

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

Complaint no. : 6487 of 2019
First date of hearing: 18.02.2020
Date of decision : 18.02.2020

Shri. Pankaj Kumar
R/o 142, Gulmohar Enclave,
New Delhi-110049

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:

Complainant in Person with
Ms. Vridhi Sharma
Ms. Shweta Priyadarshini
Shri Tarun Sharma

Advocate for the complainants
Advocate for the respondent
AR of respondent company

ORDER

1. The present complaint dated 13.12.2019 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 "Trinity", Sector 84, Gurugram
2.	Project Area	2.281 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	26 of 2013 dated 17.05.2013 valid up to 16.05.2019
5.	Name of licensee	Sh. Bhoop Singh and Others
6.	RERA Registered/not registered	Registered vide no. 24 of 2017 dated 25.07.2017
7.	RERA registration valid Upto	5 Years from the date of revised Environment Clearance commencing from 25.07.2017



8.	Unit no.	030 Ground Floor (Page no. 21 of complaint)
9.	Unit measuring	512.64 sq. ft. (Page no. 21 of complaint)
10.	Date of execution of Agreement to Sell	17.11.2014 (Page no. 20 of complaint)
11.	Payment plan	Construction Linked Payment Plan
12.	Total sale consideration	₹70,54,628/- (Including Tax) (Page no. 68 of complaint)
13.	Amount paid by the Allottee	₹32,31,158/- (Page no. 68 of complaint)
14.	Due date of delivery of possession as per clause 4.2 of Agreement to Sell-(36 months from the date of execution of agreement to Sell or Sanction of Buildings Plans and Environment Clearance whichever is later and after providing of necessary	17.11.2017 (Calculated from execution of agreement as no document regarding sanctions has been put on record by the parties to the complaint.)

	infrastructure in the sector by the government, but subject to force majeure)	
15.	Delay in handing 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 36 months, from the date of execution of agreement, which comes out to be 17.11.2017. 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 Shop/ Commercial Space to the Purchaser within thirty-six (36) months from the date of the execution of this Agreement to Sell or Sanction of Buildings Plans and Environment Clearance whichever is



later and after providing of necessary infrastructure in the sector by the government, but subject to force majeure, circumstances, reasons conditions or any Government/Regulatory authorities action, inaction or omission and reasons beyond the control of the Seller"

4. As per the fact mentioned aforesaid, it is crystal clear that as per clause 4.2 of the agreement to sell that the unit no. 030 Ground Floor had to be handed over to allottee within 36 months, 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 ₹32,31,158/- against the total sale consideration of ₹70,54,628/- 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 has failed to file any reply despite service of notice. The appearance of respondent through authorised representative and advocate itself proves the due service of notice.
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. The authority is of the considered view that there is a delay on the part of the respondent to offer physical possession of the

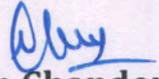


allotted unit to the complainant. As per terms and conditions of BBA executed between the parties and as such, the complainant is entitled for delayed possession charges under section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 at the prescribed rate of interest i.e. 10.20% per annum on the amount deposited by the buyer with the respondent from the due date of possession till offer of physical possession. The complainant is directed to pay the outstanding dues, if any, along with prescribed rate of interest i.e. 10.20% per annum to the respondent.

8. By virtue of clause 4.2 of Agreement to Sell executed between the parties on 17.11.2014, possession of the booked unit was to be delivered by 17.11.2017 from the date of execution of agreement. Therefore, the due date of handing over possession comes out to be 17.11.2017. Accordingly, it is the failure of the respondent to fulfil his obligations, responsibilities as per the Agreement to Sell dated 17.11.2014 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 delay possession charges at the prescribed rate of interest i.e. 10.20% p.a. w.e.f. 17.11.2017 till the offer of 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 the following 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. 17.11.2017 till the offer of actual physical possession of the booked unit.
- ii. The complainants are 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 17.11.2017 till the date of this order to the complainants 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 13.05.2020.