



HARERA
GURUGRAM

Complaint No. 1680 of 2021

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

Complaint no. : 1680 of 2021
Complaint filed on : 31.03.2021
Decided on : 19.03.2024

Raheja Navodaya Apartment Buyer Association
(Through Sh. Sudhanshu Maharana, Secretary)

Address: W4D, 204/5, Keshav Kunj,
Western Avenue, Sainik Farms,
New Delhi- 110062

.....Complainant

Versus

M/s Raheja Developers Limited
Address: 3rd Floor, Raheja Mall,
Sohna Road, Sector-47, Gurugram, Haryana.

.....Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Shri Mayank Raghav
Shri Garvit Gupta

Counsel for the complainant
Counsel for the respondent

ORDER

1. The present complaint has been filed by the complainant in form CRA 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 14(3) of the Act wherein it is inter alia prescribed that the promoter is liable to rectify any structural defect or any other defect



in workmanship, quality or provisions of services if such defect is brought to the notice of the promoter within a period of five years from the date of handing over possession without further charge within 30 days. Further, in the event the promoter fails to rectify the defect within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under the Act.

A. Project related details

2. The particulars of the project, details of the complainant, etc. have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Project name and location	"Raheja Navodaya", Sector 92 & 95, Gurugram, Haryana.
2.	Project area	17 acres
3.	Nature of project	Residential group housing colony
4.	RERA registered/not registered	Partly registered. Vide no. 55 of 2019 (for tower T3, T4, community building 1 and convenient shopping) by M/s Saan Propcorn Pvt. Ltd. Valid up to 30.11.2022
5.	DTPC License no.	216 of 2007 dated 05.09.2007
	Validity status	04.09.2024
	Name of licensee	NA Buildwell Pvt. Ltd. C/o Raheja Developers Pvt. Ltd.
6.	Occupation Certificate	OC received on 11.11.2016 for



	detail	<p>following towers/blocks-</p> <ul style="list-style-type: none"> ➤ Block-B (ground + 1st floor to 15th floor) ➤ Block- C (ground + 1st floor to 15th floor) ➤ Block- D (ground + 1st floor to 15th floor) ➤ Block- E (ground + 1st floor to 15th floor) ➤ Tower- 1(ground + 1st floor to 14th floor) ➤ Tower- 2 (ground + 1st floor to 14th floor) ➤ EWS Block- (ground +1st floor to 6th floor) ➤ Community building -II (ground floor to 1st floor) 																												
7.	Total tower in the project	<p>Eight number of towers/blocks, one EWS block, two nursery schools, two community building and one convenient shopping which are as follows:</p> <table border="1" data-bbox="774 1108 1407 2049"> <tr> <td>Tower - T1</td> <td>Ground plus 14</td> </tr> <tr> <td>Tower - T2</td> <td>Ground plus 14</td> </tr> <tr> <td>Tower - T3</td> <td>Ground plus 23</td> </tr> <tr> <td>Tower - T4</td> <td>Ground plus 23</td> </tr> <tr> <td>Block - B</td> <td>Ground plus 15</td> </tr> <tr> <td>Block - C</td> <td>Ground plus 15</td> </tr> <tr> <td>Block - D</td> <td>Ground plus 15</td> </tr> <tr> <td>Block - E</td> <td>Ground plus 15</td> </tr> <tr> <td>EWS</td> <td>Ground plus 6</td> </tr> <tr> <td>Nursery School 1</td> <td>Ground plus 1</td> </tr> <tr> <td>Nursery school 2</td> <td>Ground plus 1</td> </tr> <tr> <td>Community building</td> <td>Ground floor</td> </tr> <tr> <td>Community building 2</td> <td>Ground plus 1</td> </tr> <tr> <td>Convenient</td> <td>Ground floor</td> </tr> </table>	Tower - T1	Ground plus 14	Tower - T2	Ground plus 14	Tower - T3	Ground plus 23	Tower - T4	Ground plus 23	Block - B	Ground plus 15	Block - C	Ground plus 15	Block - D	Ground plus 15	Block - E	Ground plus 15	EWS	Ground plus 6	Nursery School 1	Ground plus 1	Nursery school 2	Ground plus 1	Community building	Ground floor	Community building 2	Ground plus 1	Convenient	Ground floor
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		shopping	
8.	Raheja Navodaya Apartment Owners Association Complainant herein (Through Sh. Sudhanshu Maharana, Secretary)	Registered vide no. HR-018-2017-03036 under Haryana Registration and Regulation of Societies Act, 2012	

