

**PROCEEDINGS OF THE DAY**

Day and Date	Wednesday and 30.01.2019
Complaint No.	778/2018 case titled as Mr. Naresh Kumar Gupta & Kiran Gupta Vs M/s Raheja
Complainant	Mr. Naresh Kumar Gupta & Kiran Gupta
Represented through	Complainant No.1 in person with Shri Sushil Yadav Advocate.
Respondent	M/s Raheja
Respondent Represented through	<b>None for the respondent</b>
Last date of hearing	19.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Project is registered with the authority**

Project was registered with the authority but the date of registration of project has expired on 13.8.2018 as per registration certificate. Counsel for the respondent stated that they have applied for extension of registration but no copy of extension of registration has been produced on record.

Case has been called out but none has appeared on behalf of the respondent. The respondent is, therefore, proceeded against ex-parte.

Arguments heard.

As per clause 4.2 of the Builder Buyer Agreement dated 13.02.2014 for unit No.C-121, 12<sup>th</sup> floor, tower-C, in project "Raheja Revanta" Sector 78,

Gurugram, possession was to be handed over to the complainant within a period of **48** months from the date of execution of BBA + **6** months grace period which comes out to be **13.8.2018**. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,65,71,377/- to the respondent against a total sale consideration of Rs.1,85,88,930/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 13.8.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the offer of possession. If the respondent fails to give possession as per re-revised date in that case complainant is entitled for refund alongwith prescribed rate of interest.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10<sup>th</sup> of subsequent month.

The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar  
(Member)  
30.1.2019

Subhash Chander Kush  
(Member)

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

**Complaint no. : 778 of 2018**  
**First date of hearing : 19.12.2018**  
**Date of Decision : 31.01.2019**

1.Mr. Naresh Kumar Gupta  
2.Mrs. Kiran Gupta  
R/o 47, Aspen Greens Nirvana,  
Gurugram.

**Complainants**

**Versus**

M/s Raheja Developers Ltd.  
Address: - 406 4<sup>th</sup> floor, Rectangle one,  
D - 4, District Centre, Saket,  
New Delhi.

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Mr. Naresh Kumar Gupta Complainant in person  
Shri Sushil Yadav Advocate for complainant  
None for the Respondent Advocate for respondent

**ORDER**

1. A complaint dated 27.04.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Naresh Kumar Gupta and Mrs.



Kiran Gupta, against the promoter M/s Raheja Developers Ltd. on account of violation of the clause 4.2 of floor buyer agreement executed dated 13.02.2014 in respect of C-121, 12<sup>th</sup> floor, tower C, admeasuring 1642.91 sq. ft. of the project 'Raheja Revanta' located at Sector 78 , Gurugram for not handing over possession of the subject plot on the due date i.e. by 13.08.2018 which is an obligation of the promoter/respondent under section 11(4)(a) of the Act *ibid*.

2. Since the floor buyer agreement dated 13.02.2014 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for noncompliance of contractual obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Raheja Revanta", Sector 78 , Gurugram, Haryana.
2.	Flat/apartment/unit no.	C- 121, 12 <sup>th</sup> floor, tower C
3.	Project area	18.7213 acre



4.	Admeasuring super area of the unit	1642.91 sq. ft.
5.	RERA registered/not registered	<b>Registered (32 Of 2017)</b>
6.	Revised date of completion as per registration certificate	<b>5 years from the environmental clearance</b> <b>Environmental clearance certificate is not in the file</b>
7.	DTCP license no.	49 of 2011
8.	Nature of real estate project	Residential group housing colony
9.	Date of execution of Agreement to sell	13.02.2014
10.	Payment Plan	Time linked payment plan
11.	Total consideration	Rs. 1,85,88,930/-
12.	Total amount paid by the complainant till date	Rs. 1,65,71,377/
13.	Due date for delivery of possession as per clause 4.2 of the application form. <i>Note - 48 months from the execution of agreement 6 months grace period from the agreement to sell</i>	13.08.2018
14.	Delay in handing over possession till date	4 months
11.	Penalty clause (clause 4.2)	Rs. 7/- sq. ft. of the super area per month



4. The details provided above have been checked as per records available in the case file which have been provided by the complainant. Despite service of notice the respondent neither

appeared nor filed their reply to the complaint therefore case is being proceeded exparte against the respondent.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The came up on hearing on 19.12.2018 and 30.01.2019. The reply has not been filed by the respondent.

