

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

Date of Filing of  
complaint: 05.07.2022  
Date of Decision: 01.10.2024

1. Mr. Indradeb Prasanta Pal  
2. Mrs. Sushmita Pal  
Both RR/o: - A-601, Antriksh Green ahinsha Khand-2  
Indira Puram, Gaziabad, U.P.

**Complainants**

Versus

M/s Raheja Developers Limited.  
Reg. Office: - W4D, 204/5, Keshav Kunj, Western Avenue,  
Cariappa Marg, Sainik Farms, New Delhi-110062

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Sh. Col. M.S. Sehrawat (Advocate)  
Sh. Garvit Gupta (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint dated 05.07.2022 has been filed by the complainant/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 provisions 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. | Heads                                     | Information   |
|-------|---|---|
| 1.    | Project name and location                 | "Raheja's Atharva", Sector 109, Gurugram  |
| 2.    | Project area                              | 14.812 acres  |
| 3.    | Nature of the project                     | Residential Group Housing Colony  |
| 4.    | DTCP license no. and validity status      | 257 of 2007 dated 07.11.2007 valid up to 06.11.2017                             |
| 5.    | Name of licensee                          | Brisk Construction Pvt. ltd and 3 others  |
| 6.    | RERA Registered/ not registered           | Registered vide no. 90 of 2017 dated 28.08.2017                                 |
| 7.    | RERA registration valid up to             | 27.02.2023<br>5 Years from the date of revised Environment Clearance            |
| 8.    | Unit no.                                  | B-0301, 3 <sup>rd</sup> floor, block/tower- B<br>[Page no. 60 of the complaint] |
| 9.    | Unit measuring                            | 2251 sq. ft.<br>[Page no. 60 of the complaint]                                  |
| 10.   | Date of allotment letter                  | 12.09.2008<br>[Page no. 55 of the complaint]                                    |
| 11.   | Date of execution of flat buyer agreement | 12.09.2008<br>[Page no. 59 of the complaint]                                    |



|     |                        |  |
|-----|------------------------|--|
| 12. | Possession clause      | <p><b>4.2 Possession Time and Compensation</b></p> <p><i>Possession Time and Compensation That the Company shall endeavors to give possession of the Apartment to the Allottee(s) within thirty six (36) months from the date of the execution of this Agreement and after providing necessary infrastructure in the sector by the Government, but subject to force majeure, circumstances and reasons beyond the control of the Company. The Company on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Apartment to the Allottee(s) for his/her occupation and use and subject to the Allottee(s) having complied with all the terms and conditions of this Flat Buyer Agreement. In the event of his/her failure to take over and/or occupy and use the Apartment provisionally and/or finally allotted within thirty (30) days from the date of intimation in writing by the Company, then the same shall lie at his/her risk and cost and the Allottee(s) shall be liable to pay compensation @ Rs. 5/- sq. ft. of the super area per month as holding charges for the entire period of such delay. If the Company fails to complete the construction of the said building/Apartment within thirty six (36) months from the date of execution of this Agreement and after providing necessary infrastructure in the sector by the Government, as aforesaid, then the Company shall pay to the Allottee(s) compensation 7sq. ft. of the super area .....</i></p> |
| 13. | Due date of possession | <p><b>12.09.2011</b></p> <p><b>[Note: 36 months form the date of agreement to sell i.e., 12.09.2008]</b></p>   |
| 14. | Payment plan           | <p><b>Installment Payment Plan</b></p> <p>[as per payment plan at page no. 79 of the complaint]</p>  |



|     |   |   |
|-----|---|---|
| 15. | Basic sale consideration as per BBA at page no. 79 of the complaint | Rs.71,38,060 /-   |
| 16. | Total amount paid by the complainants                               | Rs.83,90,992/-<br>(per applicant ledger dated 22.12.2018 at page 114 of the complaint)  |
| 17. | Occupation certificate /Completion certificate                      | 20.05.2014<br>(Page no. 89 of the complaint)  |
| 18. | Possession letter   | 26.05.2014 (as alleged by the complainant and respondent)<br>Offer of possession Annexed but date was not mentioned<br>(Page no. 94 of the complaint) |
| 19. | Settlement deed   | 23.11.2015<br>(page no. 37 of the reply)  |
| 20. | Conveyance deed   | 25.05.2023<br>(page no. 51 of the reply)  |

### **B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:

- i. That the complainants applied for a 3BHK Flat vide application on 07-12-2007 , specifics of which are as follows:
  - a. Flat -3 BHK +3T+SQ and 2 covered car parking.
  - b. Super Area 2251 Sq Ft, Basic Price-2275/-sft total Rs 62,46525/-
  - c. Car Parking Charges-200,000/ each-.
  - d. Booking Amount Rs 6,24,653/- vide Cheque No 894626, HDFC Bank dated 07-12-2007 and Cheque ( post-dated ) No 894627, for Rs 9,36,979/-HBFC Bank dated 07-02-2008.



