

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

**Complaint no. : 04 of 2018**  
**Date of first hearing : 10.04.2018**  
**Date of decision : 20.11.2018**

1. Mr. Rajesh Khandelwal  
2. Mrs. Ritu Khandelwal  
C/O Ambuja Cements Ltd, 228, Udhog Vihar,  
Phase-I, Gurugram-122016

**Complainants**

Versus

M/s Raheja Developers Ltd  
Office : 406, 4 floor, Rectangle one D-4,  
District centre, Saket, New Delhi

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Complainant in person with Advocate for the complainants  
Shri Nilotpal Shyam,  
Advocate

Shri Tanvir Singh

Advocate for the respondent



**ORDER**

1. A complaint dated 17.02.2018 was filed under section 31 of the Real Estate (Regulation And Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation And

Development) Rules, 2017 by the complainants Mr. Rajesh Khandelwal and Mrs. Ritu Khandelwal, against the promoters M/S Raheja Developers Ltd, on account of violation of clause 4.2 of the builder-buyer agreement executed on 28.06.2012 for unit no. C-111 with a super area of 2165.85 sq. ft. in the project "Raheja's Revanta" for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	"Raheja's Revanta, Sector 78, Gurugram
2.	Unit no.	C-111, 11 floor, tower C
3.	Nature of project	Residential group housing colony
4.	Project area	2165.85 acres
5.	Registered/ not registered	<b>Registered (32 of 2017)</b>
6.	RERA registration valid upto	<b>04.08.2017 to 5 years from the date of revised environment clearance</b>
7.	DTCP license	<b>49 of 2011</b>
8.	Date of booking	28.06.2012
9.	Date of builder buyer agreement	28.06.2012
10.	Basic sale price	Rs. 1,40,23,879/-



11.	Total consideration	Rs. 1,53,07,131/- as per annexure A annexed with BBA
12.	Total amount paid by the complainant	Rs.1,53,66,578/- as per applicant ledger dated 06.10.2017
13.	Payment plan	Installation Linked Plan
14.	Date of delivery of possession as per clause 4.2 48 months from the date of execution of the buyer's agreement plus 6 months grace period	28.12.2016
15.	Delay of number of months/ years	1 year 06 months 27 days
16.	Penalty clause as per builder buyer agreement dated 28.06.2012	Clause 4.2- Rs.7/- per sq ft. per month

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. A builder buyer agreement dated 28.06.2012 is available on record for unit no. C-111 according to which the possession of the aforesaid unit is to be delivered by 28.12.2016.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 10.04.2018. The



case came up for hearing on 02.05.2018, 23.05.2018, 31.05.2018, 07.06.2018, 14.06.2018, 19.06.2018, 05.07.2018, 10.07.2018 and 24.07.2018.

### **Facts of the complaint**

5. The complainants submitted that the respondent company through their representative had approached the complainants and represented that the respondent residential project namely "Raheja's Revanta" will effectively serve the residential purpose of complainants and his family and has best of the amenities. Further the representative of the respondent company then persuaded the complainants, through repeated requests, to visit his office for detailed representation pertaining to their aforesaid project.
6. The complainants submitted that as the complainants was looking for a good residential property, since the complainants shifted from Siliguri in West Bengal, for himself and his family members, therefore, on persuasion of the respondent company, the complainants had visited the corporate office of



the respondent company situated in Saket, New Delhi to further know about the said project, Raheja's Revanta.

7. The complainants submitted that the agreement to sell has been crafted out on the basis of huge announcement of the renowned builder Raheja Group with offer of 'luxury apartments' "prestigious project", 'first of its kind in Gurgaon' in the sprawling 18.7213 acres of land in the National Capital Region. That the complainants entered into the agreement to sale for a unit in Raheja's Revanta in Sector 78, Gurgaon and the agreement was made at New Delhi on 28.06.2012 between M/s. Raheja Developers Ltd., (as first part -seller) and Mr. Rajesh Khandelwal jointly with Mrs. Ritu Khandelwal (as second part -purchaser).
8. The complainants submitted that they via application form dated 28.04.2012 approached the respondent company showing interest in the complex for allotment of a unit admeasuring 2165.850 Sq. Ft (approx.) super area which includes 1642.91 Sq. Ft. built up area on 11th floor in tower-C, which was under development. That as per agreement the respondent company agreed to sell/ convey/ transfer the **Unit**



**No. 111 in tower -C (C-111) in the complex** with the right to exclusive use of parking space for an amount of **Rs.1,40,23,879/-** calculated at **Rs.6,475/- per sq.ft.** super area and in addition to cost of car parking rights, club membership, electricity connection, IFMS, as per payment plan annexed to the agreement as annexure "B", plus applicable taxes. That the complainants in pursuant to the agreement to sell made booking amount of Rs.14,45,688/- by cheque on 30.04.2012 and agreed to pay the balance consideration as per the payment plan annexed to the agreement

9. The complainants submitted that they have paid almost 95% of the sale consideration towards the cost of the unit no. C-111 in tower-C in the complex till November, 2016 including costs towards other facilities. That the respondent company committed under the agreement to sell that it is their sincere endeavour to give possession of the unit to the Complainants within forty-eight (48) months in respect to the unit C-111 in tower-C from the date of execution of the agreement to sell, subject to force majeure conditions of government/regulatory



authority's action, inaction or omission and reason beyond control for grace period of six (6) months. Thus, the commitment of the respondent company to hand over possession of the unit to the complainants was until June 2016 and with grace periods inclusive will be until December 2016.

10. That the respondent company, if failed to complete construction of the said Unit within forty-eight (48) months plus the grace period of six (6) months from the date of execution of the agreement to sell, shall pay compensation @ Rs.7/- per sq.ft. of the super area per month for the entire period of such delay which is proportionate to the rental income for the similar property in the area or average rental of equivalent sized unit in the vicinity, whoever is higher

**11. Issues raised by the complainants**

- i. Whether the complainants are entitled to refund of the principal amount along with interest?
- ii. Whether the respondent failed to provide delivery of the above said unit?



## 12. Relief sought

- i. To deliver the possession of unit C-111, on the 11th floor, in tower -C, Sector -78, Gurugram having an approximate area of 2165.850 Sq. Ft. as per the agreed terms of the said agreement to sale dated 28.06.2012.
- ii. To refund of amount paid Rs. 1,53,65,412/- by the complainants as cost of the unit allotted to the complainants and paid under the allotment letter of the respondent.
- iii. To further pay interest at the rate of 14% till 31-01-2018 period amounting to Rs. 1,11,98,517/- to the complainants.
- iv. To pay a sum of Rs. 50,00,000/- as compensation for damages on account of mental harassment caused to the complainants, loss of reputation, lack of services, physical discomfort, mental agony which the complainants had suffered due to only negligent act and deficiency in service on the part of the





respondent. So that the respondent never even thinks to harass someone in the near future.

- v. Any other order or relief which this hon'ble real estate regulatory authority, Haryana may deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the complainants and against the Respondent.

### **Reply by the respondent**

13. The respondent submitted that the present complaint is liable to be dismissed as the same has been filed without any cause of action. The complainants executed application form on 24.04.2012. even otherwise leading complainants is, as per information in the application form, VP (finance) in ambuja cements ltd. As such he cannot be expected to execute any documents without thoroughly reading, clearly understanding the terms and conditions thereof especially when said documents is imposing financial implication.



14. Application form executed by the complainants on 24.04.2012 categorically suggests that he applied for allotment of an

apartment after thoroughly reading and clearly understanding the proposed terms and conditions of the allotment.

15. Agreement to sell was executed on 28.06.2012 so it is impossible to make any payment on 30.04.2012 in pursuit to said agreement to sell.

16. Respondent submitted that project was launched against licence no. 49 of 2011 dated 01.06.2011 after obtaining all necessary and requisite permission from the competent authorities including the building plans granted by DGTC. The said project is in sector 78 under the new master plan of Gurugram and is in the vicinity of Dwarka expressway.

17. The respondent had adequately explained the risks in delay of handing over the possession and the complainants were abundantly pre-cautioned in advance and thereafter they knowingly and willingly accepted the risk in delay of handing over possession for the reasons best known to them.

18. The respondent applied for registration for its ongoing project stating inter alia 5 years from the date of revised environment clearance as the time period within which it undertakes to



complete the said project. Hon'ble authority vide registration number 32 of 2017 has issued the registration certificate.

