

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

Complaint no. : 6382 of 2022
Date of complaint : 14.10.2022
Date of order : 11.09.2024

Purshotam Behl,
R/o: - H. No. J-004, Chintel Paradiso,
Sector- 109, Gurugram, Haryana-122017.

Complainant

Versus

1. M/s Raheja Developers Limited.
Regd. Office at: 317, 3rd Floor, Raheja's Mall,
Sector-47, Sohna Road, Gurugram.
2. Realcare Building Maintenance Services Pvt. Ltd.
Regd. Office at: 406, Rectangle one, D-4, District
Centre, Saket, New Delhi-110017.

Respondents

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Sunil Kumar (Advocate)
Garvit Gupta (Advocate)
None

Complainant
Respondent no.1
Respondent no.2

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 provisions 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.	Heads	Information
1.	Project name and location	"Raheja's Mall", Sector-47 Gurugram.
2.	Project area	2.718 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	455 of 2006 dated 27.01.2006 valid till 26.01.2012.
5.	Name of licensee	Smt. Bishan Devi
6.	RERA Registered/not registered	Unregistered
7.	Unit no.	Shop no. UG- 010C, Ground Floor [Page 17 of complaint]
8.	Unit measuring	450.66 sq. ft.
9.	Date of execution of agreement to sell	27.08.2021 [Page 22 of complaint]
10.	Total consideration	Rs.45,06,600 /- [as per BBA on page 23 of complaint]
11.	Total amount paid by the complainant	Rs.45,00,000/- [as evident from the complainant's account statement annexed with the complaint dated 31.03.2022 on page 20 of complaint]
12.	Possession clause	Clause no. 2. "The Buyer has paid 22.19% of the total price/booking at the time of allotment and signed registration form and standard application form of the project. Clause no. 3 "On payment of 77.81% of total price within stipulated time,

		<i>possession will be offered to the buyer."</i>
13.	Due date of possession	Cannot be determined as balance sale consideration of 77.81% has not been fully paid by the complainant till date.
14.	Date of offer of possession of the shop	Not offered
15.	Occupation Certificate	25.01.2010 (as per BBA on page 23 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -

- I. That the complainant was allotted a shop bearing no. UG-010C, Ground Floor, having 450.66 sq.ft super area in the project of the respondent named "Raheja's Mall" at Sector 47, Sohna Road, Gurugram vide allotment letter dated 18.08.2021. Further, an agreement to sell regarding the said allotment was also executed between the parties on 27.08.2021 for a total sale consideration of Rs.45,06,600/- against which the complainant has paid a sum of Rs.45,00,000/- in all.
- II. That as per clause 3 of the agreement, it is agreed between the parties that on payment of 77.81% of total price within stipulated time, possession will be offered to the buyer. However, the said sale consideration was paid by the complainant on 01.11.2021 and thereafter on 10.11.2021, almost full consideration was paid by him to the respondent, but the offer of possession is still not offered by the respondent.
- III. That the maintenance services company i.e. respondent no.2 unethically and illegally demanded maintenance charges from the complainant. Although, the complainant raised objection for maintenance charges as no offer of possession was made by the respondent no.1.

- IV. That the complainant wrote an email dated 08.09.2022, showing that the current shop is not in ready condition as there is no provision of locking of shop and lots of garbage was lying inside the shop.
- V. That the complainant several times visited the office of respondent no.1 & 2 for correction and illegal demand of maintenance charges and at last wrote several emails to both of the respondents, but all positively efforts made by the complainants goes in vain. Hence, the present complaint.
- C. Relief sought by the complainant:**
4. The complainant has sought following relief(s).
- Direct the respondents to offer possession of the unit, to pay delay possession charges and to execute conveyance deed as per the Act of 2016.
 - Direct the respondents to not to charge maintenance charges from the complainant and to issue NOC in his favour.
5. The respondent no.1 put in appearance through Advocate and marked attendance on 01.02.2023, 12.07.2023 and 04.10.2023. Despite specific directions for filing of reply, the respondent no.1 has failed to comply with the orders of the authority. It shows that the respondent no.1 is intentionally delaying the procedure of the court by avoiding filing of the written reply. Therefore, vide proceeding dated 03.01.2024, the defence of the respondent no.1 was struck off. However, in the interest of justice, the respondent no.1 was given an opportunity to file written arguments within a period of 2 weeks with an advance copy to the complainant. However, the same has not been filed by it till date. Further, despite due service of notice through speed post as well as through email, none has put in appearance on behalf of respondent no.2 nor reply has been filed on its behalf before the Authority till date. In view of the above, the respondent no. 2 is hereby proceeded ex-parte. Hence, in view of the same, the Authority is deciding the complaint on the basis of these undisputed documents available on record and submissions made by the complainant.

