

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

Complaint no. : 1151 of 2020
First date of hearing: 07.04.2020
Date of decision : 12.11.2020

1. Mr. Vishesh Kumar Sood
2. Mrs. Kanan Sood

Both R/o: - I-815, Jalvayu Towers,
Sector-56, Gurugram

Complainants

Versus

M/s Raheja Developers Limited.
Reg. Office: - W4D, 204/5, Keshav Kunj,
Western Avenue, Cariappa Marg,
Sainik Farms, New Delhi-110062. जयते
Also, at: - Raheja Mall, 3rd 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 complainants
Advocate for the respondent

ORDER

1. The present complaint dated 03.03.2020 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 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 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, 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	29.08.2011 [Page 25 of complaint]
9.	Date of execution of flat buyer's agreement-Shilas	29.08.2011 [Page 28 of complaint]



10.	Unit no.	IF6-04 Independent floor, 3 rd floor, Tower-6, [Page 30 of complaint]
11.	Unit measuring	2317 sq. ft. super area [1998 sq. ft. on 3 rd floor and 556 sq. ft. terrace/court area] [Page 29 of complaint]
12.	Payment plan	"Installment payment plan" [Page 53 of complaint]
13.	Total consideration as per Applicant ledger dated 31.08.2017 (page 79 of complaint)	Rs.93,49,612/-
14.	Total amount paid by the complainants as per Applicant ledger dated 31.08.2017 (page 79 of complaint)	Rs.82,32,635/-
15.	Due date of delivery of possession in case of independent floor as per clause 4.2 of the flat buyer agreement: 24 months from the date of the execution of the agreement and after providing necessary infrastructure in the sector by the government plus 6 months grace period [Page 38 of complaint]	01.03.2014
16.	Delay in handing over possession till date of this order i.e. 12.11.2020	6 years 8 months and 15 days

3. As per clause 4.2 of the flat buyer agreement, the possession was to be handed over within 24 months from the date of the execution of the agreement and after providing of necessary

infrastructures in the sector by the government along with grace period of 6 months which comes out to be 01.03.2014.

Clause 4.2 of the flat buyer agreement is reproduced below:

4.2 Possession Time and Compensation

“That the Seller 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 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. The complainant booked a Flat comprising

of 2317 sq. feet and 556.00 sq. feet terrace/ Court area as mentioned in the Flat Buyer Agreement and Allotment letter attached herewith. The complainant was Apartment no. IF6-04 admeasuring 2317 sq. feet and 556.00 sq. feet terrace / Court area;

5. The complainants submitted that till date no possession has been handed over to the complainant and whenever the complainant tried to contact the respondent, the respondent used to give 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 were not giving the positive answer to their request. The complainant also sent various letter to the respondent to inform/commit the final date of delivery of possession but the respondent being in a dominant position and being a powerful person, never relied to the request made by the compliant;
7. The complainants submitted that the respondent in their email dated 18.12.2018 informed the complainant after several request that they have applied for the Occupation certificate

for project 'Shillas 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. It is submitted that after very inspection, the complainant came to know that the respondent has applied for occupation certificate in May' 2017. The possession was to be handed over by February' 2014 and the respondent has submitted the application for obtaining OC was made only in May 2017 which is still pending till date. Thus, there is delay of 6 year in handing over possession till now;

8. The complainants submitted that after exhausting all his patience had lastly contacted the respondent representative for providing the final revised date of possession of the said Flat, but no fruitful answer has been replied by the respondent and its officials. Hence, the cause of action firstly arose in the month of February' 2014 where the respondent failed to deliver the possession of the said apartment and still it is continuing one as possession has not been handed over to the complainant till now. Thus, the complainants have legal right to file the present complaint before the Authority.



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. 82,35,148/- w.e.f. February 2014 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 was 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. IF6-04, in Raheja Shilas, Sector 109, Gurugram vide Application form dated 23.04. 2011. The Respondent vide Letter dated 29.08.2011 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. Although the provisions of the RERA, 2016 are not applicable to the facts of the present case in hand yet without prejudice and in order to avoid complications later on, the respondent has registered the project with the Authority. The said 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;
- III. 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 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;

- IV. 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.
- V. that the Respondent vide its Email dated 05.09.2016 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;

- VI. that despite the respondent fulfilling all its obligations as per the provisions laid down by law, the government agencies have failed miserably to provide essential basic infrastructure facilities such as Roads, sewerage line, water and electricity supply in the sector where the said project is being developed. 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, therefore the respondent cannot be held liable on account of non-performance by the concerned governmental authorities. The respondent company has even paid all the requisite amounts including the External Development Charges (EDC) to the concerned authorities.



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 29.08.2011, possession of the booked unit was to be delivered within stipulated time period of 24 months and further 6 months

grace period. Therefore, the due date of handing over possession comes out to be 01.03.2014. Further, the respondent till date has failed to obtain the OC as well. 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 complainants are entitled to delay possession charges at the prescribed rate of interest i.e. @9.30% p.a. w.e.f. 01.03.2014 till the 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 passes 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. 01.03.2014 till actual physical possession;
- 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 01.03.2014 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;
 - iv. The respondent shall not charge anything from the complainants 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 complainants 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

Dated: 12.11.2020


(Subhash Chander Kush)

Member

Judgement Uploaded on 01.12.2020.