B. Facts of the case

3. The complainant has made the following submissions:

- i. That the complainant is a registered society under the Co-operative Society Act, 1984 in the name and style "Raheja Navodaya Apartment Owner Association" having registered office at Sectors 92 and 95 Gurugram, Haryana. The complainant comprises all the residents of the society.
- ii. That the respondent company widely publicized the offer of selling flats in the name "Raheja Navodaya Apartment", Sectors 92 & 95, District- Gurugram, Haryana. The members of complainant association were provided with information memorandum/prospectus for the said flat, indicating terms and conditions for allotment of flat in the project comprising the details pertaining to the offer being made as a part of application form.
- iii. That the members of the complainant were told that the respondent's project has been approved by the Government of Haryana. Therefore, all the residents of the complainant society had made the investment in the project of the respondent to have a home for their family and seem to be safe at that time, they decided to



purchase the said flat by putting their hard-earned money and life's savings into it.

- iv. That all the residents have purchased the flat in the society and agreements have been executed by all the residents. The full and final payments were made by them on time and possession of the flats was delivered to all residents, after a delay of 24 months. All the flats of the project are allotted in the name of the residents, who later on became members of complainant society/RWA. But the agreement was not executed on time because the respondent deliberately delayed the same. After repeated reminders, the agreement was signed by the respondent under the signature of the attorney of the respondent, though the date has been mentioned by the respondent, illegally. It is further submitted that the possession was to be delivered within 24 months from the execution of the aforesaid agreement with a grace period of 6 months.
- v. That after execution of the agreement, residents have made complete payment to the respondent as per his demand. The possession was delivered to all residents of the society. But the respondent has not completed the construction of the project of the society before giving the possession to the residents. Respondent has left many necessary works to be done in the construction of the flats of the society, which the respondent had promised to provide:
- Most of the plumbing work is not done as per the specifications of the constructions. Plumbing pipes were left open to decay.
 - The electricity work is not done properly. Most of the wiring is left open which can attract any mishappening at any time. Even the electricity connection is commercial not residential. That the transformer and the power station are also not developed by the builder.



- The opening of most of the water tank was left open.
- Due to faults in the construction, drainage system and water management system, a lot of water gets filled in the basement of the project. That even there is lot of seepage in most of the flats and outer structure of the towers.
- The ducts of the cooling system of the parking and ducts of the fans installed in the parking were left open which could damage the whole cooling system.
- The doors of the common area and restricted area are damaged and not installed properly.
- There is water logging in the open space which attracts lots of infection/diseases for the kids/residents. The respondent has turned the park space of the society into wastage due to its improper care and management.
- The transformer and generator of society have been left open which are gross violations of the safety systems/norms of the society. The respondent has not taken the OC before giving the possession of the flats. The respondent is liable to be prosecuted for gross violations of the safety norms led by the Govt. Authorities in this regard.
- Few Lifts of the society are not installed and most of the lifts are not working properly or are not in the condition to use. Even as per the safety norms, the lights inside the shaft of lifts are not installed.
- That the respondent has taken an electricity connection which was commercial over the premises for the purpose of construction. At present, the premise is used for residential purpose as all the residents have shifted in their flats after taking the possession of the flats. It was the responsibility of the respondent to get the commercial electricity connection converted into the residential electricity connection. Respondent was responsible to pay security amount to the electricity department regarding this conversion of electricity connection. But the respondent has not paid the security amount to the electricity department despite various requests of the society and the residents of the society are charged electricity at commercial rate till date. Thus, the respondent has forced the residents of the society to pay the electricity bill at commercial rates which cause as a lot of monetary loss to the society. At present the electricity



department is threatening to disconnect the electricity meter of the society due to the illegal and unlawful act of the respondent.

- That the respondent has not applied for the water connection from the authorities and hence they are forced to take water from water tankers and to incur huge amount for the same.
- The fire NOC from the department has not been taken but the respondent and there are many irregularities in the fire equipment.
- That there are many environment violations as well.
- That the club which is to be developed by the respondent is also incomplete.
- Many of the flats and tower are incomplete
- RERA registration has not been done by the respondent.