- ii. That vide allotment letter dated 12-09-2008, respondent company allotted apartment no -B-0301, having Super Area 2251 sq ft at "ATHARVA", Secor 109 Gurgaon Haryana.
- iii. That at the time of accepting consideration from the complainants, the respondent showed very rosy picture about the aforesaid residential project and assured that said project would be equipped with all modern facilities of international quality and thus would be good residential project for abode purposes and the said project would be developed in scheduled time frame without any delay in project.
- iv. That flat buyer's agreement was signed between the parties on 12-09-2008 at the marketing office of the respondent company at Gurgaon. The respondent unilaterally decided earnest money @ 15% of the basic cost and demanded Rs 15,61,632/- ( 25% ) even before signing of the FBA. As the possession clause of buyer agreement, the due date of handing over possession would be within 36 months from the date of signing of FBA. As the FBA was signed on 12-09-2008 , due date for possession comes out to be 11-09-2011.
- v. That the respondent company intimated in writing of receipt of occupancy certificate, demanding payment of the final instalment towards "On receipt of Occupancy Certificate" and, offering possession of the said flat vide their letter dated 24<sup>th</sup> May 2014 to the complainants. The respondent company demanded final instalment payment to be made on or before June 2014. It is very important to note that the said letter clearly mentions "The above mentioned total due amount is



inclusive of any previous Out standing's and interest, if any". It is pertinent to note that the respondent in the same letter demanded advance maintenance for 3 months. It is also worth mentioning that though the complainants applied for and paid for 2 covered car parking whereas possession offer letter mention of only one covered car parking allotted to them.

- vi. That the complainants responded vide letter dated 30-05-2014 complaining that without existence of Electricity, water and sewerage connection, colony cannot be said to be habitable at all , more over basement are under construction and no car parking was possible. Respondent company also warned about possible increase in super area as the same may undergo change. That even after receipt of OC, super area may change. There is no revised plan either.
- vii. The complainants submitted that the respondent company vide letter dated 13-10-2015, demanded a huge sum of Rs 12,35,400/- towards escalation charges , increase in super area of the flat , holding charges , electricity charges and such other charges with a view to pressurize the complainants to take possession of the flat which was still not ready for peaceful living.
- viii. That the complainants had not taken possession of the Flat by 13-10-2015 because the flat was not habitable at all for the complainants to live and enjoy rest of their life and for that complainants invested their entire life savings.



- ix. That the complainants had made payments of Rs 83,32,270/- as against total sale consideration of Rs 68,62,960/- and even IBMS Rs 2,25,100/- and club membership Rs 50,00/- added, it amounts to Rs 71,38,060/- even than paid amount is in excess by Rs 8,00,000/-. Surprisingly the respondent company is demanding Rs 12,35,400/- more now.
- x. That defeated and demoralised, the complainants took possession of the said flat on 28-11-2015, but a set of possession papers were not given.
- xi. That, though the possession was given on 28-11-2015, since then complainants are running from pillar to post to get a conveyance deed of their property executed and the respondent has been making promises after promises but conveyance deed was never executed till date by the respondent.

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

4. The complainants have sought following relief(s).

- i. Direct the respondent to execute the deed of conveyance in favour of the complainants and its registration before the competent authority forthwith in accordance with the agreement and the applicable Law, Rules and Regulations and in accordance with section 17 of the Act, and the Rules and Regulations made there under.
- ii. Direct the respondent to pay to the complainants delayed possession charges in the form of interest payment for delay in completion and handing over possession of the said Flat from



