

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

Complaint no. : 2718 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.
Having Office at: - 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
Sh. Manmeet Kaur

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 provisions 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", Gurgaon Manesar Urban Complex 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	NA Buildwell Pvt. Ltd.
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 50 of complaint]
9.	Unit no.	E-104, 10 th floor, tower E [Page 51 of complaint]



10.	Unit measuring	1100 sq. ft. (Super area)
11.	Payment plan	"Installment payment plan" [Page 70 of complaint]
12.	Total consideration as per Applicant ledger dated 02.05.2019 (annexure P-14 at page 112 of complaint)	Rs.37,51,016/-
13.	Total amount paid by the complainants as per Applicant ledger dated 02.05.2019 (annexure P-14 at page no 112 of complaint)	Rs.37,51,016/-
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.	Date of offer of possession to the complainant	15.11.2016 [Page 79 of complaint]
16.	Delay in handing over possession till date of offer of possession i.e. 15.11.2016	5 years 3 months and 14 days
17.	Details of Occupation Certificate, if any	Date of OC granted, if any, by the competent Authority: Dated 11.12.2016 Area/Tower for which OC obtained- E

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 endeavor 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 the complainant had purchased the flat with 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 like 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 complete i.e. by 01.08.2011.
5. The complainant submitted that there is a clear unfair trade practice and breach of contract and deficiency in the service of the respondent party and much more a smell of paying fraud with the complainant and others is prima facie clear



on the part of the respondent party which makes them liable to answer this Hon'ble Authority.

6. The complainant submitted that on 17.07.2017, the respondent first time replied that they we have received Occupancy Certificate from the competent authorities which entitles there to offer possession. It is pertinent to mention here that till date the respondent has obtained OC for tower B, C, D, E,1&2 dated 11.11.2016. However, is OC has been provided tower H. wherein the respondent has booked the unit 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 2008, when the Buyer Agreement containing unfair and unreasonable terms was, for the first time, forced upon the Allottees. The cause of action future arose in AUGUST 2011, when the respondent party failed to handover the possession of the Flat as per the Buyer Agreement. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the Respondent party by an order of injunction and/or passes the necessary orders.

Hence, this complaint inter-alia for the reliefs stated above:

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

- ii. To 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. To 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 respondent does not fall under the category of "Promoter" for the purpose of the said project under RERA, 2016 as OC was issued by a competent authority on 11.11.2016 which precludes the said project from the jurisdiction of this Hon'ble authority.
 - (ii) The respondent submitted that the letter dated 20.01.2017 and 24.03.2017 are 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 register 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 terms of the allotment, rules and regulations and provisions laid down in law.
10. The Authority during proceeding dated 12.11.2020 observed that the OC has been received from the competent authority and possession was offered on 15.11.2016. the complainant counsel raised a piquant question that on the visit of the site, there are so many deficiencies which has been pointed out to the respondent vide annexures taken on record through which it has been alleged by the complainant that the unit cannot be occupied on any circumstances. Annexure P-15 also corroborates this point, as such, it seems that the offer of possession letter dated 15.11.2016 is certainly fake.
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 offer of possession i.e. 15.11.2016 as per the provisions of section 18(1) of the Act read with rules 15 of the Rules.

16. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- I. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 01.02.2012 till the offer of possession i.e. 15.11.2016. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
- II. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- III. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
- IV. 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;

V. The respondent is directed to get rectified all the deficiencies within one month of the pronouncement of this order failing which a heavy penalty of Rs.10,000/- per day shall be imposed upon the respondent.


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.


HARERA
GURUGRAM