4. That there is deficiency in service on part of the respondent and therefore, the complainant has filed the present complaint before the authority for seeking direction to the respondent to pay the compensation for delay as well as interest and the respondent may be penalized for the said unfair trade practice and deficiency in services.

C. Relief sought by the complainant:

5. The complainant is seeking the following reliefs:
- i. The respondent be directed to complete the said project with immediate effect.

D. Reply by the respondent:

6. The respondent has submitted as under:
- i. That the present complaint is based on vague, misconceived notions and baseless assumptions of the complainant and are, therefore, denied. That the complainants have not approached this authority with clean hands and have suppressed the true and material facts from this authority. The complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. It is submitted that



the instant complaint is absolutely malicious, vexatious and unjustifiable and accordingly has to pave the path of singular consequence, that is, dismissal.

- ii. That the respondent is traversing and dealing with only those allegations, contentions and/or submissions that are material and relevant for the purpose of adjudication of present dispute. It is further submitted that save and except what would appear from the records and what is expressly admitted herein, the remaining allegations, contentions and/or submissions shall be deemed to have been denied and disputed by the respondent.
- iii. The said project has been completed much prior to the coming of the Act of 2016 and thus the provisions therein cannot be applied retrospectively. The complaint for this very reason is not maintainable and liable to be dismissed.
- iv. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects such as 'Raheja Atlantis', 'Raheja Atharva', 'Raheja Atlantis' and 'Raheja Vedanta' and in most of these projects large number of families have already shifted after having taken possession and Resident Welfare Associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.
- v. That the Navodaya project is located in Sector 92, Gurugram, Haryana. Spread over a vast land of 17 acres, comprising of approximately 813 units having 6 towers. It is a passionately



designed and executed project having many firsts and is the tallest building in Haryana with highest infinity pool and club in India. The scale of the project required a very in depth scientific study and analysis, be it earthquake, fire, wind tunneling facade solutions, landscape management, traffic management, environment sustainability, services optimization for customer comfort and public health as well, luxury and iconic elements that together make it a dream project for customers and the developer alike. The world's best consultants and contractors were brought together such as Thornton Tomasetti (USA) who are credited with dispensing world's best structure such as Petronas Towers (Malaysia), Taipei 101 (Taiwan), Kingdom Tower Jeddah (world's tallest under construction building in Saudi Arabia and Arabtec makers of Burj Khalifa, Dubai (presently tallest in the world), Emirates Palace Abu Dhabi etc.

- vi. That the complainant, after fully reading and understanding the contents of the flat buyer agreement executed with each of the complainants, voluntarily signed the agreement and is bound by the terms of the contract. It is submitted that clause 4.1 of the agreement states that *"the company endeavours to give possession of the Apartment to the Allottee within 24 months from the date of execution of this agreement and after providing of necessary infrastructure 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 company..."*
- vii. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute



resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 15.2 of the buyer's agreement.

- viii. That as the respondent merely endeavour to complete and handover the possession of the flat within 24 months provided necessary infrastructure in the sector is made available by the Government and force majeure conditions are not in play. Although the construction of the project was complete, the government agencies merely failed in providing the external infrastructure due to which there was delay of 24 months and the same cannot be attributed to the respondent. The respondent had also filed RTI application seeking information about the status of basic services such as road, sewerage, water and electricity. Thereafter, the respondent received a reply from HSVP wherein it is clearly stated that no external infrastructure facilities have been laid down by the concerned governmental agencies. The respondent can't be blamed in any manner on account of inaction of government authorities.
- ix. That the project in question was complete and only then occupation certificate was applied. Further, the grant of occupation certificate is basis the habitability condition and granted only when the authority is satisfied that the project is built in accordance with the building plans and zonal approvals. As per the scope of work with regard to plumbing, everything was completed before handing over of the project in 2018. That any subsequent problems or repairs that need attention post the delivery of possession has to be taken up by the RWA as part of their maintenance. The electrical work was completed in all respect basis which the occupation certificate was granted. It is submitted that the electrical connection is not



