

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

Complaint no. : 930 of 2020
First date of hearing : 07.04.2020
Date of decision : 12.11.2020

Mr. Ajay Narain Gupta
R/o: -House No. 19, Bahubali
Enclave, Karkar Dooma,
New Delhi- 110092.

Complainant

Versus

M/s Raheja Developers Limited,
Regd. Office at: W4D 204/5, Keshav
Kunj, Carippa Marg, Western Avenue,
Sainik farms, New Delhi- 110062

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Sh. Harshit Batra
None

Advocate for the Complainant
Advocate for the respondent

ORDER

1. The present complaint dated 20.02.2020 has been filed by the complainant/allottee in form of CRA 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 provisions 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.	B-203, 20 th floor, Tower-B [Page 28 of complaint]
9.	Unit measuring	1621.390 sq. ft. (approx.) [super area]

10.	Date of execution of Agreement to Sell Raheja's Revanta	26.06.2012 [Page 26 of complaint]
11.	Payment plan	Installment payment Plan [Page 60 of complaint]
12.	Total consideration as per annexure C-1, applicant ledger dated 19.12.2019(Page 17 of complaint) and annexure R-22, applicant ledger dated 22.06.2020(Page 189 of reply)	Rs.1,18,72,632 /-
13.	Total amount paid by the complainant as per annexure C-1, applicant ledger dated 19.12.2019(Page 17 of complaint) and annexure R-22, applicant ledger dated 22.06.2020(Page 189 of reply)	Rs.1,07,84,470/-
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 40 of complaint]	26.12.2016
15.	Delay in handing over possession till date to till this order i.e. 12.11.2020	3 years 10 months and 17 days

3. As per clause 4.2 of the agreement to sell Raheja's Revanta the possession was to be handed over by 48 months plus grace period of 6 Months, from the date of agreement, which comes out to be 26.12.2016. 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 complainant submitted that the agreement to sell was signed on 26.06.2012 and the complainant has paid more than 95% of the total amount of sale consideration as per the payment schedule as demanded by the respondent. There is no default on part of the complainant as regard to payments and that the payments have been duly paid to the respondent within time. However, there is delay in completion of the mentioned project by the respondent which amounts to breach of the terms and conditions of the agreement to sell.

Hence, this complaint inter alia for the following reliefs:

- i. To direct the respondent to provide the complainant with prescribed rate of interest on delay in handing over possession on the amount paid by the complainant from

- the date of possession as per the buyer agreement till actual possession;
- ii. To direct the respondent to hand over the possession of the said unit at the earliest;
5. 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.
6. The respondent contested the complaint on the following grounds:
- i. The respondent submitted that the respondent company 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. The respondent submitted 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 tunnelling 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. The world's best consultants and contractors were brought together such as ThortonTamasetti (USA) who are credited with dispensing world's best structure such as Petronas Towers(Malaysia), Taipei 101(Taiwan), Kingdom Tower Jeddah(world' tallest under construction building in Saudi Arabia and Arabtec makers of Burj Khalifa, Dubai(presently tallest in the world), Emirates palace Abu Dhabi etc.

- iii. The respondent further submitted 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 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.

- iv. The respondent submitted that the 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. Keeping every aspect in mind this iconic complex was conceived as a mixture of tallest High rise towers & low rise apartment blocks with a bonafide hope and belief that having realized all the statutory changes and licence, the government will construct and complete its part of roads and basic infrastructure facilities on time. 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 in the application form itself in Clause no. 5 of the terms and conditions.

- v. The respondent further submitted that the Allotment letter dated 26.02.2012 allotted to the complainant apartment no. B-203, on 20th floor, in Tower-B, Raheja Revanta admeasuring 1621.390 sq. ft. for a total sale consideration Rs.1,09,86,318/- and also submitted that the complainant signed and executed the Agreement to sell on 26.02.2012 and the complainant agreed to be bound by the terms contained therein. Further, the delay caused was due to reason beyond the control of the respondent and as detailed in the reply.
- vi. Hence, the present complaint deserves to be dismissed at the very threshold.
7. 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.
8. 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.

9. Arguments heard.
10. 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.
11. 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 26.06.2012, possession of the booked unit was to be delivered within stipulated time i.e. by 26.06.2016 plus grace period of 6 months. Therefore, the due date of handing over possession comes out to be 26.12.2016. The Authority 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 dated 4.8.2017 was valid for five years from the date of revised environment clearance. Since the project is not complete, it

directly 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, it is the failure of the respondent to fulfil his obligations, responsibilities as per the agreement to sell dated 26.06.2012 to hand over the possession within the stipulated period. 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 complainant is entitled to delay possession charges at the prescribed rate of interest i.e. 9.30% p.a. w.e.f. 26.12.2016 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.

12. 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. 26.06.2016 till handing over the actual physical possession;



- (ii) The complainant is 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 26.06.2016 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;

13. Complaint stands disposed of.

14. File be consigned to registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 25.09.2020

Judgement Uploaded on 01.12.2020.