- 11.09.2011 ( due date of possession ,Clause 4.2 of FBA page 8 ) at prescribed rate of Interest, till the date of giving physical possession and execution of Conveyance Deed.
- iii. Direct the respondent to charge any interest on any delayed payments by complainants at the same rate of interest allowed by authority for DPC and refund/adjust the excess rate of interest charged from the complaints suitably.
  - iv. Direct the respondent to refund Rs.12,35,005/- charged vide letter dated 13.10.2015 (as a pressure tactics to give possession) from complainants which has no provision in flat buyers agreement.
  - v. Stamp Duty amounting to Rs.3,74,800/- taken from complainants on 24.06.2014 and Rs.22,200/- on 30.06.2017, and whereas Conveyance Deed has not been executed . Interest @ prescribed rate may please be allowed on this amount till the date of conveyance deed. This money belongs to Government and illegally retained by the respondent company.
  - vi. Water & Electricity installation charges are included in EDC/IDC, however a sum of Rs.46,209/- has again been taken for water and electricity installation on 24-06-2014, same be refunded with interest.
  - vii. Direct the respondent to refund IBMS & Club Membership Charge amounting to Rs.2,25,100 /- & Rs.50,000/- respectively along with prescribed rate of interest from the dates of payments. The



Complainants are willing to deposit IBMS and Club Membership with the RWA "Raheja Atharva"

- viii. Direct respondent to refund to complainant LPG Connection charges amounting to Rs.38,764/- along with interest from the date of payment 24 Jun 2014. Till date no LPG Connection has been provided and there is no infrastructure created
- ix. Direct the respondent to hand over one set of possession related documents to the complainants.

**D. Reply by the respondent**

5. The respondent has contested the complaint on the following grounds:
- a) That the complainant, after checking the veracity of the project namely, 'Raheja's Atharva, Gurgaon had applied for allotment of a unit vide its booking application form. On the basis of the representations of the complainant, the respondent allotted unit no. B-0301 to the complainants vide allotment letter dated 12.09.2008. The complainant agreed to be bound by the terms and conditions of the booking application form. Accordingly, flat buyer's agreement was executed between the parties on 12.09.2008.
- b) That it is pertinent to mention herein that despite the respondent fulfilling all its obligations as per the provisions laid down by law, the government agencies delayed miserably to provide essential basic infrastructure facilities such as roads, sewerage line, water and



- electricity supply in the sector where the said project was developed which directly impacted the implementation of the project in question.
- c) That thereafter upon part completion of the residential group housing colony, the part occupation certificate was obtained from DTCP, Haryana in the year 2014 for the tower in question. Accordingly, the possession of the unit was offered to the complainants on 26.05.2014. The possession of the unit was taken by the complainants on 28.11.2015. It is very important to mention herein that the complainants had executed a settlement deed with the respondent. As per the terms of the said settlement deed, more specifically Clause 9 of the said settlement deed, it was mutually agreed upon that on account of grievances raised by the complainants, a one-time settlement amount of Rs. 4,99,615/- in respect of all their grievances was agreed between the parties. It was further understood and accepted by the said clause that the complainants were left with no other right, title, claim or interest including claim relating to the delay compensation.
- d) The respondent, for execution of the conveyance deed, had approached the concerned authorities and on 08.05.2023, a property tax notice cum bill for Rs. 49,561.24/- was generated in the name of the complainant no. 1 for the unit in question. As per the contents of the said notice cum bill, an amount of Rs. 49,561.24/- was to be paid towards the property tax arrears.
- e) That the respondent accordingly made the payment towards the stamp duty of Rs. 3,74,800/- on 19.05.2023 against the challan generated. It

is a general procedure that stamp paper is to be issued by the Office of the Sub-registrar within 24 hours from the date of the payment of the stamp duty charges. Since the stamp duty charges were paid by the respondent on the evening of 19.05.2023, the stamp paper was to be generated by 20.05.2023.

f) It is pertinent to mention herein that the responsibility and obligation of making payment towards the property tax is always of an allottee of the unit. Despite intimation by the respondent to the complainants to make such payment, they have blatantly refused to do so and necessary permission was required from the management of the Respondent to prove such payment towards the property tax. Accordingly, the Respondent was not able to intimate to the Authority about the actual scenario of the case in question. The said approval was granted by the management of the Respondent and although there is no such obligation of the Respondent to make the payment, yet in order to resolve the present issue, the Respondent has made such payment for the convenience of the Complainants and a No Dues Certificate was issued on 22.05.2023. Subsequently, the conveyance deed of the unit in question has been registered and executed on 25.05.2023.

6. All other averments made in the complaint were denied in toto.

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 parties.

