

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

**Complaint no. : 749 of 2019**  
**First date of hearing: 10.09.2019**  
**Date of decision : 18.02.2020**

1. Mr. Manohar Lal Kapur
2. Mrs. Usha Kapur

Both RR/o: - Flat No. 258 AFNO  
Enclave Sector-7, Plot No. 11,  
Dwarka, New Delhi-110075

**Complainants**

**Versus**

M/s Raheja Developers Limited.  
Reg. Office: - 215-216, Rectangel One,  
D-4, District centre, Saket,  
New-Delhi-110017  
Also, at: - W4D, 204/5, Keshav Kunj,  
Western Avenue, Cariappa Marg,  
Sainik Farms, New Delhi-110062

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Sh. Manohar Lal Kapur  
Mrs. Usha Kapur  
Sh. Shweta Priyadarshini  
Sh. Tarun Sharma

Complainants in person  
Advocate for the respondent  
AR of the respondent company

**ORDER**



1. The present complaint dated 26.02.2019 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 for sale executed inter se them.
2. The particulars of the project, the details of 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 Shilas", Sector-109, Village Pawala Khusrpur District-Gurugram.
2.	Project area	14.812 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	257 of 2007 dated 07.11.2007 valid till 06.11.2017.
5.	Name of licensee	Enkay Builders Private Limited
6.	RERA Registered/not registered	<b>Registered vide no 90 of 2017 dated 28.08.2017</b>
7.	RERA registration valid up to	<b>28.08.2022</b>



		Note: - The registration shall be valid for a period of 5 Years commencing from 28.08.2017 i.e. from the date of revised environment clearance; [annexure R/1, Page 24 of reply]
8.	Date of execution of flat buyer's agreement	06.03.2010 [Page 29 of complaint]
9.	Unit no.	IF1-03 Independent floor, 2 <sup>nd</sup> floor, Tower IF1 [Page 30 of complaint]
10.	Unit measuring	3304.58 sq. ft. on 2 <sup>nd</sup> floor and 815.32 sq. ft. terrace/court area [Page 30 of complaint]
11.	Payment plan	"Construction linked Plan" [Page 56 of complaint]
12.	Total consideration as per Applicant ledger dated 24.06.2013 (page 19 of complaint)	Rs.1,00,72,352.96/-
13.	Total amount paid by the complainants as per Applicant ledger dated 24.06.2013 (page 19 of complaint and admitted by the respondent)	Rs.92,76,544/-
14.	Due date of delivery of possession in case of independent floor as per clause 4.2 of the flat buyer agreement: 30 months from the date of the execution of the agreement and after providing necessary infrastructure in the sector by the government [Page 38 of complaint]	[Note: - actual physical possession not so far]

15.	<b>Date of offer of possession for fit out and improvement work in the unit to the complainants</b>	17.12.2018  [Page 68 of complaint]
16.	Delay in handing over possession till date of offer of possession i.e. 17.12.2018	Physical possession has not been offered so far
17.	Status of project	On going Application dated 24.04.2017 Grant of OC of Group Housing Project measuring 15.612 acres located at Pawala Khushrupur sector-109 Gurugram Haryana [Annexure R-2 at page 27 of the reply]

3. As per clause 4.2 of the flat buyer agreement, the possession was to be handed over within 30 months from the date of the execution of this flat buyer agreement which comes out to be 06.09.2012. Clause 4.2 of the flat buyer agreement is reproduced below:

**4.2 Possession Time and Compensation**

*“That the company shall endeavors to give possession of the Apartment to the Allottee(s) within thirty six (36) months in case of towers and Thirty (30)months in case of independent floor 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.....”*

4. The complainants submitted that till date no possession has been handed over to the complainants and whenever the complainant tried to contact the respondent, the respondent gave false assurances to the complainant about the completion of the project and revised date of possession.
5. The complainants submitted that the respondent in their email dated 06.02.2018 informed the complainant after several request that they have applied for OC in the month of May 2017 for project 'Shilas Independent Floor'. The intention of the respondent clearly elucidates that the respondent, on their parts, has delayed to submit the application before the competent Authority for obtaining occupation certificate. The possession was to be handed over by 5<sup>th</sup> September 2012 and the respondent has submitted the application for obtaining OC on May 2017. Thus, there is delay of 6 years 4 months in handing over possession till now.

Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to pay delayed charges at the prescribed rate for every month of delay from due date of possession till the offer of possession on amount paid by complainants.

- ii. Direct the respondent to give the possession of flat as soon as possible after completion of all necessary documents obtained from concerned department.
6. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
  7. The respondent contests the complaint on the following grounds:
    - I. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The agreement to sell was executed between the parties to the complaint prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively. The said project is registered under RERA with registration No. 90 of 2017 dated 28.08.2017.
    - II. That the request for grant of Occupation Certificate for the unit allotted to the complainants in the project was made before the publication of Haryana Real Estate (Regulations and Development) Rules, 2017 vide application letter dated 24.04.2017. Thus, the present dispute is not triable before this Authority.

- III. That complainants, after checking the veracity of the project, namely, 'Raheja's Shilas, Sector-109 Gurugram, had applied for allotment of a unit vide their Booking Application Form.
- IV. That respondent vide its Allotment Offer Letter dated 06.03.2010, allotted the complainants unit no. IF1-03 admeasuring 3304.58 sq.ft. The complainants signed and executed the Agreement to sell on 06.03.2010 and the complainants agreed to be bound by the terms contained therein.
- V. That the development of roads, sewerage, laying down of water and electricity supply lines has to be undertaken by the concerned governmental authorities and is not within the power and control of the respondent. The respondent cannot be held liable on account of non-performance by the concerned governmental authority. The respondent company has even paid all the requisite amounts including the External Development Charges (EDC) to the concerned authorities.
8. 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 submission made by the parties.

9. The Authority on the basis of information, explanation, other submissions made, and the documents filed by the complainants and the respondent is of considered view that there is no need of further hearing in the complaint.

Arguments heard.

10. The contention of the respondent that since it had applied for grant of Occupation Certificate in respect of the project in question on 27.04.2017 i.e. before the coming into force of the Haryana Real Estate (Regulation & Development) Rules, 2017, the project is not covered under the provisions of the Act is without any force.

Only those projects in respect of which completion certificates or Occupation Certificates had been received on the date on coming into force of the Act were not covered under the provisions of the Act and the Rules as provided in proviso no. 1 of Section 3 (1) of the Act. Ongoing project has been defined in Rule 2 (1)(o) of the Rules it reads as under:

“(O) “on-going project” means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1<sup>st</sup> May, 2017 and where development works were yet to be completed on the said date, but does not include:

- (i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is

made to the Competent Authority on or before publication of these rules; and

- (ii) That part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.”

11. In the present case the completion of the development work was not complete on the date of coming into force of the Act and the Rules. Hence, it cannot be turned as the complete project and therefore must be treated as an ongoing project. If it is so the project in question is squarely covered under the provisions of the Act and the Rules. The respondent itself knows this legal position and this is for reason that the respondent has got the project registered under Sections 3 & 4 of the Act. Therefore, the said contention of the respondent is rejected.
12. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and the respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 4.2 of flat buyer agreement executed between the parties on 06.03.2010, possession of the booked unit was to be delivered within the stipulated time period of 30 months. Therefore, the due date of handing over possession comes out to be 06.09.2012. Accordingly, it is the failure of the

respondent/promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 06.03.2010 to hand over the possession within the stipulated period. 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 complainants are entitled to delayed possession charges at the prescribed rate of interest i.e. @ 10.20% p.a. w.e.f. 06.03.2010 till the offer of possession as per the provisions of section 18(1) of the Act read with rules 15 of the Rules. The complainants have already paid Rs. 92,76,544/- (as per applicant ledger dated 24.06.2013, at page 19 of complainant) against the total sale consideration of Rs. 1,00,72,352/- (as per applicant ledger dated 24.06.2013, at page 19 of complainant).

13. Hence, the Authority hereby pass this and issue the followings 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 every month of delay from the due date of possession i.e. 06.09.2012 till the offer of physical possession;
- (ii) The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order

- and subsequent interest to be paid by 10<sup>th</sup> day of each subsequent month;
- (iii) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- (iv) The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
- (v) Interest on the due payments from the complainants shall be charged at the prescribed rate @10.20% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
- (vi) Complaint stands disposed of.
- (vii) 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