

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

Complaint no. : 3748 of 2020
First date of hearing : 08.01.2021
Date of decision : 04.03.2021

1. Sh. Taranjeet Singh Khurana
2. Mrs. Surjeet Kaur Khurana
Both RR/o: - 2/20A, GF, Jungpura- A,
New Delhi- 110014

Complainants

Versus

M/s Raheja Developer Limited.
Through its Managing Director/CEO,
Reg. Office: - 317, 3rd Floor, Raheja Mall,
Sector-47, Sohna Road, Gurugram- 122001

Respondent

CORAM

Dr. K.K Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Sh. Deepak Pathak
Sh. Saurabh Seth

Advocate for the complainants
Advocate for the respondent

HARERA
ORDER
GURUGRAM

1. The present complaint dated 17.11.2020 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 to the allottee as per the Agreement to Sell 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's "Trinity", Sector 84, Gurugram
2.	Project Area	2,281 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	26 of 2013 dated 17.05.2013 valid up to 16.05.2019
5.	Name of licensee	Sh. Bhoop Singh and Others
6.	RERA Registered/not registered	Registered vide no. 24 of 2017 dated 25.07.2017
7.	RERA registration valid Upto	For a period commencing from 25.07.2017 to 5 years from the date revised Environment Clearance;
8.	Allotment letter	01.10.2014

		[page 36 of complaint]
9.	Date of execution of agreement to sell	01.10.2014 [page 39 of complaint]
10.	Unit no.	038, Ground Floor [Page 40 of complaint]
11.	Unit measuring	512.64 sq. ft. [Page 40 of complaint]
12.	Payment plan	Installment Payment Plan
13.	Total sale consideration	Rs.59,74,820/- [as per payment plan page 75 of Reply]
14.	Amount paid by the Allottee	Rs.25,28,412/- [as per demand letter dated 13.05.2020 page 17A of complaint]
15.	Due date of delivery of possession as per clause 4.2 of Agreement to Sell:- (36 months from the date of execution of agreement to Sell or Sanction of Buildings Plans and Environment Clearance whichever is later and after providing of necessary infrastructure in the sector by the government, but subject to force majeure)	17.10.2017 (Calculated from the receipt of environment clearance i.e. 17.10.2014)
16.	Delay in handing over possession till date of decision i.e. 04.03.2021	3 years 4 months and 15 days



17.	Status of project	Ongoing
-----	-------------------	---------

3. As per clause 4.2 of the agreement to sell the possession was to be handed over by 36 months, from the date of agreement, to sell or sanction of building plans and Environment Clearance whichever is later, the due date is calculated from the receipt of Environment Clearance i.e. 17.10.2014 which comes out to be 17.10.2017. Clause 4.2 of the agreement to sell is reproduced herein below:

“4.2 Possession Time and Compensation

That the Seller shall sincerely endeavour to give possession of the Shop/ Commercial Space to the Purchaser within thirty-six (36) months from the date of the execution of this Agreement to Sell or Sanction of Buildings Plans and Environment Clearance whichever is later and after providing of necessary infrastructure in the sector by the government, but subject to force majeure, circumstances, reasons conditions or any Government/Regulatory authorities action, inaction or omission and reasons beyond the control of the Seller”

4. The complainants submitted that in the year 2014 he was looking for commercial shop for running his business and came across the wide advertisement of M/s. Raheja Developers Ltd. of an ongoing project at Gurugram in the name and style of “Raheja Trinity” at Sector 84, Gurugram.

5. The complainants submitted that the interest in the said ongoing project, the complainant was contacted by developer and thereby it was represented that the said project has been approved and is in conformity with law and the developer deals in complete transparent manner with regard to pricing, cost and without any hidden charges. Further, it was told that the said property would abide by all the prevalent laws and regulations. It was further assured that the time was essence of the contract and the allotted unit would be handed over within the timeframe as provided under the agreement.
6. The complainants further submitted that with such representation, especially regarding the adherence and strict compliance of the existing laws and regulation, the complainant was induced to purchase one shop/unit in the said project of "Raheja Trinity". Accordingly, one shop/unit was allotted to the complainant by respondent bearing Shop No. 038 at Raheja Trinity, Sector 84, Gurgaon, vide allotment letter cum agreement to Sale dated 1.10.2014 for total area of 512 Sq. ft. to a total sale consideration amount of Rs.59,74,819/-. In terms of the Clause 4.2. of the said agreement, the possession was to be handed over by 36

months from the date of execution of agreement i.e. by 30.09.2017.

