

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

Complaint no. : 455 of 2023
Date of complaint : 07.02.2023
Date of order : 22.05.2024

1. Pranshu Dutt,
2. Ashavaree Das,
Both R/o: - F-97, Third Floor,
VTC-Vikas Puri, PO- Tilak Nagar,
West Delhi, Delhi-110018.

Complainants

Versus

M/s Raheja Developers Limited.
Regd. office: Raheja's Aranya City,
Sector 11 & 14, Sohna, Gurugram, Haryana.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Gaurav Rawat (Advocate)
None

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 thereunder or to the allottees 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's Aranya City", Sectors 11&14, Sohna Gurugram
2.	Project area	107.85 acres
3.	Nature of the project	Residential plotted colony
4.	DTCP license no. and validity status	25 of 2012 dated 29.03.2012 valid up to 28.03.2018
5.	Name of licensee	Ajit Kumar and 22 Others
6.	RERA Registered/ not registered	Registered vide no. 93 of 2017 dated 28.08.2017
7.	RERA registration valid up to	27.08.2022
8.	Plot no.	D-133 [page no. 32 of complaint]
9.	Unit area admeasuring	368.51 sq. yds. (Page no.32 of the complaint)
10.	Allotment letter	06.10.2016 (page 24 of complaint)
11.	Date of execution of agreement to sell	06.10.2016 (page 28 of complaint)
12.	Possession clause	<p>4.2 Possession Time and Compensation</p> <p><i>That the Seller shall sincerely endeavor to give possession of the plot to the purchaser within thirty-six (36) months from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. However, the seller shall be entitled for compensation free</i></p>



		<p><i>grace period of six (6) months in case the development is not completed within the time period mentioned above. In the event of his failure to take over possession of the plot, provisionally and /or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be lie at his/her risk and cost the purchaser shall be liable to pay @ Rs.50/- per sq. Yds. of the plot area per month as cost and the purchaser shall be liable to pay @ Rs.50/- per sq. Yards. Of the plot area per month as holding charges for the entire period of such delay.....”</i> (Page no. 38 of the complaint).</p>
14.	Grace Period	<p>Allowed</p> <p>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the part completion certificate by January 2017. As per agreement to sell, the construction and development work of the project is to be completed by January 2017 which is not completed till date. Accordingly, in the present case the grace period of 6 months is allowed.</p>
15.	Due date of possession	<p>06.04.2020 (Calculated as 36 months from the date of execution of buyer's agreement i.e., 06.10.2016 + 6 months grace period)</p>
16.	Total sale consideration	<p>Rs.1,14,14,959/- (as per customer ledger on page 17 of complaint)</p>

17.	Amount paid by the complainant	Rs.1,15,09,584/- (as per customer ledger on page 17A of complaint)
18.	Occupation certificate /Completion certificate	Not received
19.	Offer of possession	Not offered

B. Facts of the complaint

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

- I. That the complainants were allotted a plot bearing no. D-133, admeasuring 368.51 sq. yds. in project of the respondent named "Raheja's Aranya City phase 2" situated in Sector 11 & 14, Sohna, Gurugram vide allotment letter dated 06.10.2016. Thereafter, an agreement to sell was executed between the parties on 06.10.2016 for a basic sale price of Rs.1,14,14,959/- inclusive taxes, EDC, IDC and additional charges under time link payment plan and sum of Rs.1,02,53,336/- was paid by the complainants till 11.06.2019 in time bound manner.
- II. That as per clause 4.2 of the buyer's agreement, the respondent was liable to offer the possession before 06.10.2019, but the same has not been handed over to the complainants even after passing of more than 3 years from the due date of possession.
- III. That the complainants many times visited the office of respondent requesting for possession and asked for development of project, but builder always given false assurance about completion of plot. Further, the complainants were doing email communication with builder many times but received only false assurance of completion of project and about possession of plot.
- IV. That the builder in last 6 years, many time made false promises for possession of plot and current status of project still desolated and raw after

extracting more than 89% amount of total sale consideration and has breached the trust and agreement.

- V. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent and trick of extracting more and more money from complainants pocket seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainants who have spent their entire hard earned savings in order to buy this plot for home and stands at a crossroads to nowhere.
- VI. That the respondent has failed to complete the project and obtain the completion certificate for plot. The complainants have suffered a great financial loss, mental trauma and had suffered a great set back.
- C. Relief sought by the complainants:**
4. The complainants have sought following relief(s).
 - i. Direct the respondent to hand over the possession of the plot after receiving completion certificate and execute the conveyance deed.
 - ii. Direct the respondent to pay the interest on the total amount paid by the complainants as per the Act of 2016.
 - iii. Direct the respondent to disclose the status of completion certificate and to furnish a copy of it.
 - iv. Direct the respondent to not to charge holding charges.
 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. Despite due service of notice through speed post and specific direction vide order dated 25.10.2023, no reply has been received from the respondent with regard to the present complaint and also none has put in appearance on its

behalf before the Authority till date. Therefore, the respondent is hereby proceeded ex-parte and the complaint will be decided as per documents available on record and submission made by the complainants.

