

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

**Complaint no.** : 886 of 2020  
**First date of hearing:** 07.04.2020  
**Date of decision** : 12.11.2020

1. Mrs. Seema Kapoor
2. Mr. Rishab Kapoor

**Both R/o:** - 8/6, 2<sup>nd</sup> floor,  
Front Side, West Patel Nagar,  
Central Delhi, New Delhi- 110008.

**Complainants**

Versus

M/s Raheja Developers Limited,  
**Regd. Office at:** W4D 204/5, Keshav  
Kunj, Carippa Marg, Western Avenue,  
Sainik farms, New Delhi- 110062  
**Corporate office at:** Raheja Mall, 3<sup>rd</sup> floor,  
Sector-47, Sohna Road, Gurugram

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Sh. Nilotpal Shyam and  
Ms. Shivali  
None

Advocates for the Complainants  
Advocate for the respondents

**ORDER**

1. The present complaint dated 28.02.2020 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's "Revanta", Sector 78, Gurugram
2.	Project area	18.7213 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	49 of 2011 dated 01.06.2011 valid up to 31.05.2021
5.	Name of licensee	Sh. Ram Chander, Ram Sawroop and 4 Others
6.	RERA Registered/ not registered	Registered vide no. 32 of 2017 dated 04.08.2017

7.	RERA registration valid up to	5 Years from the date of revised Environment Clearance
8.	Unit no.	A-312, 31 <sup>st</sup> floor, Tower-A [Page 32 of complaint]
9.	Unit measuring	1197.830 sq. ft.(approx.) [super area]
10.	Date of execution of Agreement to Sell Raheja's Revanta	11.05.2012 [Page 30 of complaint]
11.	Payment plan	Installment payment Plan [Page 64 of complaint]
12.	Total consideration as per (annexure C-2, applicant ledger dated 28.11.2019)	Rs.85,22,285/- [Page 81 of complaint]
13.	Total amount paid by the complainant as per (annexure C-2, applicant ledger dated 28.11.2019)	Rs.78,94,825/- [Page 81 of complaint]
14.	Due date of delivery of possession as per clause 4.2 of Agreement to Sell (48 months + 6 months grace period from the date of execution of agreement in respect of "Surya tower") [Page 44 of complaint]	11.11.2016
15.	Delay in handing over possession till date to till this order i.e. 12.11.2020	4 years and 1 day

3. As per clause 4.2 of the agreement to sell Raheja Revanta the possession was to be handed over by 48 months from the date of execution of agreement in case of flat/unit booked in Surya Tower plus grace period of 6 Months, which comes out to be

11.11.2016. Clause 4.2 of the Agreement to Sell is reproduced below.

**"4.2 Possession Time and Compensation**

*That the Seller shall sincerely endeavour to give possession of the Unit to the Purchaser within thirty-six (36) months in respect of 'TAPAS' Independent Floors and Forty-eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the agreement to sell and after providing of necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any Government/Regulatory authorities action, inaction or omission and reasons beyond the control of the Seller. However, the Seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above...."*

4. The complainants submitted that the respondent company through their representative had approached the complainants and represented that the respondent residential project name "Raheja Revanta" will effectively serve the residential purpose of complainants and has best of the amenities.
5. The complainants submitted that the parties executed the flat buyer developer agreement on 11.05.2012 but the respondent has failed to handover the possession of the unit to the complainant on the promised date of possession i.e.

11.11.2016 including grace period as per the buyer developer agreement.

6. The complainants submitted that there is more than three years and two months of unexplained delay in handing over the possession of impugned unit by the respondent company to the complainants without any justifiable reason. Therefore, the complainants have genuine grievance which require the intervention of the Authority.

Hence, this complaint inter alia for the following reliefs:

- I. To direct the respondent company to immediately deliver the possession of Unit No. A-312, 31st floor, Tower-A, "Raheja Revanta" Sector-78 Gurugram;
  - II. To direct the respondent company to pay interest @18% p.a. compounded for the delayed period calculated from the date of delivery of possession as mentioned in the agreement to sale till the actual date of handing over the possession of the impugned unit.
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. The respondent contested the complaint on the following grounds:

- I. the respondent submitted that it is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects such as 'Raheja Atlantis', 'Raheja Atharva', 'Raheja Shilas' and 'Raheja Vedanta' and in most of these projects large number of families have already shifted after having taken possession and Resident Welfare Associations have been formed which are taking care of the day to day needs of the allottees of the respective projects;
- II. that the construction of the tower in which the unit allotted to the complainant is located is complete and the finishing work is remaining and the respondent shall hand over the possession of the same to the complainant after its completion subject to the complainant making the payment of the due instalments amount and on availability of infrastructure facilities such as sector road and laying providing basic external infrastructure such as water, sewer, electricity etc. as per terms of the application and agreement to sell;



- III. that the complaint is not maintainable for the reason that the agreement contains an Arbitration Clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute;
- IV. that the Revanta Project is one of the most Iconic Skyscraper in the making, a passionately designed and executed project having many firsts and is the tallest building in Haryana with highest infinity pool and club in India. The scale of the project required a very in-depth scientific study and analysis, be it earthquake, fire, wind tunneling facade solutions, landscape management, traffic management, environment sustainability, services optimization for customer comfort and public health as well, luxury and iconic elements that together make it a dream project for customers and the developer alike;
- V. that compatible quality infrastructure (external) was required to be able to sustain internal infrastructure and facilities for such an iconic project requiring facilities and service for over 4000 residents and 1200 Cars which cannot be offered for possession without integration of external infrastructure for basic human life be it availability and continuity of services in terms of clean water, continued fail safe quality electricity, fire safety, movement of fire tenders, lifts, waste and

sewerage processing and disposal, traffic management etc.

