

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

**Complaint no. : 1140 of 2020**  
**First date of hearing: 07.04.2020**  
**Date of decision : 12.11.2020**

Mr. Rajinder Singh  
S/o Sh. Daya Ram  
R/o: - 14/2 Mata Mandir Complex,  
Near Allahabad Bank, Matiyala Extn.  
(South), Matiala, New Delhi-110075

**Complainant**

Versus

M/s Raheja Developers Limited.  
**Reg. Office:** - W4D, 204/5, Keshav Kunj,  
Western Avenue, Cariappa Marg,  
Sainik Farms, New Delhi-110062.  
**Corporate office at:** - Raheja Mall, 3<sup>rd</sup> floor,  
Sector-47, Sohna Road, Gurugram- 122001

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Sh. Rishabh Gupta  
None

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 03.03.2020 has been filed by the complainant/allottee 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 as provided under the provision of the Act or the rules and regulations made there under or 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 complainant, 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                     | Brisk Construction Pvt. Ltd and 3 others                                |
| 6.    | RERA Registered/not registered       | Registered vide no 90 of 2017 dated 28.08.2017                          |



|     |   |   |
|-----|---|---|
| 7.  | RERA registration valid up to   | 5 years from the date of revised Environment Clearance;   |
| 8.  | Allotment letter  | 06.03.2010<br>[Page 18 of complaint]  |
| 9.  | Date of execution of flat buyer's agreement-Shilas  | 06.03.2010<br>[Page 21 of complaint]  |
| 10. | Unit no.  | IF4-02 Independent floor, 1 <sup>st</sup> floor, Tower IF4<br>[Page 22 of complaint]                                |
| 11. | Unit measuring  | 2062.33 sq. ft. super area on 1 <sup>st</sup> floor and 138.06 sq. ft. terrace/court area<br>[Page 22 of complaint] |
| 12. | Payment plan  | "Installment payment plan"<br>[Page 48 of complaint]  |
| 13. | Total consideration as per Applicant ledger dated 12.02.2016  | Rs.67,94,516.04/-<br>[page 58 of complaint]   |
| 14. | Total amount paid by the complainants as per Applicant ledger dated 12.02.2016  | Rs.60,13,351/-<br>[page 58 of complaint]  |
| 15. | 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<br>[Page 30 of complaint] | 06.09.2012  |
| 16. | Date of offer of possession for fit out and improvement work in the unit to the complainants  | 17.12.2018<br>[Page 90 of complaint]  |

|     |   |                             |
|-----|---|-----------------------------|
| 17. | Delay in handing over possession till date of order i.e. 12.11.2020 | 8 years 2 months and 6 days |
|-----|---|-----------------------------|

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 the 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 complainant submitted that the respondent had advertised about their project under name and style "**RAHEJA SHILAS**" situated in Sector- 109, Gurugram alleging to be consisting of many advance technologies and amenities/

infrastructures. Pursuant to the lucrative offer and strong market hold of the respondent, the complainant had shown interest in the said project and agreed to purchase a Flat in the said Project. The said project is stated to be Low-Rise independent floor and the complainant booked a flat comprising of 2062.33 sq. feet and 138.06 terrace/ Court area. The complainant was allotted on apartment no. IF4-02 admeasuring 2063 sq. feet and 138.06 terrace / Court area.

5. The complainant submitted that till date no possession has been handed over to the complainant 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.
6. The complainant submitted that the complainant regularly contacted the respondent through telephonically as well as through email to get the final date of possession but the respondent with malafide intention did not give any positive answer. The complainant also sent various letter to the respondent asking them to inform/commit about the final date of delivery of possession but the respondent being in a dominant position and a powerful person, never replied to the request made by the compliant. It is submitted that vide letter

dated 17.12.2018, the respondent intimated the offer of possession stating the they have applied for Occupation certificate and the complainant is being given the opportunity to carry out fit outs and improvements work in apartment. The said letter is baseless and has no value in the eye of law.

7. The complainant submitted that the respondent in their email dated 25.1.2019 informed the complainant after several request that they will receive the Occupation certificate in next 45-60 days for project 'Shilas Independent Floor' but no occupation certificate has been received yet. The intention of the respondent clearly elucidates that the respondent, on their part, has delayed submitting 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 only in May 2017 which is still pending till date.

8. The complainant submitted that the respondent has also committed fraud with the complainant and has robbed him of his money and also his dreams as he has taken away a life-long dream of owning a space which shall support him during his remainder period of life. The respondents in the given circumstances has voluntarily committed breached terms of

the FBA executed and have acted arbitrarily for which he should be even prosecuted criminally for cheating, fraud and criminal breach of trust.