**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**

9. 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**

10. 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.*

11. 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 complainant**

- E. I** Direct the respondent to pay to the complainants delayed possession charges in the form of interest payment for delay in completion and handing over possession of the said Flat from 11.09.2011 ( due date of possession ,Clause 4.2 of FBA page 8 ) at prescribed rate of Interest, till the date of giving physical possession and execution of Conveyance Deed.
- E. II** Direct the respondent to charge any interest on any delayed payments by complainants at the same rate of interest allowed by authority for DPC and refund/adjust the excess rate of interest charged from the complaints suitably.
- E.III** Direct the respondent to refund Rs.12,35,005/- charged vide letter dated 13.10.2015 (as a pressure tactics to give possession) from complainants which has no provision in flat buyers agreement.
- E.IV** Stamp Duty amounting to Rs.3,74,800/- taken from complainants on 24.06.2014 and Rs.22,200/- on 30.06.2017, and whereas Conveyance Deed has not been executed . Interest @ prescribed rate may please be allowed on this amount till the date of conveyance deed. This money belongs to Government and illegally retained by the respondent.
- E.V** Water & Electricity installation charges are included in EDC/IDC, however a sum of Rs.46,209/- has again been taken for water and electricity installation on 24-06-2014, same be refunded with interest.
- E.VI** Direct the respondent to refund IBMS & Club Membership Charge amounting to Rs.2,25,100 /- & Rs.50,000/- respectively along with prescribed rate of interest from the dates of payments. The Complainants are willing to deposit IBMS and Club Membership with the RWA "Raheja Atharva".
- E.VII** Direct respondent to refund to complainant LPG Connection charges amounting to Rs.38,764/- along with interest from the date of payment 24 Jun 2014. Till date no LPG Connection has been provided and there is no infrastructure created.

12. The above mentioned reliefs no. E.I , E.II, E.III, E.IV, E.V, E.VI and E.VII as sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected
13. The respondents filed an application for dismissal of the complaint concerning the part completion of the residential group housing project, which was approved in 2014 by the competent authority. The offer of possession was made on 26.05.2014 and the actual possession was taken on 28.11.2015. Further it state that Section 18 of the Real Estate (Regulation and Development) Act, 2016, came into force on 01.05.2017, and the possession of the unit in question was taken well before the Act's provisions became effective. Therefore, the question of the applicability of Section 18 of the Act of 2016 to the present case does not arise.
14. On the documents and submission made by both the parties, the authority observes that there has been complete inaction on the part of the complainants for a period of more than Six years till the present complaint was filed in July 2022. The complainants remained dormant of their rights for more than 6 years and they didn't approach any forum to avail their rights. There has been such a long unexplained delay in pursuing the matter. One such principle is that delay and latches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a



certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise the extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.

15. Further, as observed in the landmark case i.e. ***B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]***, the Hon'ble Supreme Court held that "*Law assists those who are vigilant and not those who sleep over their rights.*" Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefit of law.
16. In the light of the above stated facts and applying aforesaid principles, the Authority is of the view that the present complaint wherein seeking delay possession charges alongwith prescribed rate of interest is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the complainant sought relief

w.r.t. delay possession charges and other interconnected reliefs are not maintainable at this belated stage.

**E.VIII Direct the respondent to execute the deed of conveyance in favour of the complainants and its registration before the competent authority forthwith in accordance with the agreement and the applicable Law, Rules and Regulations and in accordance with section 17 of the Act, and the Rules and Regulations made there under.**

17. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
18. It is important to note that vide proceedings dated 02.11.2022 and 10.03.2023, the respondent was directed to execute the conveyance deed and same was executed on 25.05.2023 which was confirmed by both the parties during proceedings. In view of the above, the above sought relief become redundant.

**E.IX Direct the respondent to hand over one set of possession related documents to the complainants.**

19. The complainant is seeking relief of handover one set of possession related documents to the complainants. It is pertinent to note that the respondent builder had made an offer of possession to the complainant on 26.05.2014, and the complainant subsequently took actual possession of the property on 28.11.2015.

20. As per section 19(5) of the Act, 2016 the allottee is entitled to have the necessary documents in respect of their unit. The said Section is retracted below:

19(5)

***The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.***

21. Therefore, the respondent builder is hereby directed to hand over the possession-related documents to the complainant, if such documents have not already been provided.

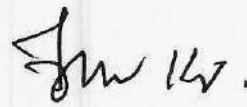
**F. Directions of the authority.**

22. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainant seeking above reliefs against the respondents is decided in terms of paras 13 to 21 above. Ordered accordingly.

23. Complaint stands disposed of.

24. File be consigned to registry.

  
(Vijay Kumar Goyal)  
Member

  
(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.10.2024