### **REJOINDER**

19. That it is humbly submitted that the respondents have sought to act in an oxymoron manner i.e. on the one hand inviting intending buyer by issuing public advertisements, allowing their agents to act and such that the buyer succumb to be intending buyer of their new residential projects, promising timely delivery of possession of the dwelling unit, highlighting in the pamphlets, catalogues and even in the agreement to sell. Now that the respondent seek to deviate from such beauty pruned commitments, seeking to deny the already legitimately agreed time of delivery of possession, on the basis of misinterpretation of the terms and conditions with extended time schedule of environment clearance.

20. That while reiterating the submission as made in the instant complaint dated 15.02.2018 and oral submission during the hearing which themselves make it absolutely translucent that builder had by passed the time schedule of delivery of possession and the response as filed by the respondent,



without prejudice to the submission that the said reply and documents filed by the Respondents are extraneous and absolutely superfluous.

### Determination of issues

After considering the facts submitted by the complainant, reply by the respondents and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

21. With respect to the **first and second issues** as per clause 4(2) of the agreement, the respondent company was bound to deliver the possession of the said unit within 48 months with a grace period of 6 months of the date of execution of the agreement to the complainant which comes to 28.12.2016 but the respondent has not delivered the possession of the said flat till date thereby delayed the possession by 1 year 6 months and 27 days till the date of decision.



#### *"4(2). Possession and holding charges*

*3(a) ...the company proposes to offer the possession of the said apartment to the allottee within a period of 48 months from the date of from date of execution of the agreement to sell...The allottee further agrees and understands that the company shall additionally be entitled to a period of 6 months (Grace Period), after the expiry of the said*

*commitment period to allow for unforeseen delays beyond the reasonable control of the company."*

22. The complainants on previous dates has brought on record certain documents as well as pictorial pleas regarding change of increasing storeys from 45 to 60 without the consent of RWA of the project in question and nor they have got any permission from the DTCP department regarding change of sanction plan which has also led to the change of nature of the project i.e from increasing density, TOD policy which is mainly responsible for the delay in delivery of the booked unit. Moreover, no rhyme and reasons has been provided in this context by the respondent. Therefore, the complainants are at liberty to withdraw from the project.

23. Accordingly, the due date of possession was 28.12.2016 and the possession has been delayed by one year, six months and twenty seven days till the date of decision. The delay compensation payable by the respondent @ Rs.7/- per sq. ft. of the super area for every month of delay until the actual date fixed by the company for handing over of possession of the said apartment to the allottee as per clause 4(2) of apartment



buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*

24. The respondent is in breach of the terms of the agreement as the respondent did not deliver the possession of the said unit within the stipulated time. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) to refund the amount received by him in respect of the said unit along with interest at the prescribed rate for every month of delay. Section 18 (1) is reproduced below:



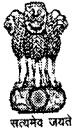
*“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

### **Findings of the authority**

**25. Jurisdiction of the authority-** The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.





**Territorial Jurisdiction-** As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town & Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purpose with offices situated in Gurugram. 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 complainants.

26. Counsel for the complainants have stated that chances of settlement outside the court are very remote. Counsel for the respondent also stated that the settlement between the parties could not be materialized. Parties had been given time on 14.06.2018, 19.06.2018, 05.06.2018 and 10.07.2018 to settle the matter between themselves but it has been reported that they have stopped any type of communication and as such, the purpose of giving opportunity regarding settlement is null. The





complainants on previous date have brought out on record certain documents as well as pictorial pleas regarding change of storeys from 45 to 60.

**DECISION AND DIRECTIONS OF THE AUTHORITY:**

27. After taking into consideration all the material facts as adduced and produced by both the parties, the below noted directions are being issued in the interest of justice and fair play. Thus, the authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- i. The respondent is directed to refund the entire amount deposited by the complainants with prescribed rate of interest at the rate of 10.45% per annum from the date of deposit of amount within 45 days from the date of decision.
- ii. The complainants are at liberty to move an appropriate application before the adjudicating officer for further compensation as per provision of the Act
- iii. The applications submitted by the respondent stands rejected.



25. The order is pronounced.

26. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated : 20.11.2018

Judgement uploaded on 20.12.2018

