

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

Complaint no. : 982 of 2020
First date of hearing: 07.04.2020
Date of decision : 12.11.2020

1. Mr. Ajay Khanna
 2. Mrs. Hema Govindan
- Both R/o: C 6/3, DLF City,
Phase-1, Gurugram- 122002

Complainants

Versus

M/s Raheja Developers Limited.
Reg. Office: - W4D, 204/5, Keshav Kunj,
Western Avenue, Cariappa Marg,
Sainik Farms, New Delhi-110062.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Sh. Santosh Kumar Pandey Advocate for the complainants
None Advocate for the respondent

ORDER

1. The present complaint dated 13.03.2020 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 Atharva", Sector-109-Gurugram.
2.	Project area	14.812 acres
3.	Nature of the project	Residential 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 Limited 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	12.09.2008 [Page 34 of complaint]
9.	Date of execution of flat buyer's agreement-Shilas	12.09.2008 [Page 37 of complaint]

10.	Unit no.	D-0601, 6 th floor, Tower D [Page 38 of complaint]
11.	Unit measuring	2251 sq. ft. [super area]
12.	Payment plan	"Installment payment plan" [Page 57 of complaint]
13.	Total consideration as per Applicant ledger dated 07.02.2020	Rs.83,88,462/- [page 65 of complaint]
14.	Total amount paid by the complainants as per Applicant ledger dated 07.02.2020	Rs.83,88,461/- [page 65 of complaint]
15.	Due date of delivery of possession as per clause 4.2 of the flat buyer agreement; 36 months from the date of the execution of the agreement [Page 44 of complaint]	12.09.2011
16.	Date of offer of possession	24.05.2014 [Page 70 of complaint]
17.	Delay in handing over possession till the offer of possession i.e. 24.05.2014	2 years 8 months and 12 days

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 flat buyer agreement which comes out to be 12.09.2011. 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 complainants submitted that the parties had executed the flat buyer agreement on 12.09.2008 however, the respondent has failed to handover the possession of the unit to the complainants within the promised date of possession i.e. 12.09.2011.
5. That the respondent company intimated in writing of receipt of occupancy certificate, demanding payment of final instalment towards "On receipt of Occupancy Certificate" and, offering possession of the said flat vide their letter dated 24th May 2014 to the complainants. That the respondent company demand final instalment payment to be made on or before 24th June 2014. It is pertinent to note that the said letter clearly mentions - "The above mentioned total due amount is inclusive of any previous Outstanding's and interest, if any". It is pertinent to note that the respondent company in the same letter demanded a sum of

Rs. 27,012/- to be paid towards maintenance charges for 3 months to the maintenance agency which shows that the flat was not ready and hence the offer of possession made under letter dated 24th May 2014 was only to demand and collect final Installment from the complainants. Thereafter, the complainants upon pre-possession inspection, found to their utter shock and complete disbelief that the flat was far from completion and not in accordance with specifications and quality standards that formed part of the agreement.

6. The complainants submitted that having made the payment in full as demanded and directed by the respondent company was made even though complainants were made to wait for months before the flat was offered for pre-possession quality inspection.
7. The complainants submitted that he was brought deviations to specifications and substandard quality of finishing to the notice of the respondent company and requested them to carry out necessary repairs and provide internal infrastructure in accordance with the specifications under the agreement to enable them to take possession of the flat without any further delay. It is pertinent to note that the flat was to have been completed and handed over to the complainants by 11th September 2011 by the respondent company.

8. The complainants submitted that the respondent company vi de letter dated 13th October 2015 demanded the sum of Rs. 12,35,005/- towards escalation charges, increase in the super area of the flat, holding charges, electricity charges and such other charges with a view to pressurize the complainants to take possession of the flat which was still not ready for peaceful living.
9. that the complainants had not taken possession of the flat by 13th October 2015 because the flat was not ready for the complainants to live and-enjoy the fruits of their investment even after making all payments in full including maintenance charges as demanded and directed by the respondent company on 17th June 2014. That the respondent company realized their error and vide letter dated 8th December 2015 invited the complainants to come forward to take possession of their flat, offering concessions/ waivers till 31st December 2015.
10. That the complainants tried in vain by all means fair and possible - emails, phone calls, personal visits; to persuade the respondent company to complete the flat in accordance with the quality and specifications in accordance with the agreement and to make offer of possession in accordance with the terms and conditions set out in the agreement as they had been eager, willing and ready to take possession of

their flat in accordance with the agreement so that they could enjoy the fruits of their labour and investment.

11. The complainants submitted that no other option was left to them then to file a complaint for facts enumerated above: -

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

- i. to direct the respondent company to execute the deed of conveyance in favour of the complainants and its registration before the competent authority forthwith in accordance with the agreement and the applicable law, rules and regulations and in accordance with Section 17, of the Act and the rules and regulations made thereunder;
- ii. to direct the respondent to pay the complainants delayed possession charges in the form of interest payment for delay in completion and possession of the said flat from 11th September, 2011 till the date of execution of the deed of conveyance in favour of the allottees together with unencumbered, peaceful physical possession of the flat of the complainant(s) in accordance with Section 17 and Section 18 of the

Act at such rates prescribed in Rule 15 under the Rules;

iii. to direct the respondent to order and restrain the Developer/respondent/ company against levy and recovery of any interest, penalty, charges, demands or dues or any holding charges and monthly maintenance bills, etc. from the Allottee/ Complainants.

12. 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.
13. The authority issued notice of the complaint to the respondent by speed post as well as on given email address at (compliances@raheja.com) the delivery reports have been placed in the file. Despite service of notice, the respondent has preferred not to file the reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.
14. The respondent filed a reply after the court proceeding dated 12.11.2020 but during the court proceeding, he failed to appear. Hence, the reply has not been taken on record.

15. 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.
16. 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.
17. Arguments heard.
18. 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.
19. 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 12.09.2008, 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 12.09.2011 However, Further the Authority


allowed six months grace period on account of any force majeure. hence, the due date of delivery comes out to be 12.03.2012. The respondent has offered the possession of the unit to the complainant on 24.05.2014 and as such, the complainant is well within his rights to get the delayed possession charges. The complainant is entitled for delayed possession charges under section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 at the prescribed rate of interest i.e. 9.30% per annum on the amount deposited by the complainant with the respondent from the due date of possession i.e. 12.03.2012 to 24.05.2014. 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. 12.03.2012 till the offer of possession i.e. 24.05.2014 as per the provisions of section 18(1) of the Act read with rules 15 of the Rules. Further It has been stated by the counsel for the complainant that the respondent has not executed the conveyance deed. As a matter of fact, as per provisions of section 17 (1) of the Act *ibid*, conveyance deed is to be done

within a period of 90 days. However, since it has not been done so far, hence a direction is given to the respondent to execute the conveyance deed within one month from the pronouncement of this order failing which the authority shall be constrained to impose penalty under section 63 of the Act *ibid*.

20. Hence, the Authority hereby passes this order and issues the following 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. 12.03.2012 till the offer of possession i.e. 24.05.2014. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.
- ii. The complainants are 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 complainants 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;
- v. Respondent is directed to execute the conveyance deed within one month from date of pronouncement of this order.
21. Complaint stands disposed of.
22. 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