D. Jurisdiction of the authority

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

D. I Territorial jurisdiction

7. 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

8. 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.

E. Findings on the relief sought by the complainant.

- E. I Direct the respondents to offer possession of the unit, to pay delay possession charges and to execute conveyance deed as per the Act of 2016.**

10. In the present complaint, the complainant 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."

11. Clause 3 of the agreement to sell dated 27.08.2021 provides for handing over of possession and is reproduced below:

3. "On payment of 77.81% of total price within stipulated time, possession will be offered to the buyer".

12. In the instant case, a ready to move in property was to be handed over to the complainant as the occupation certificate of the project in question was duly obtained by the respondent on 25.01.2010. After combined reading of Clause 2 and 3 of the agreement dated 27.08.2021, it is determined that the complainant has paid 22.19% of the total sale consideration at the time of allotment and after payment of balance 77.81% of the sale consideration, the possession of the shop was to be offered to the complainant. However, as per record, the complainant has not fully paid the balance sale consideration and the same has been duly admitted by him in his pleadings. Therefore, there is no delay on part of the respondent in offering possession of the unit. Moreover, the complainant has never suffered any delay as the ready to move in property was to be handed over to him subject to payment of balance consideration, which has not been paid by him till date. So, there is no equity in favour of the complainant. Hon'ble Apex Court has also categorically held in many judgements that the rules and procedure are handmaid of justice and not its mistress. Hence, in such an eventuality and in the interest of natural justice, delay possession charges

cannot be granted to the complainant as there is no infringement of any of his by the respondent-promoter.

13. In the light of the facts mentioned above, the respondent is directed to offer possession of the unit to the complainant subject to payment of outstanding dues against the unit in question. The respondent is further directed to handover possession of the unit and get the conveyance deed executed in favour of the complainant in terms of section 17(1) of the Act of 2016 read with clause 3 of the agreement dated 27.08.2021, on payment of stamp duty and registration charges as applicable.

E. II Direct the respondents to not to charge maintenance charges from the complainant and to issue NOC in his favour.

14. The complainant has submitted that the maintenance services company i.e. respondent no.2 unethically and illegally demanded maintenance charges from the complainant. Although, the complainant raised objection for maintenance charges as no offer of possession was made by the respondent no.1. After considering the documents available on record as well as submissions made by the parties, it is determined that the occupation certificate for the project in question was obtained by the respondent on 25.01.2010 whereas, the subject plot was allotted to the complainant vide allotment letter dated 18.08.2021. Therefore, the complainant/allottee comes into the picture only on 18.08.2021. Moreover, the possession of the unit has not been offered to him till date. Therefore, the demand on account of maintenance charges is not justified at this stage and the same can only be demanded at the time of offer of possession of unit to the complainant. In view of the above, the demand w.r.t maintenance charges is hereby set-aside.

F. Directions of the authority

15. 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 complainant is not entitled to the relief of delay possession charges as there is no delay on part of the respondent.
 - ii. The respondent/promoter is directed to offer possession of the unit to the complainant subject to payment of outstanding dues against the unit in question.
 - iii. The respondent/promoter is further directed to handover possession of the unit and to get the conveyance deed executed in favour of the complainant in terms of section 17(1) of the Act of 2016 read with clause 3 of the agreement dated 27.08.2021, on payment of stamp duty and registration charges as applicable.
 - iv. The respondent shall not charge maintenance charges from the complainant till offer of possession of the unit.
 - v. The respondents shall not charge anything from the complainant which is not the part of the agreement to sell dated 27.08.2021.
16. Complaint stands disposed of.
17. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.09.2024