

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

Complaint no. : 6199 of 2019
First date of hearing: 18.02.2020
Date of decision : 12.11.2020

1. Mr. Namit Jaswal
2. Mrs. Shweta Jaswal
Both R/o: - D23-0701 Ireo Victory
Valley Sector-67, Gurugram

Complainants

Versus

M/s Raheja Developers Limited.
R/o: -D-4, District centre,
Behind Hotel Sheraton, Saket,
New-Delhi-110017

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Ms. Ritu Kapoor
None

Advocate for the complainants
Advocate for the respondent

HARERA
GURUGRAM
ORDER

1. The present complaint dated 11.12.2019 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 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 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	NA Buildwell Pvt. Ltd
6.	RERA Registered/not registered	Unregistered
7.	Date of execution of Allotment letter	23.01.2009 [Page 34 of complaint]
8.	Date of execution of flat buyer agreement	24.12.2008 [Page 37 of complaint]
9.	Unit no.	F-071, 7 th floor, tower F [Page 38 of complaint]
10.	Unit measuring	1498 sq. ft. [Super area]
11.	Payment plan	"Construction linked payment plan"

		[Page 57 of complaint]
12.	Total consideration as per applicant ledger dated 23.10.2019 (annexure P-9 at page 95 of complaint)	Rs.51,17,860/-
13.	Total amount paid by the complainants as per applicant ledger dated 23.10.2019 (annexure P-9 at page no 95 of complaint)	Rs.51,17,860/-
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 44 of complaint]	24.12.2011
15.	Delay in handing over possession till the date of order i.e. 12.11.2020	8 years 10 months and 19 days [Note: - possession has not been handed over so far]
16.	Status of project	OC for the tower in which the unit is question is situation 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 complainants submitted that the parties executed the flat buyer agreement on 24.12.2008. Whereby the respondent was liable to handed over the possession within stipulated time period. However, the respondent has failed to handover the possession of the unit to the complainants on the promised date of possession i.e. 24.12.2011 despite receipt of entire sale consideration.
5. The complainants submitted that in January 2009 the Federal Bank Housing Finance Limited had granted a loan of sum of Rs. 30,41,885/- and has dispersed till date the full amount of sum of Rs.30,41,885/- to the respondent (Builder) from time to time as per the construction plan and demand raised. Against this housing loan the complainant has already paid Rs.51,74,784/- and is yet to clear a balance amount of Rs.8,86,801/- which includes principle amount plus interest charge. The complainant has been paying EMI of Rs. 32503/- over an extended period with higher interest

component as a result of excessive delay by the builder. This has made the total cost of the unit much higher than what was anticipated. All the payments were made from time to time as agreed in the agreement and still the respondent did not complete the project on time which was promised to be completed by December, 2011 consequent to which the complainant is in great loss as he is paying high EMI.

6. The complainants submitted that despite repeated calls, and requests no definite commitment was shown by the Respondent to timely complete the project nor any heed was paid to pay the EMIs. The intention of the respondent and their officers and directors is malafide right from the beginning and has been aimed to cheat the complainant and due to the lack of commitment to complete the project on time and unfair trade practice the complainant has no other remedy other than to come to this Authority.

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

- i. direct the respondent to pay Delayed possession charges (DPC) along with interest on total payment made by the complainant i.e. Rs.51,18,357/- which is mentioned in the statement of account given by the complainant and to waive off all the maintenance charges;
7. 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.

8. Notice to the promoter/respondent through speed post and through E-mail address (Customercare@raheja.com) was sent; the delivery report of which shows that delivery was completed. Despite service of notice, the Promoter/respondent has failed to file a reply within stipulated time period. However, the respondent and his advocate have marked attendance on 13.10.2020. This is a clear evidence that the service was completed.
9. 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.
10. 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.
11. Arguments heard.
12. 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.

13. 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 24.12.2008, 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 24.12.2011. Further the authority allows six months grace period on account of any force majeure. Hence, the due date of delivery comes out to be 24.06.2012. 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 delayed possession charges at the prescribed rate of interest i.e. @9.30% p.a. w.e.f. 24.06.2012 till the handing over of actual physical possession as per the provisions of section 18(1) of the Act read with rules 15 of the Rules.

14. 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. 24.06.2012 till the handing over of 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 24.06.2012 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;

- VI. The respondent is directed the maintenance charges demanded by the respondent shall be waived off;
- VII. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent. A copy of this order be endorsed to registration branch for further action in the matter.

15. Complaint stands disposed of.

16. 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