commercial and the complainants have received back (commercial rate) which was overcharged by DHBVN. At present, the complainant is being charged the residential rates only. It is denied that most of the water tanks are left open without cover. It is submitted that all water tanks have been covered with proper lids. It is denied that there is seepage in the basement due to fault in construction and drainage and latest photographs are annexed. Further, it is submitted that all the openings made in the basement are in accordance with the building plan and no air duct is left open. With respect to doors in common areas and restricted areas, it is submitted that not only are the doors damage free, all the doors in the common area and in the restricted area are functioning smoothly and properly. It is denied that there is any water logging in the open space or green area or park. It is submitted that all parks and green area are fully functional and post the delivery of possession, the respondent is not liable for the maintenance of the green area/park. It is denied that the respondent had not obtained the occupation certificate prior to handing over possession and is liable to be prosecuted for gross violation of safety norms. The transformers/DG are installed as per the norms and NOC of the same was received before obtaining OC. It is submitted that the Electrical Inspectorate, Haryana on inspection of the lifts in the project found all the lifts to be functional and moreover it is pertinent to mention to bring on record that as per his inspection report, the RWA has not got the lift license renewed since 2018. The respondent has already applied multiple times however, GMDA has not laid down water pipelines in



the area due to which temporary water connection is made. The construction of the club is complete and functional.

E. Jurisdiction of the authority

7. The authority observes that it has territorial as well as 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 the Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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. 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.

F. Findings of the authority

11. The case of the complainant-association is that the residents have been inconvenienced with plumbing works and leakage issues, fire safety measures are not as per norms, lifts not working properly, water logging in the basement, ventilation duct, etc.
12. Vide order dated 13.10.2021, a local commissioner was appointed to submit report regarding issues raised in the complaint along with report regarding registrability of the whole project/part project in which occupation certificate has not been issued so far. The report of local Commissioner was received on 08.11.2021 and the same is placed on record. The concluding paragraph of LC report is reproduced below:

“7. Conclusion:

The site of project namely “Raheja Navodaya” located in sector-92 & 95, Gurugram developed by M/s Raheja Developers Pvt. Ltd. has been inspected and it is concluded that:

- I. **Plumbing works/leakage issues-** There is accumulation of wastewater in basement as a result of leakage from soil water pipes carrying wastewater from towers running through basement toward STP. Water accumulation has caused damage to paint and plaster.*
- II. **Electrical shafts and wirings-** Electrical shafts are left open which is hazardous for the residents. Further, wirings for installation of bollard lights in landscaped area are left open at some places.*



- III. **Fire safety measures-** Firefighting system is installed on site and is in working condition. However, the system was found shut during the site visit and on running it was found there were leakages in the pipelines connected to fire tank. The promoter didn't provide approved fire plans to verify the fire tender path on site.
- IV. **Cooling duct-** Cooling ducts are in working condition but have been rusted and damaged due to leaking at some of the joints.
- V. **Water logging in basement-** The leakage of water from soil water pipes carrying wastewater from towers running through the basement has led to accumulation of water in the basement and resulted in foul smell in the basement.
- VI. **Community building & swimming pool-** As per the approved layout plan, community building has ground and first floor (G+1) whereas on project site, only ground floor is developed. The competent authority has granted occupation certificate for ground and first floor whereas only ground floor of community building has been built at the project site. The promoter has developed a swimming pool in front of the community building which is not operational as on date.
- VII. **Lift -** There are two lifts proposed in every tower of the project. All the lift are installed, and all are operational except one lift of tower-E.
- VIII. **Ventilation Duct-** For ventilation of basement, the promoter has developed ventilation ducts which open in the green area of the project at a height of around 4 feet from the ground. These ducts are left uncovered which is hazardous for residents. Further, basement slab is demolished at certain places by taking down the concrete and plaster while leaving the reinforcement in place (as captured in the photos). As per the MEP consultant on behalf of the promoter, it is done to create room for light and ventilation.
- IX. **STP-** The STP is operational with all the equipment and machineries installed in place. However, as per the MEP consultant on behalf of the promoter, two motors in STP have broken down and need to be repaired.
- X. **Whether the project is registrable or not-** As per the joint development agreement, M/s Saan Procon Pvt. Ltd. had to develop towers T-3, T-4, community building 1 and convenient shopping and the area is duly registered with the authority vide R.C. no. 55 of 2019 valid upto 30.11.2022. While, M/s Raheja Developers Pvt. Ltd. has to develop tower T-1, T-2, block -B, block-C, block-D, block-E, community building 2, two nursery schools and the E.W.S block and for this area the promoter has obtained occupation certificate dated 11.11.2016 but the completion certificate by the competent authority has not been obtained yet. The area to be developed by M/s Raheja Developers Pvt. Ltd. (tower T-1, T-2,



block -B, block-C, block-D, block-E, community building 2, two nursery schools and the E.W.S block) is registrable with authority."