- VI. that every customer including the complainant was aware and was made well cautious that the respondent cannot develop external infrastructure as land acquisition for roads, sewerage, water and electricity supply is beyond the control of the respondent. Therefore, as an abundant precaution, the respondent company while hedging the delay risk on price offered made an honest disclosure;
- VII. that the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, it appears that its calculations have gone wrong on account of severe slump in the real estate market and the complainant is now raising untenable and illegal pleas on highly flimsy and baseless grounds. Such malafide tactics of the complainant cannot be allowed to succeed;
- VIII. that despite the respondent fulfilling all its obligations as per the provisions laid down by law, the government agencies have failed miserably to provide essential basic infrastructure facilities such as roads, sewerage line, water and electricity supply in the sector where the said project is being developed. The development of roads, sewerage, laying down of water and electricity supply



lines has to be undertaken by the concerned governmental authorities and is not within the power and control of the respondent;

- IX. that the respondent cannot be held liable on account of non-performance by the concerned governmental authorities. The respondent company has even paid all the requisite amounts including the External Development Charges (EDC) to the concerned authorities. However, yet, necessary infrastructure facilities like 60-meter sector roads including 24-meter-wide road connectivity, water and sewage which were supposed to be developed by HUDA parallelly have not been developed for reason beyond its control;
- X. that the time period for calculating the due date of possession shall start only when the necessary infrastructure facilities will be provided by the governmental authorities and the same was known to the complainant from the very inception. It is submitted that non-availability of the infrastructure facilities is beyond the control of the respondent;
- XI. that the respondent had also filed RTI Application for seeking information about the status of basic services such as Road, Sewerage, Water and electricity. Thereafter, the respondent received reply from HSVP wherein it is clearly stated that no external

infrastructure facilities have been laid down by the concerned governmental agencies;

- XII. that furthermore two High Tension (HT) cables lines were passing through the project site which were clearly shown and visible in the zoning plan dated 06.06.2011. The respondent was required to get these HT lines removed and relocate such HT Lines for the blocks/floors falling under such HT Lines. The respondent proposed the plan of shifting the overhead HT wires to underground and submitted building plan to DTCP, Haryana for approval, which was approved by the DTCP, Haryana. It is pertinent to mention that such HT Lines have been put underground in the revised Zoning Plan. The fact that two 66 KV HT lines were passing over the project land was intimated to all the allottees as well as the complainant. The respondent had requested to M/s KEI Industries Ltd for shifting of the 66 KV S/C Gurgaon to Manesar Line from overhead to underground Revanta Project Gurgaon vide letter dated 01.10.2013. That HVPNL took more than one year in giving the approvals and commissioning of shifting of both the 66KV HT Lines. It was certified by HVPNL Manesar that the work of construction for laying of 66 KV S/C & D/C 1200 Sq. mm. XLPE Cable (Aluminium) of 66 KV S/C Gurgaon - Manesar line and 66 KV D/C

Badshahpur – Manesar line has been converted into 66 KV underground power cable in the land of the respondent's project which was executed successfully by M/s KEI Industries Ltd has been completed successfully and 66 KV D/C Badshahpur – Manesar Line was commissioned on 29.03.2015;

- XIII. that the construction of the tower in which the unit allotted to the complainant is located is 75% complete and the respondent shall hand over the possession of the same to the complainant after its completion subject to the complainant making the payment of the due installments amount and on availability of infrastructure facilities such as sector road and laying providing basic external infrastructure such as water, sewer, electricity etc. as per terms of the application and agreement to sell.
- XIV. that due to the above-mentioned conditions which were beyond the reasonable control of the respondent, the construction of the project in question has not been completed and the respondent cannot be held liable for the same. The respondent is also suffering unnecessarily without any fault on its part and due to these reasons, the respondent has to face cost overruns without its fault. Under these circumstances passing any adverse



order against the respondent at this stage would amount to complete travesty of justice.

- XV. that the complaint has been worded as if simpleton apartment buyers have lost their monies and therefore, they must have their remedy. The present case also brings out how a few can misguide others to try and attempt abuse of the Authority which is otherwise a statutory body to ensure delivery of apartments and safeguard of investment of every single customer who puts his life saving for a dream house and social security.
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 agreement to sell executed between the parties on 11.05.2012, possession of the booked unit was to be delivered within stipulated time i.e. by 11.05.2016 plus grace period of 6 months. Therefore, the due date of handing over possession comes out to be 11.11.2016. Accordingly, it is the failure of the respondent to fulfil his obligations, responsibilities as per the Agreement to Sell dated 11.05.2012 to hand over the possession within the stipulated period. The Authority also observed that despite the lapse of due date, no offer of possession has been given nor any occupation certificate has been received by the respondent. Registration certificate No.32 of 2017 was valid for five years from the date of revised environment clearance which was expired in the year 2018, as such since the project is not complete, it direly needs essential of registration certificate for which a notice under section 59 for violation of Section 3 (1) of the Act ibid be issued by the

Planning branch on account of non-renewal of the RERA registration certificate. The unit has not been delivered to the complainant till date, the complainant is well within his right to get delayed possession charges. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainants are entitled to delayed possession charges at the prescribed rate of interest i.e. 9.30% p.a. w.e.f. 11.11.2016 till handing over the actual physical possession of the booked unit as per the proviso to 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. 11.11.2016 till handing over the 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 11.11.2016 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;
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