

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

<b>Complaint no.</b>	<b>3489 of 2023</b>
<b>Date of filing:</b>	<b>26.07.2023</b>
<b>Date of decision</b>	<b>13.09.2024</b>

1. Nisha Pandey 2. Anupama Pandey R/O: - G 11b, The Ivy Apartments, Sushant Lok Phase - 1, Sector 28, Gurugram, Haryana	<b>Complainants</b>
Versus	
Raheja Developers Ltd. Regd: Office Raheja Developers Ltd. W4d,2o4/5, Keshav Kunj, Western Avenue, Cariappa Marg, Sainik Farms, New Dethi- 110062	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Vaibhav Tyagi	<b>Complainants</b>
Sh. Garvit Gupta	<b>Respondent</b>

**ORDER**

1. This complaint has been filed by the complainant/allottee 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 thereunder 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project	"Raheja Revanta", Sector 78, Gurugram, Haryana
2.	Project area	18.7213 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	49 of 2011 dated 01.06.2011 valid up to 31.05.2021
5.	Name of licensee	Sh. Ram Chander, Ram Sawroop and 4 Others
6.	Name of licensee	Sh. Ram Chander and 5 others
7.	Date of environment clearances	23.10.2013 [Note: - the date of revised EC is taken from the complaint no. 1681 of 2022 of the same projects being developed by the same promoter]
8.	Date of revised environment clearances	31.07.2017 [Note: - the date of revised EC is taken from the complaint no. 1681 of 2022 of the same projects being developed by the same promoter]
9.	RERA Registered/ not registered	Registered vide no. 32 of 2017 dated 04.08.2017
10.	RERA registration valid up to	31.01.2023 5 Years from the date of revised Environment Clearance + 6 months grace period in view of Covid- 19
11.	Unit no.	C-114, 11 <sup>th</sup> floor, Tower/block- C (Page no. 35 of the complaint)

12.	Unit area admeasuring	1226.34 sq. ft. (Page no. 35 of the complaint)
13.	Allotment letter	01.08.2014 (Page no. 28 of the complaint)
14.	Date of execution of agreement to sell	01.08.2014 (Page no. 32 of the complaint)
15.	Possession clause	<p><b>4.2 Possession Time and Compensation</b></p> <p><i>That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser <b>within thirty-six (36) months in respect of 'TAPAS' Independent Floors and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer &amp; 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 construction is not completed within the time period mentioned above. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form &amp; Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days</b></i></p>

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		<p>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 compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."</p> <p>(Page no. 43 of the complaint).</p>
16.	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 48 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 occupation certificate by August 2018. As per agreement to sell, the construction of the project is to be completed by August 2018 which is not completed till date. <b>Accordingly, in the present case the grace period of 6 months is allowed.</b></p>
17.	Due date of possession	<p>01.02.2019</p> <p>(Note: - 48 months from date of agreement i.e., 01.08.2014 + 6 months grace period)</p>
18.	Basic sale consideration as per BBA at page no. 35 of the complaint	Rs. 1,15,15,112/-
19.	Total sale consideration as per customer ledger dated 17.04.2020 page no. 64 of the complaint	Rs. 1,31,14,735/-
20.	Amount paid by the complainants	<p>Rs.1,16,26,556/-</p> <p>(As per customer ledger dated 17.04.2020 page no. 64 of the complaint)</p>



21.	Occupation certificate /Completion certificate	Not received
22.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainants have made the following submissions: -

- I. That the complainants were approached by the representatives of the respondent company in the year 2013 to invest in a project situated at Sector 78, Gurugram, Haryana, being developed by them. The complainants were assured that the same would be a prime residential project with various facilities, including club house, etc. and would be delivered within 2 years from the date of booking. Based on the various representations made by the respondent, the complainants paid an amount of Rs. 11,94,209/- towards booking a unit in the project and again on 30.05.2014 paid an amount of Rs 27,10,556/- however, it was only on 01.08.2014 that they received the allotment letter where a unit number C-114 was allotted to the complainants.
- II. That the respondent company had also issued an agreement to sell on the same date to the complainants, wherein various terms and conditions were added which were not promised or agreed between the parties, at the time of booking of the unit. Upon perusal of the agreement to sell, the complainants were shocked to find that it was filed with various arbitrary and one-sided terms and conditions. For instance, as per clause 3.7 of the agreement, on delay in making the installment payment towards the consideration of the unit, the complainants were liable to pay interest @18% compounded on monthly basis, however, upon the delay in providing possession of the unit, the respondent was supposed to pay to the complainant a meagre interest of Rs 7/- per square feet of the super area per month for the period of delay. However, the complainants could not negotiate any of the one-sided and arbitrary terms and conditions as any