13. Vide order dated 08.02.2022, the respondent was directed to submit an affidavit giving a timeline within which the project shall be completed after completing all the requisite infrastructure development works and meeting all the pre-requisite for applying for CC. The authority also directed the promoter to obtain BIP permission from the competent authority in respect of towers T3, T4 and community building no.1 and convenient shopping to be developed by M/s Saan Procon Pvt. Ltd. having the project registered vide RC no. 55 of 2019. The respondent/promoter was further directed to file an affidavit as by what time the defects mentioned in the LC report would be rectified. The authority directed to file all the necessary affidavits within 15 days from the date of order dated 08.02.2022.
14. Despite several opportunities given to the respondent to comply with the directions of the authority passed vide order dated 08.02.2022, the respondent failed to file the requisite documents. Thereafter, vide order dated 30.05.2023, the respondent was directed to show cause under section 63 of the Act as to why a penalty of Rs.5 lakhs be not imposed upon the respondent for non-compliance of the order dated 08.02.2022. Further the planning branch was directed to verify whether the condition of the registration certificate issued to the respondent (RC-55-2019) has been complied or not, if not, what action has been taken.
15. In compliance of the aforesaid order dated 30.05.2023, the planning branch has submitted the following report:



STATUS OF COMPLIANCES DONE BY THE PROMOTER			
Conditions	Compliance due date	Date of approval obtained on	Whether compliance done within timeframe
Renewal of license no. 216 of 20007	31.12.2019	09.07.2021	With a delay of 556 days

16. On 06.10.2023, the respondent filed a reply to the aforesaid show cause wherein it is stated that there is no fault or illegality or any type of delay on the part of the respondent in filing any affidavit and any delay, if caused, is on account of reasons not attributable to the respondent company.
17. The counsel for the complainant is placing on record a copy of affidavit and states that despite directions of the authority, the respondent has failed to rectify the defects identified in the report of LC appointed by the Authority and the problem of leakage, water logging and lack of various amenities including provision of proper electricity connection and transfer of IFMS amount has not yet happened and requests for directions to the promoter to complete deficiencies in time bound manner and to hand over the IFMS amount collected from the allottee along with the complete account details.
18. The counsel for the respondent has filed latest status report stating the rectification work executed after August, 2023 and a copy has been handed over to the counsel of the complainant-Association stating that the construction of the project has been completed and OC obtained on 11.11.2016 and the complainant association has no locus standi to file the complaint. The counsel for the respondent states that transfer of IFMS

amount is not part of the relief sought in the complaint and hence, directions for the same cannot be sought by way of affidavit filed today.

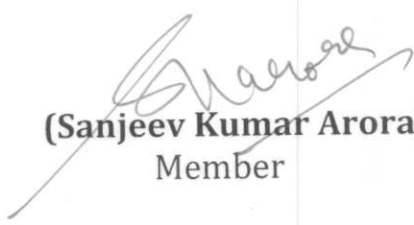
19. The authority observes that as per section 14(3) of the Act, the promoter is liable to rectify any structural defect or any other defect in workmanship, quality or provisions of services if such defect is brought to the notice of the promoter within a period of five years from the date of handing over possession without further charge within 30 days. Further, in the event the promoter fails to rectify the defect within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner provided under the Act.
20. As per the complaint and report of LC, certain defects have been pointed out and a period of 3 (three) months is given to the respondent /builder to rectify the defects and deficiency in construction and services, if any, failing which the complainant association is at liberty to approach the adjudicating officer for failure to rectify such defect within aforesaid time and for seeking appropriate compensation in the manner as provided under the Act as per section 14(3) read with sections 71 & 72 of the Act.

G. 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) of the Act:
- A period of 3 (three) months is given to the respondent /builder to rectify the defects and deficiency in construction and services, if any, failing which the complainant association is at liberty to approach the adjudicating officer for seeking appropriate compensation in the

manner as provided under the Act as per section 14(3) of the Act read with sections 71 and 72 of the Act.

22. Complaint stands disposed of.
23. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.03.2024



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