refund the entire amount paid by the

complainants along with interest @ 24 per annum, penalties and litigation charges.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 1. Direct the respondent to pay interest for every month of delay at the prevailing rate of interest.
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.
6. The respondent/promoter put in appearance through its Advocate and marked attendance on 29.08.2023 and 05.10.2023 respectively for filing of the reply. Despite given ample opportunities, it failed to file the reply. It shows that the respondent was intentionally delaying the procedure of the court by avoiding filing of written reply. Therefore, in view of above, vide order dated 05.10.2023, the defence of the respondent was struck off.
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.

D. Jurisdiction of the authority:

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

D.1 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.

D.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) 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;

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.

E. Findings on the relief sought by the complainants.

E.1 Direct the respondent to pay interest for every month of delay, on the amount paid so far, at the rate mandate by Act of 2016

12. In the present complaint, the complainants intends 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."

(Emphasis supplied)

13. The date of possession of the apartment as per clause 19.1 of the agreement to sell dated 16.11.2017, is to be calculated as 48 months from the execution of agreement for sale and a grace period of 6 months. Therefore, the due date of possession comes to 16.05.2022.
14. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prevailing 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.
15. 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.
16. 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., 04.01.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

17. The definition of term 'interest' as defined under section 2(z) 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:

"(z) "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;"*

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.

19. 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 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. The due date of handing over possession is 16.05.2022. No document is placed on record to show that after completing the unit, OC has been obtained or even applied to the competent Authority and no offer of possession has been made to the complainants-allottees.

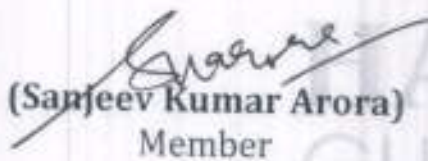
20. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondents/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, 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 respondents are established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 16.05.2022 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier, at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F. Directions of the Authority:

21. 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 on the paid-up amount by the complainants at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 16.05.2022 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier.
- ii. The arrears of such interest accrued from 16.05.2022 till the date of this order by the authority shall be paid by the promoter to the allottee(s) 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

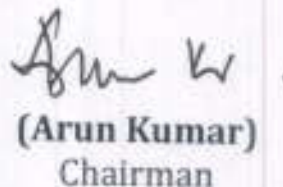
- allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The complainants are directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period, the respondents shall handover the possession of the allotted unit on obtaining of occupation certificate.
 - iv. The respondent shall not charge anything from the complainants which is not the part of the agreement to sell.
 - v. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
22. Complaint stands disposed of.
23. File be consigned to registry.



(Sanjeev Kumar Arora)
Member



(Vijay Kumar Goyal)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 04.01.2024