7. The complainants submitted that he was received a letter dated 22.10.2020 whereby a demand of Rs.19,87,136/- was raised against the complainant with threat of charging of interest @18% p.a. The said letter is highly illegal and arbitrary in as much as the respondent never cared about the timely delivery of possession and more than three years have passed since the date of possession was scheduled despite timely payment was made by the complainant and for the delayed period no interest/compensation was paid by the respondent.
8. That the complainant was shocked to find the demand and the demand with penal interest provision is highly illegal, arbitrary, unlawful and has been raised to extract illegal money.

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

- I. Direct the respondent to pay the interest @ 18% on the deposited amount with pendente lite interest of 12% P.a. from the date of 01.10.2017, when the developer was to hand over the possession.

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 respondent contests the complaint on the following grounds:
- i. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The agreement to sell was executed between the parties to the complaint prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively. The said project is registered under RERA with registration No. 24 of 2017 dated 25.07.2017.
 - ii. The respondent has submitted that the complainants booked Shop No. 38, in Raheja Trinity at Sector - 84, Gurugram, Haryana vide application form dated 19.08.2014. Booking of the said allotted shop was done prior to the enactment of the RERA Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively. The respondent vide its allotment offer

letter dated 01.10.2014 allotted to the complainant commercial shop no. 38 admeasuring 512.64 sq. ft (Tentative) for a total sale consideration without taxes of Rs. 59,74,819/-. The total sale consideration amount was exclusive of the registration charges, stamp duty, service tax and other charges which are to be paid by the complainant at the applicable stage and the same is known to the complainant from the very inception.

- iii. The respondent submitted that only such allottees, who have complied with all the terms and conditions of the office space buyer's agreement including making timely payment of instalments are entitled to receive compensation under the buyer's agreement. As per the statement of account dated 05.11.2020 the outstanding amount payable by the complainant to the respondent is Rs.39,40,011/-.
- iv. 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 the relevant work to provide infrastructure facilities is still in progress.
- v. That the complainants have not approached this Hon'ble Authority with clean hands and have intentionally

suppressed and concealed the material facts in the present complaint. The present complaint has been filed by it maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law.

- vi. The respondent further submitted that the delay, if any, in the project has been due to the delay in grant of the necessary approvals by the competent authorities and not due to any deficiency on part of the respondent. The process of grant of the necessary approvals by the competent authorities had been beyond the control of the respondent. The respondent has made best possible endeavour and all efforts at every stage to diligently follow with the competent authorities for the concerned approvals. In fact, it is in the interest of the respondent too to complete the Project as early as possible and handover the possession to the complainants. However, much against the normal practice and expectations of the respondent, at every stage, each division of the concerned authority has taken time, which was beyond normal course and practice.
- vii. 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. 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.

11. 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.

12. 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.
13. Arguments heard.
14. 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.
15. 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 flat buyer agreement executed between the parties on 01.10.2014, possession of the booked unit was to be delivered within stipulated time period of 36 months from the date of agreement to sell or sanction of building plans and Environment Clearance whichever is later, the due date is calculated from the receipt of environment clearance i.e. 17.10.2014. Therefore, the due date of handing over

possession comes out to be 17.10.2017. 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. 01.10.2017 till offer of possession plus two months as per provision of section 19(10) of the Real Estate (Regulation and Development) Act 2016 of the booked unit as per the provisions of section 18(1) of the Act read with rules 15 of the Rules.

16. 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. 01.10.2017 till offer of possession plus two months as per provision of section 19(10) of the Real Estate (Regulation and Development) Act 2016.

- 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 01.10.2017 till the date of this order to the complainants within 90 days from the date of decision and subsequent interest to be paid on or before 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 delay 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;
17. Complaint stands disposed of.
18. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K Khandelwal)

Chairman

Dated: 04.03.2021

Judgement uploaded on 09.04.2021