- disagreement thereof would have led to the cancellation of the unit and forfeiture of the non-refundable amounts paid by the complainants along with earnest money i.e., 10% of the basic sale price of the unit.
- III. That in terms of the clause 4.2 of the agreement, the respondent was liable to handover possession of the unit within a period of 48 months from the date of execution of the Agreement along with grace period of 6 months. Therefore, the possession of the unit was liable to be handed over by August, 2018.
- IV. That the complainants complied with the demands raised by the respondent from time to time and has been regular in its payments. There has been no demand raised by the respondent which has not been complied with by the complainants, in fact, in terms of the ledger statement issued by the respondent itself, the complainants have paid an amount of Rs. 1,17,06,645.81/- out of the total consideration of Rs. 1,15,15,112/-, whereas the construction of the project is nowhere near completion. Upon enquiry from the officials of the respondent company, there had been no response from them. The respondent company on 22.02.2017 issued a letter in terms of which it unilaterally and without confirmation or acceptance by the complainants changed the completion schedule of the project, in terms of the said letter the respondent company would now be applying for occupation certificate of the project in December, 2018.
- V. That the complainants were forced to inspect the project of the respondent in 2023 and subsequently, found that the same is nowhere near completion despite a lapse of almost 5 years from the date of possession in terms of the agreement. The respondent company had repeatedly provided only false assurances to the complainants regarding possession of the project, aggrieved by the same, the complainants issued a Legal Notice dated 12.06.2023 to the respondent company. In terms of the said legal notice, the

complainants demanded possession of their unit in the state and facilities as assured at the time of booking of the said unit and to provide adequate and fair delayed interest compensation on account of the inordinate delay in handing over of the unit.

- VI. That the respondent has failed to offer possession of the unit to the complainants within the time promised as per the agreement. The respondent has failed to offer physical possession of the unit till date. The complainants feel cheated because it is apparent that the promises made by the respondent were nothing but false and dishonest.

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

4. The complainant has sought following relief(s):

- i. Direct the respondent to offer the possession of the unit and pay delayed possession charges along with prescribed rate of interest.

5. The respondent/promoter put in appearance through its Advocate and marked attendance on 01.12.2023 and sought short adjournment for filing of the reply. Despite a lapse of more than a year 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 31.05.2024.

6. 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.

**D. Jurisdiction of the Authority:**

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D.I Territorial Jurisdiction:**

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8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by 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.

**D.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.

**E. Objection regarding the circumstances being 'force majeure'**

11. The respondent has contended that the project was delayed because of the 'force majeure' situations like delay due to lack of infra services by Government Agency which were beyond the control of respondent. However, all the pleas advanced in this regard are devoid of merits. First of all, the



possession of the unit in question was to be offered by 01.02.2019. Further, the time taken in getting governmental approvals/clearances cannot be attributed as reason for delay in project. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

**F. Findings on the relief sought by the complainants.**

**E.I Direct the respondent to offer the possession of the unit and pay delayed possession charges along with prescribed rate of interest.**

12. The above-mentioned reliefs sought by the complainants are taken together being inter-connected.
13. In the present complaint, the complainants intends to continue with the project and is 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."*

14. Article 4.2 of the buyer's agreement provides for handing over of possession and is reproduced below:

**4.2 Possession Time and Compensation**

*That the Seller shall sincerely endeavour to give possession of the Unit to the purchaser **within thirty-six (36) months in respect of 'TAPAS' Independent Floors and forty eight (48) months in respect of 'SURYA TOWER' 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 construction is not completed within the time period mentioned above. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit 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 compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay.....".*

15. 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 and 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 his 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.

**16. Due date of handing over possession and 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 48 months plus 6 months of grace period, in case the construction is not complete within the

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time frame specified. 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 occupation certificate by August 2018. However, the fact cannot be ignored that the construction is still not completed and this led to delay in completion of the project. Accordingly, in the present case the grace period of 6 months is allowed.

**17. Admissibility of delay possession charges at 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.

18. 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.

19. Taking the case from another angle, the complainant-allottees were entitled to the delayed possession charges/interest only at the rate of Rs.7/- per sq. ft. per month as per clause 4.2 of the buyer's agreement for the period of such delay, whereas the promoter as per clause 3.14 of the buyer's agreement was entitled to charge interest @ 18% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the

authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of its dominant position and to exploit the needs of the home buyer's. The authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumer/allottee in the real estate sector. The clauses of the buyer's agreement entered between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These type of discriminatory terms and conditions of the buyer's agreement would not be final and binding.

20. 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., 13.09.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

21. 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;"*

22. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted to her in case of delayed possession charges.
23. 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 buyer's agreement executed between the parties on 01.08.2014, the possession of the subject unit was to be delivered within 48 months from the date of execution of this agreement. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 01.02.2019. The respondent has failed to handover possession of the subject unit 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 unit to the complainant as per the terms and conditions of the buyer's agreement dated 01.02.2019 executed between the parties. Further no OC/part OC has been granted to 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.
24. 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 complainant is entitled to delay possession charges at rate of the

prescribed interest @11.10% p.a. from the due date i.e 01.02.2019 till offer of possession plus two months after obtaining occupation 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. (Inadvertently mentioned in the proceeding of the day as from the due date of possession i.e 01.02.2019 till offer of possession after obtaining occupation certificate from the competent authority plus two months whichever is earlier).

**G. Directions of the authority**

25. 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 of 11.10% p.a. for every month of delay from the due date of possession i.e., 01.02.2019 till offer of possession after obtaining occupation certificate from the competent authority plus two months 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 due date of possession till the date of order by the authority shall be paid by the promoter to the allottee 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 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- iii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

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- iv. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainants w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
- v. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
- vi. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% 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.
26. Complaint stands disposed of.
27. File be consigned to registry.

Dated: 13.09.2024

**HARERA**  
**GURUGRAM**

  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram