

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

Complaint no. : 1037 of 2019
First date of hearing: 28.08.2019
Date of decision : 18.02.2020

M/S. Neeleshwari Diagnostics Pvt. Ltd.
Through its authorized signatory/Director Sh.
Atul Kishore Raizada
Address: R/O L-32/7, DLF City, Phase-2
Gurugram-122002

Complainant

Versus

M/s Raheja Developer Limited
Address: W4D, 204/5, Keshav Kunj,
Cariappa Marg, Western Avenue, Sainik Farms
New Delhi-110062

Respondent

CORAM

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Manish Yadav
Shri Tarun Sharma

Advocate for the complainant
AR of respondent company

ORDER

1. The present complaint dated 26.03.2019 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 to the allottee as per the Agreement to Sell executed inter-se them.

2. The particulars of the project, the details of 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	
1.	Project Name and location of the project	Raheja's "Revanta", Sector 78, Gurugram
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.	RERA Registered/not registered	Registered vide no. 32 of 2017 dated 04.08.2017
7.	RERA registration valid Upto	5 Years from the date of revised Environment



		Clearance commencing from 04.08.2017
8.	Unit no.	C-124, 12 th floor, Tower no. C (Page no. 21 of complaint)
9.	Unit measuring	1621.39 sq. ft. (Page no. 21 of complaint)
10.	Date of execution of Agreement to Sell	29.06.2012 (Page no. 20 of complaint)
11.	Payment plan	Construction Linked Payment Plan
12.	Total sale consideration	₹1,25,57,340/- (Page no. 67 of complaint)
13.	Amount paid by the Allottee	₹1,15,44,308.25/- (Page no. 68 of complaint)
14.	Due date of delivery of possession as per clause 4.2 of Agreement to Sell-(48 months+6 months grace period in respect of "SURYA TOWER"	29.12.2016
15.	Delay in handling over possession till date	Possession has not been offered so far

16.	Status of project	Ongoing
17.	Specific relief sought (in specific terms)	To direct the respondent to immediately deliver the possession and to pay delayed possession charges at prescribed rate of interest per annum for delayed period in handing over the possession of the subject apartment.

3. As per clause 4.2 of the Agreement to Sell the possession was to be handed over by 29.06.2016 plus grace period of 6 Months, in case the construction is not completed within the time period mentioned above. which comes out to be 29.12.2016. Clause 4.2 of the Agreement to Sell is reproduced herein 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 authorities 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....”

4. As per the fact mentioned in the Performa at page no. 2,3 and 4 it is crystal clear that as per the clause 4.2 of the agreement to sell that the unit no. C-124, 12th floor, Tower no. C had to be handed over to allottee within 48 months along with additional grace period of 6 months, which comes out to be 29.12.2016 from the date of execution of agreement to sell. Whereas the builder has miserably failed in completing the project and handing over the unit to the home buyer for which he has paid an amount of ₹1,15,44,308.25/- against the total sale consideration of ₹1,25,57,340/- Since the builder has failed miserably in completing his obligation as per the provision of section 18(1) of RERA Act the buyer can either seek refund or possession at prescribed rate of interest till the actual handing over of possession. In the present case the buyer is seeking delayed possession charges.
5. The respondent submitted in the reply that the delay in construction was for the reason beyond their control.
6. Arguments of both sides were heard. However, the respondent could not submit any cogent reasoning for not handing over the flat or unit within stipulated time as per clause 4.2 of the agreement to sell.



7. It has been transpired that, in fact. this clause is basically in two parts, one part i.e. completion of tower/building in all respects and provision of internal development works within licenced area was to be complied with by the promoter and the second part of this condition i.e. provisions of necessary infrastructure especially road, sewer and water in the sector by the Government was to be complied with by HSVP/HUDA where the promoter has deposited external development charges as per directions of DTCP Haryana. Since so far the promoter has not been able to obtain occupation certificate from the competent authority in respect of tower/building where the unit has been allotted to the complainant, therefore, the complainant is entitled for delayed possession charges under section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 at the prescribed rate of interest i.e. 10.20% per annum on the amount deposited by the complainant with the respondent from the due date of possession till the offer of physical possession of the allotted unit. As such the respondent cannot rely upon the condition that the government has not provided necessary infrastructure in the area. Moreover, at the time of issuance of licence by the competent authority, the promoter has also executed bilateral agreement stating therein that till such time, government services are made available in this area, they will manage the services at their own level.



8. By virtue of clause 4.2 of Agreement to Sell executed between the parties on 29.06.2012, possession of the booked unit was to be delivered by 29.06.2016 plus grace period of 6 months. Therefore, the due date of handing over possession comes out to be 29.12.2016. Accordingly, it is the failure of the respondent to fulfil his obligations, responsibilities as per the Agreement to Sell dated 29.06.2012 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. 10.20% p.a. w.e.f. 30.12.2016 till offer of the actual physical possession of the booked unit as per the proviso to section 18(1) of the Act read with rules 15 of the Rules.
9. Hence, the Authority hereby pass this order and issue directions under section 34(f) of the Act: -
- i. The respondent is directed to pay interest at the prescribed rate of 10.20% p.a. for delay in handing over the possession from the due date of possession i.e. 30.12.2016 till the actual handing over the possession of the booked unit.
 - ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent is directed to pay interest accrued from 30.12.2016 till the date of this order to the complainant

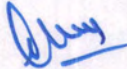


within 90 days from the date of decision and subsequent interest to be paid by the 10th of each succeeding month, The respondent shall not charge anything which is not part of the agreement.

- iv. Complaint stands disposed of.
- v. File be consigned to registry.


Samir Kumar
(Member)




Subhash Chander Kush
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 18.02.2020

Judgement uploaded on 11.05.2020