

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

Complaint no. : 6615 of 2019
First date of hearing: 18.02.2020
Date of decision : 18.02.2020

1. Shri. Prashant Dubey
2. Smt. Purti Dubey
R/o A-702, Sanmati Kunj,
Dwarka, Plot No. 19 A, Sector 6, Dwarka,
New Delhi

Complainants

Versus

M/s Raheja Developer Limited
Address: Raheja Mall, 3rd Floor, Sector-47,
Sohna Road, Gurugram-122001

Respondent

CORAM

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sushil Yadav Advocate for the complainants
Shri Tarun Sharma AR of respondent company

ORDER

1. The present complaint dated 20.12.2019 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 complainants, 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 "Navodaya", Sector 92 & 95, Gurugram
2.	Project Area	17 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	216 of 2007 dated 05.09.2007 valid up to 04.09.2019
5.	Name of licensee	NA Buildwell Pvt. Ltd.
6.	RERA Registered/not registered	Unregistered
7.	Unit no.	K-054, 5 th Floor, Tower K (Page no. 16 of complaint)
8.	Unit measuring	1990 sq. ft. (Page no. 16 of complaint)

9.	Date of execution of Flat buyer Agreement	25.07.2008 (Page no. 15 of complaint)
10.	Payment plan	Construction Linked Payment Plan
11.	Total sale consideration	₹66,57,029/- (Page no. 31A of complaint)
12.	Amount paid by the Allottee	₹66,57,029/- (Page no. 31A of complaint)
13.	Due date of delivery of possession as per clause 4.2 of Agreement to Sell-(36 months from the date of execution of agreement)	25.07.2011
14.	Delay in handing over possession till date	Possession has not been offered so far
15.	Status of project	Ongoing
16.	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.
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3. As per clause 4.2 of the Flat buyer Agreement the possession was to be handed over by 36 months, from the date of agreement, which comes out to be 25.07.2011. Clause 4.2 of the Agreement is reproduced herein below:

"4.2 Possession Time and Compensation

That the Company shall endeavour 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"

4. As per the facts mentioned aforesaid it is crystal clear that as per clause 4.2 of the agreement the unit no. K-054, 5th Floor, Tower K had to be handed over to allottee within 36 months from the date of execution of agreement, which comes out to be 25.07.2011. 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 ₹66,57,029/- against the total sale consideration of ₹66,57,029/- 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 AR on behalf of respondent on the date of hearing itself proves that the notice has been served upon the respondent.
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 complainants. As per terms and conditions of BBA executed between the parties and as such, the complainants is entitled to 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.

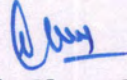
8. By virtue of clause 4.2 of Agreement to Sell executed between the parties on 25.07.2008, possession of the booked unit was to be delivered by 25.07.2011 that is 36 months from the date of execution of agreement. Therefore, the due date of handing over possession comes out to be 25.07.2011. Accordingly, it is the failure of the respondent to fulfil his obligations, responsibilities as per the Agreement to Sell dated 25.07.2008 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 complainants is entitled to delay possession charges at the prescribed rate of interest i.e. 10.20% p.a. w.e.f. 26.07.2011 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 following directions under section 34(f) of the Act: -

- i. The respondent is directed to pay interest accrued so far at the prescribed rate of 10.20% p.a. for delay in handing over the possession from the due date of possession i.e. 26.07.2011, 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, till the offer of actual physical possession of the unit.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- iii. The respondent shall not charge anything which is not part of flat buyer 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.



HARERA
GURUGRAM