

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

Complaint no. : 6540 of 2019
First date of hearing: 18.02.2020
Date of decision : 12.11.2020

1. Mr. Thyagarajan Venkataraman
2. Mrs. Akila Venkataraman
3. Mr. Venkataraman Satish

All R/o: - B-3/37C, Lawrence Rod,
Keshav Puram, New Delhi- 110035

Complainants

Versus

M/s Raheja Developers Limited,
Regd. Office at: 406, 4th Rectangle
One, D-4, District Centre, Saket,
New Delhi- 110017.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Sh. Pawan Kumar Ray
None

Advocate for the Complainants
Advocate for the respondent

ORDER

1. The present complaint dated 19.12.2019 has been filed by the complainant/allottee 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	NA Buildwell Pvt. Ltd
6.	RERA Registered/ not registered	Unregistered
7.	Unit no.	A-041, 4 th floor, Block-A
8.	Unit measuring	3100 sq. ft. [super area]
9.	Allotment letter	05.12.2011 [Page 39 of complaint]
10.	Date of execution of flat buyer agreement "Raheja's Navodaya"	05.12.2011 [Page 41 of complaint]

11.	Payment plan	Installment payment Plan [Page 60 of complaint]
12.	Total consideration as per (annexure-V, applicant ledger dated 25.04.2019)	Rs.1,05,24,421 /- [Page 67 of complaint]
13.	Total amount paid by the complainant as per (annexure-V, applicant ledger dated 25.04.2019)	Rs.1,05,24,421 /- [Page 67 of complaint]
14.	Due date of delivery of possession as per clause 4.2 of flat buyer agreement (24 months + 6 months grace period from the date of execution of agreement [Page 48 of complaint]	05.06.2014
15.	Delay in handing over possession till the date of order i.e. 12.11.2020	6 years 5 months and 7 days [Note: - Possession has not been handed over so far]
16.	Status of the 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 by 24 months plus grace period of 6 months, from the date of execution of agreement, which comes out to be 05.06.2014. Clause 4.2 of the flat buyer agreement is reproduced below.

"4.2 Possession Time and Compensation

That the company endeavors to give possession of the Apartment to the Allottee within twenty four (24) 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 conditions or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the Company. However, the company shall be entitled for a grace period of six (6) months, in case the construction is not completed within the frame above mentioned.....”

4. The complainants submitted that the parties executed the flat buyer agreement on 05.12.2011. Whereby the respondent is handed over the possession stipulated time period i.e. 05.06.2014. However, the respondent has failed to give possession of the flat even till date.
5. The complainants submitted that the project is situated at one of the most sought after destinations in NCR which is going to be the foremost industrial hub in the future, Navodaya is located in the heart of the emerging new millennium city of Gurugram with industrial estates of Manesar and Dharuhera catering to various corporates and business houses.
6. The complainants submitted that the project has other amenities and features such as Pool, SPA, Gym, Tennis Court, Card Room, Table Tennis, Party Hall, Kids Play Area, Swimming Pool, 24 hours power backup in apartments, Hi tech Security Systems, Primary School, Food Courts and Restaurants and other features.



7. The complainants submitted that the present circumstances of the complainants have constrained them to file the present complaint as they had deposited entire sale consideration with the respondent and no possession nor delay compensation has been granted to them till date.
8. The complainants submitted that they were receipt of notice of possession letter dated 10.01.2017 from the respondent company end wherein the respondent company had raised an outstanding amount and the same were duly paid by the complainants but despite making payment in terms of full and final settlement the respondent company had failed till date in providing the possession of the unit booked.
9. The complainants submitted that the respondent company vide their notice of possession assured the complainants that the possession will be handed over the complainants within 4 weeks of submission of documentation and payments. The complainants duly made the payments asked for by the respondent company and also submitted all the relevant documents required. But despite of the same the complainants are being made to run from pillar to post to seek the possession of the unit booked.
10. The complainants submitted that the respondent company had unilaterally adjusted the delay compensation of the

complainants for the period of delay and that too relying upon the calculation based as per the one-sided agreement and only till November 2016.

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

- i. To direct the respondent to deliver immediate possession of the unit no. A-041, located at 4th floor, admeasuring 3100 sq. ft. in block-A, in the project Raheja's Navodaya along with all the promised amenities and facilities and to the full and final satisfaction of the complainants;
- ii. To direct the respondent to make the payment of delay penalty at the RERA prescribed rate of interest on the amount already paid by the complainants to the respondent, from the promised date of delivery of the flat till the actual delivery of the flat to the complainants;
- iii. To direct the respondent to waive off the maintenance charges before handing over the possession;

11. 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.

12. Notice to the promoter/respondent through speed post and through E-mail address (secretarial@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 promoter/respondent company A.R and his advocate have marked attendance on 18.02.2020. This is a clear evidence that the service was completed.
13. 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.
14. 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.
15. Arguments heard.
16. 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.

17. 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 05.12.2011, possession of the booked unit was to be delivered within stipulated time period of 36 months plus 6 months grace period. Therefore, the due date of handing over possession comes out to be 05.06.2014. Occupation certificate has not been received so far by the respondent and the respondent offered the possession of the unit to the complainant on 10.01.2017 but the complainant has not obtained physical possession of the unit till date. However, the respondent is dragging and lingering on the matter w.r.t. actual offer of possession till date without obtaining any OC in this context which can be treated to be a fraud exercise of his dominant position as a builder and it tantamount to be a grave mis-demeanor for which he should be separately penalized as per the provisions of the RERA Act. 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 complainants are entitled to delay possession charges at the prescribed rate of interest i.e. @9.30% p.a. w.e.f. 05.06.2014 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.

18. 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. 05.06.2014 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 05.06.2014 till the date of this order to the complainants 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 complainants 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 complainants in case of delayed possession charges;
- VI. The respondent is directed all the maintenance and holding charges imposed by the respondent shall remain nullified/waived off.


19. Complaint stands disposed of.

20. 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.