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 observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D. 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.

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. I Direct the respondent to pay the interest on the total amount paid by the complainants as per the Act of 2016.

E. II Direct the respondent to hand over the possession of the plot after receiving completion certificate and to execute the conveyance deed.

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

13. 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 Seller shall sincerely endeavor to give possession of the Plot to the purchaser **within thirty-six (36) months** from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. **However, the seller shall be entitled for compensation free grace period of +/- six (6) months in case the development is not completed within the time period mentioned above.** In the event of Purchaser's failure to take over possession of the Plot,*



provisionally ang/or finally allotted, within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable pay to @ Rs.50/- per sq. yd. of the Plot area per month as holding charges for th entire period of such delay. It is made clear to purchaser that the holding charges and the late construction charges are distinct and separate to be payable by the Purchaser to the seller. Further, if the seller fails to give possession of the said Plot within Thirty-Six (36) plus aforesaid grace period of six (6) from the date of execution of the Agreement To sell and after providing of necessary infrastructure in the sector by the government or for any reason other than the reason stated above, then the Seller shall be liable to pay the Purchaser compensation @Rs.50/- per sq. yard of the plot area for the entire period of such delay....."

14. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of its right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
15. **Admissibility of grace period:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that

the respondent has not completed the project in which the allotted unit is situated and has not obtained the CC/part CC by October 2019. However, the fact cannot be ignored that there were circumstances beyond the control of the respondent which led to delay in completion of the project. Accordingly, in the present case, the grace period of 6 months is allowed.

16. **Payment of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the 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.

17. 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.
18. 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., 22.05.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

19. 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;"

20. 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 them in case of delayed possession charges.

21. 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 4.2 of the agreement executed between the parties on 06.10.2016, the possession of the subject plot was to be delivered within 36 months from the date of agreement to sell which comes out to be 06.10.2019. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession was 06.04.2020. The respondent has failed to handover possession of the subject plot 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 plot to the complainants as per the terms and conditions of the agreement to sell dated 06.10.2016 executed between the parties. It is pertinent to mention over here that even after a passage of more than 4.1 years neither the construction is complete nor an offer of possession of the allotted plot has been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for completion certificate/part completion certificate or what is the status of construction of 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 allottees.

22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at prescribed rate of interest @10.85% p.a. w.e.f. 06.04.2020 till valid offer of possession plus 2 months after obtaining completion certificate/part completion certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
23. Further, as per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the respondent has applied for CC/part CC or what is the status of the development of the above-mentioned project. Hence, the respondent is

directed to deliver the possession on payment of outstanding dues if any and to execute the sale deed in favour of the complainants on payment of stamp duty and registration charges within 60 days after obtaining CC/part CC from the competent authority.

E. III. Direct the respondent to disclose the status of completion certificate and to furnish a copy of it.

24. As per section 11(4)(b) of the Act, 2016, the respondent is obligated to obtain the completion certificate or occupancy certificate, or both from the relevant competent authority and make it available to the allottees individually or to the association of allottees. The relevant clause is reproduced below: -

"11(4) The promoter shall-

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be"

Further as per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, the respondent is directed to disclose the status of the completion certificate to the complainant-allottees within a period of 30 days of this order and make it available to the complainants after obtaining the same from the competent authority.

E. IV. Direct the respondent to not to charge any holding charge from the complainants.

25. The respondent-promoter is not entitled to charge holding charges from the complainant-allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.

F. Directions of the authority

26. 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 complainants against the paid-up amount at the prescribed rate i.e., 10.85% p.a. for every month of delay from the due date of possession i.e., 06.04.2020 till valid offer of possession plus 2 months after obtaining completion certificate/part completion certificate from the competent authority or actual handing over of possession, 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 06.04.2020 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/promoter is directed to handover possession of the plot and execute conveyance deed in favour of the complainants in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining completion/part completion certificate from the competent authority.
- iv. The rate of interest chargeable from the allottees 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- v. The respondent-promoter is not entitled to charge holding charges from the complainant-allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.
27. Complaint stands disposed of.
28. File be consigned to registry.

Dated: 22.05.2024



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM