



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

Complaint no. : 2390 of 2021
Date of complaint : 14.06.2021
Order reserved on : 29.02.2024
Order pronounced on: 25.04.2024

1. Sh. Subhash Chauhan
2. Smt. Anju Chauhan

Complainants

Both R/o: C-8, Plot-6, Sector-6, Dwarka, New
Delhi-110075.

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. Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Ravi Rao (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 and location of the project | "Raheja's Shilas", Sector 109, Gurugram |
| 2. | Nature of the project | Residential |
| 3. | Project area | 14.812 acres |
| 4. | DTCP license no. | 257 of 2007 dated 07.11.2007 valid up to 06.11.2024 |
| 5. | Name of licensee | Brisk Construction Pvt. Ltd. and 3 others |
| 6. | Unit no. and floor no. | IF18-05 and 4 th floor (As per page no. 20 of the complaint) |
| 7. | Unit area admeasuring | 1920 sq. ft. (Super area) (As per page no. 20 of the complaint) |
| 8. | Allotment letter | 05.07.2011 (As per page no. 44 of the complaint) |
| 9. | Date of execution of flat buyer's agreement | 05.07.2011 (As per page no. 17 of the complaint) |
| 10. | Possession clause | 4.2 Possession Time and Compensation <i>That the seller shall sincerely endeavor to give possession of the plot to the purchaser within twenty-four (24) months from the date of the execution this Agreement and after providing of</i> |

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| | | <p><i>necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or nay 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 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 liable to pay @ Rs. 7/- per sq. yds. of the plot area per month as holding charges for the entire period of such delay...."</i></p> <p>(As per page no. 27 of complaint)</p> |
| 11. | 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 24 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 July 2013. As per agreement to sell, the construction and development</p> |

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| | | work of the project is to be completed by July 2013 which is not completed till date. Accordingly, in the present case the grace period of 6 months is allowed. |
| 12. | Due date of possession | 05.01.2014 (Note: 24 months from the date execution of FBA i.e., 05.07.2011 + six months grace period) |
| 13. | Basic Sale Price | Rs.89,38,675/- (As per payment plan on page no. 42 of the complaint) |
| 14. | Total sale consideration | Rs.96,73,925/- (As per payment plan on page no. 42 of the complaint) |
| 15. | Amount paid by the complainant | Rs.91,02,625/- (As per ledger on page no. 45 of the complaint) |
| 16. | Occupation Certificate/ completion certificate | Not received |
| 17. | Offer of possession | Not offered |

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the present complaint is filed by the complainants who are husband and wife and had jointly booked an apartment in the project namely "Raheja Shilas" independent floors which comprises of 94 units in the Raheja Atharva housing project in Sector-109, Gurgaon of Raheja Developers Limited i.e., the respondent.
- II. That the respondent has seized and possessed the land admeasuring to 14.812 acres situated in village-Palwala Khusrupur, district Gurgaon, which falls in Sector 109, Gurgaon and has obtained the

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- license in 2007 from department of Town & Country Planning (DTCP), Haryana for the development of residential group housing colony on the said land.
- III. That the respondent launched a project name Raheja's Atharva and invited the applications for second phase of bookings for 'Raheja Shilas' independent floors which is a part/extension of "Raheja Atharva".
- IV. That the complainants allured about the right, title, location, interest and assured to provide ultra-modern amenities and occupancy in time bound manner has shown interest in the complex and the representative of respondent approached the complainants and made all promises and while seeing the rosy picture agreed for allotment of an apartment admeasuring to 1920 sq. ft. super area which includes 1649 sq. ft. (approx.) built up on the fourth floor and a court/ terrace area admeasuring to 442.00 sq. ft. (approx.) in independent floors, tower/ block-18 by application form dated 09.05.2011 in the complex which was under development.
- V. That in pursuance of the above-mentioned application the respondent has allotted the apartment no. IF-18-05 on 4th floor in independent floors, tower/ block-18.
- VI. The complainants have paid an amount of Rs.2,50,000/- vide cheque dated 05.05.2011, Rs.2,50,000/- vide cheque dated 08.05.2011, Rs.2,00,000/- vide cheque dated 13.05.2011 and Rs.2,25,000/- vide cheque dated 20.05.2011.
- VII. That as per clause 4.2 of the flat buyer's agreement the respondent endeavors to give possession of the apartment to the complainants within 24 months from the date of execution of this agreement. Further as per the said clause if the respondent fails to complete the

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construction of the said apartment within 24 months plus grace period of 6 months from the date of execution of the agreement and after providing of necessary infrastructure in the sector for government or for any reason other reason, then the respondent shall be liable to pay compensation @ Rs.7 per sq. ft. of the super area per month for the entire period of such delay.

