

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

**Complaint no. : 971 of 2020**  
**First date of hearing: 11.08.2020**  
**Date of decision : 12.11.2020**

1. Mr. Col. (retd.) Balbir Singh  
R/o: - House No. 1303, Sector-4(UE),  
Gurugram- 122001
2. Mr. Dharmender Yadav  
R/o: - WZ-432A, Madipur Village,  
Delhi- 110063.

**Complainants**

Versus

1. M/s Raheja Developers Pvt. Limited.  
Reg. Office: - W4D, 204/5, Keshav Kunj,  
Western Avenue, Cariappa Marg,  
Sainik Farms, New Delhi-110062.
2. M/s Realcare Buliding Maintenance  
Service Private Limited.  
Reg. Office: - Raheja's Mall, Sohna  
Road, Sector-47, Gurugram

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Sh. Abhay Jain and  
Sh. Rishabh Jain  
None

Advocates for the complainants  
Advocate for the respondents

**ORDER**

1. The present complaint dated 20.03.2020 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 Mall", Sector-47 Gurugram.
2.	Project area	2.718 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	455 of 2006 dated 27.01.2006 valid till 26.01.2012.
5.	Name of licensee	Smt. Bishan Devi
6.	RERA Registered/not registered	<b>Unregistered</b>



7.	Date of execution of agreement to sell- Raheja's Mall	12.03.2007 [Page 34 of complaint]
8.	Unit no.	LG-031B, Lower Ground floor [Page 35 of complaint]
9.	Unit measuring	631.02 sq. ft. [Super area] [Page 35 of complaint]
10.	Payment plan	"Construction linked payment plan" [Page 55 of complaint]
11.	Total consideration as per payment plan (annexure- A)	Rs.36,50,450.70/- [page 30 & 55 of complaint]
12.	Total amount paid by the complainants as per detail of amount due and payment received Upto 01.03.2013	Rs.46,28,940/- [page 30 & 31 complaint]
13.	Due date of delivery of possession as per clause 4.2 of the agreement to sell: 30 months from the date of the execution of the agreement [Page 41 of complaint]	12.09.2009
14.	Date of offer of possession of the Shop	11.02.2010 [Page 66 of complaint]
15.	Delay in handing over possession till offer of possession i.e. 11.02.2010	4 months 30days

3. As per clause 4.2 of the agreement to sell, the possession was to be handed over within 30 months from the date of the execution of the agreement to sell which comes out to be 12.09.2009. Clause 4.2 of the agreement to sell is reproduced below:

#### 4.2 Possession Time and Compensation

*“The Developer shall endeavor to give possession of the Shop/ Commercial Space/ Office space/ site to the Purchaser within thirty (30) months from the date of the execution of this Agreement, but subject to force majeure, circumstances and reasons beyond the control of the Developer.....”*

4. The complainants submitted that the parties executed the flat buyer agreement on 12.03.2007 but the respondent failed to handover the possession of the unit to the complainants on the promised date of possession i.e. 12.09.2009. The respondents have offered of possession of the shop on 11.02.2010.
5. The complainants submitted that the shop of the complainants is located on the outer side of the Raheja’s Mall, which is the uncovered area, also due to shop’s location no air conditioning is available for the customers, it being an open area.
6. The complainants further submitted that even after persistent requests, the respondent-1 has not made any efforts to rectify the maintenance bills as the maintenance charges for the commercial area inside the closed dome and out-side is same, whereas in no circumstances, it be assessed same. The



complainants have paid heavy charges on the account of air conditioning in the premise. Further, in the name of maintenance charges, the respondent-1 and respondent-2 are not making any efforts to maintain the premises.

7. The complainants submitted that after making numerous requests to execute the conveyance deed but contrary the same, in order to fetch more money out of the complainants, the respondent 1 issued another possession letter dated 19<sup>th</sup> April 2017. Thereafter the complainants again request the respondent to execute the conveyance deed, but the respondents have cheated the complainants by neither maintaining the premise, nor executing the conveyance deed even after collecting huge money out of the lifetime savings of the complainants.
8. The complainants submitted that they have lost confidence and in fact have no trust left in the developer/builder as the respondents have deliberately and wilfully indulged in undue enrichment by cheating the complainants besides being guilty of indulging in unfair trade practices and deficiency in services in handing over the timely possession of the shop and then remaining non-responsive to the requisitions of the complainants.

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

- i. to direct the respondent no. 1, to execute a legitimate and lawful Conveyance deed for the shop bought by the complainant;
  - ii. to direct the respondent no. 1, to pay interest for every month of delay since April 2010, on the amount which the complainants paid for the charges for Stamp duty, Legal Charges Registration Charges and Deed charges and additional charges for the aforesaid Shop, at the rate prescribed by the RERA Act, 2016 till the respondent no. 1 execute a registered Conveyance Deed in favour of complainants;
  - iii. to direct the respondent no. 1, to pay interest on Rs.63,100/- since April 2010, on the amount of Interest-Bearing Maintenances Securities (IBMS), which was deposited in 2010 by the complainants as per the prescribed rules of Act, 2016;
  - iv. To direct the respondent to mark the separate exclusive car parking slot for the shop bought by the complainants.
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 authority issued notice of the complaint to the respondent by speed post as well as on given email address at ([customercare@raheja.com](mailto:customercare@raheja.com)) and ([secretarial@raheja.com](mailto:secretarial@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 left with no other option but to decide the complaint ex-parte against the respondent.
11. 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.
12. 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 complainants.
13. The Authority on the basis of information, explanation, other submissions made, and the documents filed by the complainants is of considered view that there is no need of further hearing in the complaint.
14. Arguments heard.

15. 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.
16. 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 12.03.2007, 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 12.09.2009. 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. The respondent has offered the possession of the unit to the complainant on 11.2.2010 but no conveyance deed has been executed by the respondent and as such, the complainant is well within his rights to get the delayed possession charges. 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. 12.09.2009 till the offer of possession i.e. 11.02.2010 as per the provisions of section 18(1) of the Act read with rules 15 of the Rules.

17. 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 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. 12.09.2009 till the offer of possession i.e. 11.02.2010. 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) The respondent is directed to execute the conveyance deed within one month from the pronouncement of this order.


18. Complaint stands disposed of.

19. 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.