

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

**Complaint no. :** 2187 of 2023  
**Date of complaint :** 26.05.2023  
**Date of Decision:** 28.03.2024

1. Sh. Krishna Parshad Madvesh  
2. Smt. Shalini Khanduja Madvesh  
**Both R/o:** B-359, 2<sup>nd</sup> floor, Green Fields  
Colony, Block B, Faridabad, Haryana-121010.

**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. Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Niloptal Shyam (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

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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 Shilas", Sector-109, Gurugram
2.	Nature of the project	Low rise floors
3.	Project area	14.812 acres
4.	DTCP License and validity	257 of 2007 dated 07.11.2007 valid up to 06.11.2024
5.	Name of the licensee	Brisk Construction Pvt. Ltd. and 3 others
6.	RERA Registration	90 of 2017 dated 28.08.2017 valid up to 5 years from the revised environment clearance (Inadvertently mentioned as 31.12.2020 in proceedings dated 28.03.2024)
7.	Unit no. and floor no.	IF9-03, Independent Floor and Tower-9 (As per page no. 37 of the complaint)
8.	Unit area admeasuring	2102 sq. ft. (Super area) (As per page no. 37 of the complaint)
9.	Allotment letter	30.06.2011 (As per page no. 33 of the complaint)
10.	Date of execution of agreement to sell	30.06.2011 (As per page no. 35 of the complaint)
11.	Possession clause	<b>4.2 Possession Time and Compensation</b> <i>That the seller shall sincerely endeavor to give possession of the plot to the purchaser <b>within twenty-four (24)</b></i>

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		<p><i>months from the date of the execution this Agreement and after providing of necessary infrastructure specially road sewer &amp; 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. ft. of the plot area per month as holding charges for the entire period of such delay...."</i></p> <p>(As per page no. 42 of the complaint)</p>
12.	Grace Period	<p><b>Allowed</b></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 December 2013. As per agreement to sell, the construction and development work of the project</p>

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		is to be completed by December 2013 which is not completed till date. <b>Accordingly, in the present case the grace period of 6 months is allowed.</b>
13.	Due date of possession	30.12.2013 (Note: 24 months from the date of execution of agreement to sell i.e., 30.06.2011 + 6 months grace period)
14.	Total sale consideration	Rs.1,06,24,129/- As per applicant ledger on page no. 62 of the complaint)
15.	Amount paid by the complainant	Rs.94,63,948/- (As per customer ledger on page no. 62 of the complaint)
16.	Occupation Certificate/ completion 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 respondent through their representative had approached the complainants and represented that the respondent's residential project name "Raheja Shilas" situated at Sector-109, Gurugram, Haryana will effectively serve the purpose of the complainants and has best of the amenities.
- II. That the respondent had claimed that they are seized and possessed of land admeasuring approximately 14.812 acres at the project site and accordingly, obtained license from Director General, Town & County Planning (DTCP), Haryana for development of residential group housing colony on the said land vide license no. 257 of 2007 dated 07.11.2007. It was further represented by the respondent that

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the project is an extension of "Raheja Atharva" project having all the necessary sanctions and approvals from the competent authority.

- III. That the complainants shown their willingness to book a unit in the project on the basis of the announcement of the respondent being a renowned builder i.e., Raheja Group along with the aforesaid representation made by the respondent.
- IV. That the complainants accordingly booked the unit and also made a payment of Rs.9,00,183/- vide cheque dated 12.02.2011 to the respondent for an independent unit in "Raheja Shilas". Accordingly, allotment letter dated 30.06.2011 was issued by the respondent to the complainants for the allotment unit no. IF09-03, admeasuring 2102 sq. ft. It is noteworthy that 30.06.2011 was taken as deemed date of allotment of unit.
- V. That the complainants on the same date of issue of allotment letter also entered into the agreement to sell for the unit was executed on 30.06.2011 between M/s Raheja Developers Ltd. and the complainants. It is noteworthy that the said agreement to sell is a standard form of agreement which is biased, one sided, amounting to unfair trade practice as the complainants were compelled to sign on dotted lines in view of one-sided standard form of agreement to sell with no right to bargain especially in view of the fact that the complainants were in fear to lose the money already paid to the respondent.
- VI. That in accordance with the agreement to sell dated 30.06.2011, the respondent agreed to sell convey /transfer the unit no. IF09-03, Independent floor, Tower-9 admeasuring 2102 sq. ft of super area with the right to exclusive use of parking space in the project for sale consideration of Rs.87,75,850/- calculated @Rs.4,175/- per sq. ft.