Hence, this complaint inter alia for the following reliefs:

- I. to direct the respondent to pay the delayed possession charges at the prescribed rate of interest on amount paid by the complainant i.e. Rs. 60,39,048/- w.e.f. 05.09.2012 till hand over of physical possession, within 90 days from the date of order and monthly interest on regular basis before 10th day of each month;
  - II. to direct the respondent to provide the possession of the flat as soon as possible after completion of all necessary documents Obtained from Concerned Departments.
9. 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.
10. The respondent contested the complaint on the following grounds:

- I. that the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. It is submitted that the instant complaint is absolutely malicious, vexatious and unjustifiable and accordingly has to pave the path of singular consequence, that is, dismissal;
- II. that the complainant booked floor No. IF4-02, in Raheja Shilas, Sector 109, Gurugram vide Application form dated 21.09.2009 and the Respondent vide Letter dated 06.03.2010 issued Allotment Letter to the Complainant. Booking of the said allotted floor was done prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA, 2016") and the provisions laid down in the said Act cannot be applied retrospectively.
- III. Without prejudice to the above, the respondent submitted that the project is registered under RERA with Registration No. 90 of 2017 dated 28.08.2017. The Authority had issued the said certificate which is valid for a period of five years commencing from 28.08.2017 the date of revised EC;
- IV. 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 (Regulation and Development) Rules, 2017, That after completion of construction of Atharva Towers and Shilas Towers, the Company also applied for Occupation Certificates. The Department of Town and Country Planning, Haryana granted two occupation Certificates consisting of all high rise Atharva Towers and Shilas Towers vide its letters bearing Memo No. ZP-331/SD(BS)/2014/10384 dated 20.05.2014 and Memo No. ZP-331/SD(BS)/2014/26665 dated 19.11.2014 respectively with respect to all high-rise apartments and EWS flats;

- V. that the construction activity of the Raheja Shilas - Independent Floors (IF) which consists of low-rise floor apartment is already completed and only after completion of construction of the Raheja Shilas - Independent Floors (IF), the Respondent applied for grant of Occupation Certificates to the Department of Town and Country Planning, Haryana on 05.06.2018 and the same is still pending with the department. It is submitted that the Apartments are ready for delivery as is evident from the report of DTCP dated 31.07.2018. It was further submitted that the physical possession may only be offered to the

complainants after obtaining Occupation Certificate from the concerned department;

VI. that the Respondent vide its email dated 17.12.2018 informed the complainants that the construction work has already been completed and finishing work is in progress which will be installed once the possession is offered because once these fittings are installed, the defect liability period starts, Further we have to apply for the OC and the same will be immediately be applied once we received the sewage, water and electricity connections etc. which are still pending from Government side;

VII. that despite the respondent fulfilling all its obligations as per the provisions laid down by law, the government agencies have failed miserably to provide the timely occupational certificate, which is beyond the control of the respondent.

11. 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.

12. The Authority on the basis of information, explanation, other submissions made, and the documents filed by the parties is of

considered view that there is no need of further hearing in the complaint.

13. Arguments heard.
14. 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 complainant at a later stage.
15. On consideration of the documents, and submissions made by both the parties regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of flat buyer agreement executed between the parties on 06.03.2010, possession of the booked unit was to be delivered within stipulated time period of 30 months. Therefore, the due date of handing over possession comes out to be 06.09.2012; Further the authority also allows six months grace period on account of any force majeure conditions beyond the control of the respondent. Hence, the due date of delivery comes out to be 06.03.2013. However, the respondent till date has neither been able to obtain the OC nor has offered the possession of

the unit to the complainant. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the flat buyer agreement 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 complainant is entitled to delay possession charges at the prescribed rate of interest i.e. @9.30% p.a. w.e.f. 06.03.2013 till the handing over of actual physical possession of the booked unit as per the provisions of section 18(1) of the Act read with rules 15 of the Rules.

16. 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 9.30% p.a. for every month of delay from the due date of possession i.e. 06.03.2013 till the handing over of actual physical possession;
- 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 06.03.2013 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;

- iv. The respondent shall not charge anything from the complainant which is not part of the flat buyer agreement;
- v. Interest on the due payments from the complainant shall be charged at the prescribed rate @9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges;

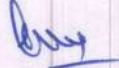
17. Complaint stands disposed of.

18. File be consigned to registry.

  
(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Subhash Chander Kush)

Member

Dated: 12.11.2020

Judgement Uploaded on 01.12.2020.