

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

Complaint no. : 5267 of 2022
Date of complaint : 02.08.2022
Date of order : 04.01.2024

1. Dr. Ramesh Sangwan
2. Dr. Kamla Sangwan
Both R/o: H. No.-71, Ward No.-31, Sangwan
Hospital, Bhiwani Chowk, Jind-126102.

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. Vikas Bhardwaj (Advocate)
Sh. Garvit Gupta (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 Shillas", Sector 109, Gurugram, Haryana
2.	Project area	15.61 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	i. 257 of 2007 dated 07.11.2007 valid up to 06.11.2024 ii. 14 of 2011 dated 13.02.2011 valid up to 12.02.2019
5.	Name of licensee	Brisk Construction Pvt. Ltd and 3 others
6.	RERA Registered/Not Registered	90 of 2017 dated 28.08.2017 valid up to 28.08.2022
7.	Unit no.	IF8-01, Ground floor & tower-IF-8 (As per page no. 23 of the complaint)
8.	Unit area admeasuring	2152.64 sq. ft. (Super Area) (As per page no. 18 of the complaint)
9.	Date of allotment	03.04.2010 (As per page no. 20 of the complaint)
10.	Date of execution of flat buyer's agreement	03.04.2010 (As per page no. 22 of the complaint)
11.	Possession clause	4.2 Possession Time and compensation <i>That the company shall endeavor 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 Floors 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. The company on obtaining certificate for</i>

		occupation and use by the competent authorities shall handover the apartment to the allottee(s) for his/her occupation and use and subject to the allottee(s) having complied with all the terms and conditions of this flat buyer's agreement. (Emphasis supplied) (As per page no. 32 of the complaint).
12.	Due date of possession	03.10.2012 (30 months from the execution of buyer's agreement i.e., 03.04.2010)
13.	Basic Sale consideration	Rs.71,57,713/- (As per page no. 25 of the complaint)
14.	Total sale consideration	Rs.83,16,904/- (As per page no. 15 of the complaint)
15.	Amount paid by the complainants	Rs.77,62,985/- (As per receipt information on page no. 37-49 of the complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- i. That the complainants booked a unit no. IF8-01, on ground floor, having super area of 2152.64 sq. ft. in group housing complex called Raheja's Shilas, Sector-109, Gurugram, with respondent and the same was allotted in their names by respondent vide allotment letter dated 03.04.2010. Thereafter the subject unit was agreed to be sold by respondent in favour of the complainants for basic sale price of Rs.71,57,713/-. External Development Charges (EDC) and Internal Development Charges (IDC) and charges for open car parking payable by the complainants to the respondent/promoter were Rs.11,59,191/-. In this regard flat buyer's agreement dated 03.04.2010 was executed by respondent in favour of the complainants after receiving payment of Rs.17,89,727/-. Remaining

- amount was to be paid as per construction linked payment plan mentioned in the said flat buyer's agreement.
- II. That the complainants never delayed in payment of any of the instalments to the respondent. An amount of Rs.77,62,985/- has been paid to the respondent as per demands raised in respect of the unit in question and there is no default or outstanding amount to be paid by the complainants.
 - III. That as per clause 4.2 of the said flat buyer's agreement, the respondent was required to handover possession of the said unit in a fully developed condition i.e., after development of all common area and facilities e.g. STP, fire extinguishers, functioning of club, community center, play-ground, swimming pool, construction of flats for Economically Weaker Sections etc. (these conditions are required to be mandatorily fulfilled at the time of grant occupation certificate by District Town Planner, Gurugram) to them within the stipulated period of 30 months from the date of execution of the said agreement i.e., 03.04.2010 and the timeline for handing over possession has already expired on 03.10.2012. Occupation certificate has not yet been issued by the Authorities and the same is still pending.
 - IV. That as per clause 3.13 of the flat buyer's agreement in case the respondent fails to pay the possession of the unit within the stipulated period mentioned above, he will pay compensation to the complainants/allottees. However, he has failed to comply with terms and conditions of this clause of the agreement and has not paid compensation to the complainants due to delay in handing over possession.
 - V. That the complainants had already deposited more than 90% of the total amount. Though the complainants had opted for construction

linked payment plan but this does not mean that development of internal infrastructure as mentioned above is not linked to this plan. The erection of tower only is not the construction linked plan, but the work on other infrastructure like setting up of electric sub-station must also go simultaneously whereas the same is still pending. That the respondent has cheated the complainants by diverting the amount paid by them to the other projects. It is evident on the face of it that the respondent are not in a position to deliver the project in near future as it has already missed the deadline for delivery of units and the status of the construction on site makes the situation deplorable.

- VI. That due to fault of the respondent in handing over possession to the complainants within stipulated time as mentioned in the agreement and making false statements in the brochure, the complainants suffered a loss of Rs.1,00,000/- by way of mental agony and this amount is required to be compensated by the respondent to them.
- VII. That the respondent has failed to handover the said unit in fully developed condition with development of all infrastructure facilities to the complainants. They do not intend to withdraw from the project and seeking interest for every month of delay till the handing over of possession at the prescribed rate of interest.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- I. 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 02.11.2022, 10.03.2023, 29.08.2023 and 05.10.2023 respectively and sought short adjournment 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 complainant-allottees.

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.I Territorial jurisdiction

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

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.

9. 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 prevailing rate mandate by Act of 2016

10. 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)

11. The date of possession of the apartment as per clause 4.2 of the flat buyer's agreement dated 03.04.2010, is to be calculated as 30 months from the execution of flat buyer's agreement in case of independent floors. Therefore, the due date of possession comes to 03.10.2012.

12. **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, they 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.

13. 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.
14. 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%**.
15. 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:



"(2a) "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;"*

16. Therefore, interest on the delay payments from the complainants 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.
17. 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 03.10.2012. 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.
18. 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., 03.10.2012 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.

19. This is without prejudice to any other remedy available to the allottee including compensation for which the allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016

F. Directions of the Authority:

20. 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 of Rs.77,62,985/- 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., 03.10.2012 till valid 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 03.10.2012 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.

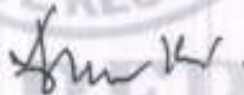
- iv. The respondent shall not charge anything from the complainants which is not the part of the flat buyer's agreement.
- v. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which 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.

21. Complaint stands disposed off.

22. 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