

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

Complaint no. : 2716 of 2019
First date of hearing: 22.10.2019
Date of decision : 12.11.2020

M/S Chelsea Mills LLP (formerly
known as Chelsea Mills) Through its
Managing partner Mohinder Kumar
Jain.

R/o: - C-107, Naraina Industrial Area,
Phase-1, New-Delhi-110028

Complainant

Versus

M/s Raheja Developers Limited.
R/o: - Office Space#406, 4th floor,
Rectangel One, D-4, District centre,
Behind Hotel Sheraton, Saket,
New-Delhi-110017

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Sh. Sukhbir Yadav
None

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 19.07.2019 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 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 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 till 04.09.2019
5.	Name of licensee	Raheja Developers
6.	RERA Registered/not registered	Unregistered
7.	Date of execution of Allotment letter	27.06.2008 [Page 47 of complaint]
8.	Date of execution of flat buyer agreement	01.08.2008 [Page 51 of complaint]

9.	Unit no.	H-091, 9 th floor, tower H [Page 52 of complaint]
10.	Unit measuring	1498 sq. ft.
11.	Payment plan	"Installment payment plan" [Page 71 of complaint]
12.	Total consideration as per Applicant ledger dated 02.05.2019 (annexure P-14 at page 110 of complaint)	Rs.50,03,879/-
13.	Total amount paid by the complainants as per Applicant ledger dated 02.05.2019 (annexure P-14 at page no 110 of complaint)	Rs.50,03,879/-
14.	Due date of delivery of possession as per clause 4.2 of the apartment buyer agreement: within 36 months from the date of execution of agreement and after providing necessary infrastructures in the sector by the govt, but subject to force majeure. [Page 58 of complaint]	01.08.2011
15.	Delay in handing over possession till the date of order i.e. 12.11.2020	9 years 3 months and 11 days [Note: - possession has not been handed over so far]
16.	Status of project	OC for the tower in which the unit in question is situated has not been granted.

3. As per clause 4.2 of the flat buyer agreement, the possession was to be handed over within 36 months from the date of the execution of this agreement which comes out to be

01.08.2011. 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 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 it had purchased the flat with an intention that after purchase, his employee will live in his own flat and it was promised by the respondent party at the time of receiving payment for the flat that the possession of fully constructed flat along with basement and surface parking, landscaped lawns, club/pool etc. as shown in brochure at the time of sale, would be handed over to the complainant as soon as construction work is completed i.e. 01.08.2011.
5. The complainant submitted that there is clear unfair trade practice, breach of contract and deficiency in the service on

the part the respondent party which is prima facie clear from the actions of the respondent.

6. The complainant submitted that on 17.07.2017, the respondent first time replied that they have received Occupancy Certificate from the competent authorities which entitled them to offer possession. However, till date the respondent has obtained OC for only Blocks B, C, D, E, and Towers 1&2 vide OC dated 11.11.2016. But the respondent did not have the OC for tower H, wherein the complainant has booked the unit/apartment. Therefore, the notice of possession was illegal.
7. The complainant submitted that for the first-time cause of action for the present complaint arose in August 2018, when the flat buyer agreement containing unfair and unreasonable terms was, forced upon the Allottees. The cause of action further arose in August 2011, when the respondent party failed to handover the possession of the Flat/unit as per the Buyer Agreement. That the cause of action subsists till such time as this Authority restrains the Respondent party by an order of injunction and/or passes the necessary orders.

Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent party to give the possession of flat as soon as possible;

- ii. Direct the respondent party to pay interest at the prescribed rate for every month of delay from due date of possession till the actual handing over the possession on amount paid by complainant;
 - iii. Direct the respondent to adjust the twice changed vat escalations changes, water & electricity installation charges, adhoc charges & etc;
8. 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.
9. The respondent contested the complaint on the following grounds:
- i. The respondent submitted that the it does not fall under the category of "Promoter" for the purpose of the said project under RERA, 2016 as OC has been issued by a competent authority on 11.11.2016 which precludes the said project from the jurisdiction of this Authority;
 - ii. The respondent submitted that the letter dated 24.03.2017 is contrary to the fact that Occupancy Certificate has been received by the respondent on 11.11.2016 and the possession notice has also been issued to the complainant on 15.11.2016;

- iii. The respondent submitted that the construction of the tower has been completed and the unit of the complainant is ready for move-in. Although the complainant is abstaining to get the possession and conveyance deed registered in favour of him;
 - iv. The respondent submitted that there is no delay on the part of the respondent in fulfilling its obligations as per the terms of the agreement and it has always acted in accordance with the term of the allotment, rules and regulations and provisions laid down in law.
10. The Authority on the date of hearing 12.11.2020 observed that the OC for the tower in which unit in question is situated has not been received from the competent authority, possession was offered on 15.11.2016, which cannot consider being invalid offer.
 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 clause 4.2 of flat buyer agreement executed between the parties on 01.08.2008, possession of the booked unit was to be delivered within stipulated time period of 36 months. Therefore, the due date of handing over possession comes out to be 01.08.2011 and further six months grace period on account of any force majeure conditions beyond the control of the respondent has been allowed and the due date of delivery comes out to be 01.02.2012. 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. 01.02.2012 till the actual handing over of possession 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. 01.02.2012 till the actual handing over of 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 01.02.2012 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;

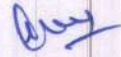
V. Interest on the due payments from the complainant shall be charged at the prescribed rate @9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges;

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.