- VIII. That the complainants have made the complete payment of Rs.91,02,625/- with regard to the said apartment which is also reflected in the ledger issued by the respondent and even after the various reminders the complainants has neither received the possession of the apartment nor compensation.
- IX. That the complainants case is not just of a simple/ordinary delay but one of a kind of immense financial burdens on the complainants. The complainants have been severely traumatized by the non-delivery of possession of the apartment clubbed with the mental agony and huge consideration of the hard-earned money of the complainants is still lying with the respondent interest free.
- X. That on 17.02.2020, the complainants received the communication through e-mail that the company will receive the occupation certificate till the end of the year and accordingly the possession will be initiated. But till date the possession is not initiated.
- XI. That despite the respondent suggesting that the project will be completed within a time bound manner in 24 months and making the complainants fulfill their payment considerations amongst other things, the actual possession of the apartment is still pending. The respondent has been making false promises of timely delivery of the project. The respondent is not only misleading the complainants on

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- this pretext but also fraudulently and deceitfully made the complainants deposit the monies periodically for the said apartment.
- XII. That the respondent have no reasonable justification for the inordinate delay in construction of the project and none of the circumstances resulting in this delay, were beyond its control. It is submitted that the complainants have invested their hard-earned money and lifetime savings for their 'dream homes' and even after more than six years now, the respondent failed and neglected to hand over physical possession of the said apartment to them.
- XIII. That the complainants being aggrieved by the offending misconduct, fraudulent activities of the respondent, the complainants are filing the present complaint before the Hon'ble Authority, Gurugram. It is submitted that the respondent is not completing construction of the project and should be addressed by the Hon'ble Authority.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to deliver the possession of apartment;
 - Direct the respondent to pay the interest for every month of delay at the prescribed rate of interest;
 - Direct the respondent to pay an amount of Rs.10,21,440/- for Compensation @Rs.7 per sq. ft. per month for failure in providing the possession of the apartment;
 - Direct the respondent to pay Rs.5,00,000/- on account of mental agony, harassment and litigation charges to the bonafide complainants.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed

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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 12.10.2023 and 29.02.2024 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 by avoiding filing of written reply. Therefore, in view of above, the defence of the respondent is 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 complainants-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

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(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.I Direct the respondent to deliver the possession of the apartment and to pay interest for every month of delay, on the amount paid so far, at the prescribed rate of interest

10. The above-mentioned reliefs sought by the complainants are taken together being inter-connected.
11. 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.”

(Emphasis supplied)

12. The due date of possession of the apartment as per clause 4.2 of the flat buyer’s agreement dated 05.07.2011, is to be calculated as 30 months from the execution of flat buyer’s agreement in case of independent



floors including grace period of 6 months. Therefore, the due date of possession comes to 05.01.2014.

13. **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.

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., 25.04.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
16. 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

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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., 10.85% by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.

18. 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 05.01.2014. 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.

19. 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

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promoter, interest for every month of delay from due date of possession i.e., 05.01.2014 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.

E.II Direct the respondent to pay an amount of Rs.10,21,440/- for compensation and Rs.5,00,000/- as litigation cost on account of mental agony and harassment caused to the complainants

20. The complainants are seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra* held that an allottee is entitled to claim compensation 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 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.

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 of **Rs.91,02,625/-** 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., 05.01.2014 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.

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- ii. The arrears of such interest accrued from 05.01.2014 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. Thereafter, interest for every month of delay shall also be paid by the promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules till a valid offer of possession is made to the complainants/allottee(s) after obtaining occupation certificate.
 - 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.
22. Complaint stands disposed off.
23. File be consigned to registry.



(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 25.04.2024