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super area and in addition to cost of parking rights, club membership, electricity connection, IFMS, as per the payment plan annexed to the said agreement plus applicable taxes. Accordingly, the total consideration approximately comes as Rs.1,06,24,129/- as per the statement of account issued by the respondent. The said amount also includes service tax which is legally not chargeable.

- VII. That the respondent committed under the agreement to sell to handover the possession of the unit within 24 months from the date of execution of the agreement to sell with a grace period of 6 months. Thus, the commitment of the respondent to deliver the possession of the unit to the complainants was till December, 2013 (i.e., 30.12.2013) even when including the grace period of six months. However, the respondent has failed to hand over the possession of the flat to the complainants till today. It is submitted that there has been no force majeure condition till date justifying the delay in handing over the possession even after elapse of more than 9.5 years from the date as promised in agreement to sell. The reason for non-delivery of possession is solely attributable to the respondent and hence the respondent cannot claim benefit off their own wrong.
- VIII. That the respondent failed to keep their promised of delivery of the unit within the time prescribed under the agreement to sell i.e., latest by 30.12.2013. The respondent did not even bother to give reason about such unreasonable delays in handing over the possession of unit to the complainants. The respondent does not respond to the genuine problems faced by the complainants. While the respondent failed to keep its promise of deliver the unit by due date, at the other hand, the complainants were compelled to pay

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compound interest @18% per annum for any delay in payment of due installments.

- IX. That more than nine and half (9.5) years have elapsed from the date from which the respondent was under a contractual obligation to obtain the occupancy certificate and accordingly handover the possession of the unit. The aforesaid reason of delay of more than nine years in obtaining the occupancy certificate/possession is itself a ground for granting interest for delayed period. The present complaint shall be treated as demand for getting possession along with interest of the project of respondent(s) in accordance with Section 18 of Act of 2016.
- X. That it is a fit case wherein Hon'ble Authority shall order for granting possession along with interest in view the mandatory obligation as provided under RERA Act, 2018 as well as on account of the acrimony of respondent company wherein they obliterated the trust reposed on them by complainants by handing over of unit along with interest. It is important to note that the Complainants have paid more than 95% of the total sale consideration with no date of delivery of possession in sight till date due to the illegalities conducted by the respondent.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s):
- Direct the respondent to immediately (not more than 30 days from the date of order) deliver the possession of unit no. IF 09-03 after adjusting the delayed possession interest.
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 sought short adjournment for filing of the reply. Despite a lapse of more than seven months since the notice has been issued to the respondent to file reply, 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 was struck off on 04.01.2024.
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**





.....  
(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 immediately (not more than 30 days from the date of order) deliver the possession of unit no. IF 09-03 after adjusting the delayed possession 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. Clause 4.2 of the apartment buyer's agreement provides for handing over of possession and is reproduced below for ready reference:

**4.2 Possession Time and Compensation**

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*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 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. ft. of the plot area per month as holding charges for the entire period of such delay...."*

**(Emphasis supplied)**

13. The due date of possession of the apartment as per clause 4.2 of the flat buyer's agreement dated 30.06.2011, 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 30.12.2013.
14. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prevailing rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, 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.*

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15. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
16. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 28.03.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
17. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(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;"*
18. 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.
19. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due



date as per the agreement. The due date of handing over possession is 30.12.2013. No document is placed on record to show that after completing the unit, OC has been obtained or even applied to the competent Authority and no offer of possession has been made to the complainants-allottees.

20. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondents/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of respondents are established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.12.2013 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier, at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**F. Directions of the Authority:**

21. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest on the paid-up amount of **Rs.94,63,948/-** 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., 30.12.2013 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 30.12.2013 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 10<sup>th</sup> 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.

V.1-3  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 28.03.2024