#### **Facts of the complaint-**

6. The complainant submitted that they have booked an apartment/flat admeasuring built up area 1642.91 sq. ft. in a project of the respondent for total sale consideration is Rs. 18,588,930/- which includes BSP, car parking, IFMS, Club Membership, PLC etc. The complainants made payment of Rs. 16,571,377/- to the respondent vide different cheques on different dates.
7. The complainants submitted that as per agreement to sell the respondent has allotted a flat bearing no. C-121 in tower C admeasuring 1642.91 sq. ft. in surya tower, Raheja Revanta in Sector 78 Gurgaon to the complainant. That as per para 4.2 of the agreement to sell, the respondent had agreed to deliver the



possession of the flat within 48 months from the date of signing of the agreement to sell dated 13.02.2014 with an extended period of 180 days.

8. The complainants submitted that they regularly visited the site but were surprised to see that construction work was very slow in progress and no one was present at the site to address the queries of the complainants. It appears that respondent has played fraud upon the complainants. The only intention of the respondent was to take payments for the project without completing the work. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainants. That despite receiving the payment as demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls, the respondent has failed to deliver the possession of the allotted flat to the complainants within stipulated period.

9. The complainants submitted that the construction of the project in which the complainant flat was booked with a promise by the respondent to deliver the flat by 13.02.2018 was not completed within time for the reasons best known to the respondent; which



clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.

10. The complainants submitted that they visited the site but were shocked to see that construction was going on very slow speed then the complainants contacted the respondents through mails and personal visit to know about the project, but the respondent did not give any satisfactory answer. The complainants submitted that they had paid Rs.16,571,377/- as and when demanded by the respondent but the construction was going on at a very slow speed and even the respondent did not know that when they will be able to deliver the project. So consequently the complainant sent a mail/representation on dated 25.07.2018 to the respondent for cancellation of the unit and refund the money but the respondent denied for refund of the money .

11. The complainants submitted that due to this omission on the part of the respondent the complainants have been suffering from disruption , mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the flat on time or refund the money. That as per clause 4.2 of the agreement to sell dated 13.02.2014 it was





agreed by the respondent that in case of any delay, the respondent shall pay to the complainants a compensation @ Rs.7/- per sq.ft. per month of the super area of the apartment/flat. It is however, pertinent to mention here that builder is neither giving the possession nor giving any satisfactory answer which is unjust, and the respondent has exploited the complainant by neither providing the possession of the flat even after a delay nor refunded the amount paid by the complainants. The respondent cannot escape the liability merely by mentioning a clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided agreement to sell and usurp such a huge amount of the complainant.

12. The complainants submitted that the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainants @18%per annum to be compounded from the date of amount paid.

13. The complainants submitted that they have requested the respondent several times on telephonic calls and also personally visiting the office of the respondent to refund the amount along with interest @ 18% per annum on the amount deposited by the



complainant but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainants with his hard-earned huge amount and wrongfully gain himself and caused wrongful loss to the complainants.

### Issues to be decided

1. Whether the promoter is liable to refund the amount of Rs.16,571,377/- along with interest @ 18% per annum on compounded rate from the date of booking of the flat in question

### Reliefs sought: -

The complainant are seeking the following reliefs:

- i. Direct the respondents to refund the amount of Rs. 16,571,377/- along with interest @ 18% per annum on compounded rate from the date of booking of the flat in question.

### Respondent's reply: -

The reply has not been filed.



### Determination of issues

15. With respect to the sole **issue** raised by the complainant, as per clause 4.2 of the buyer agreement dated 13.02.2014, the possession of the unit was to be handed by 13.08.2018. However, the possession has been delayed by 5 months(approx.) till the date of decision. As the possession of the unit was to be delivered by 13.08.2018 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. Moreover, the project registered and there is no likelihood of hope to ascertain the exact status of the completion of project. Hence, the authority left with no other option decided to order for the refund of the paid amount by the respondent alongwith prescribed rate of interest @10.75% as per the provision of section 18(1) of the Act



### Findings of the authority

16. The authority has complete jurisdiction to decide the complaint in regard to 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

17. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs. 5,000. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs. 10,000.
18. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority hereby proceeds ex-parte on the basis of the facts available on record and adjudges the matter in the light of the facts adduced by the complainant in its pleading.
19. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the



authority has decided to observed that project was registered with the authority but the date of registration of project has expired on 13.8.2018 as per registration certificate. Counsel for the respondent stated that they have applied for extension of registration but no copy of extension of registration has been produced on record. Case has been called out but none has appeared on behalf of the respondent. The respondent is, therefore, proceeded against ex-parte.

20. As per clause 4.2 of the builder buyer agreement dated 13.02.2014 for unit no.C-121, 12<sup>th</sup> floor, tower-C, in project "Raheja Revanta" Sector 78, Gurugram, possession was to be handed over to the complainant within a period of 48 months from the date of execution of BBA + 6 months grace period which comes out to be 13.8.2018. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,65,71,377/- to the respondent against a total sale consideration of Rs.1,85,88,930/-. Accordingly, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 13.8.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the offer of possession. If the respondent fails to give possession as per re-revised date in that case complainant is entitled for refund alongwith prescribed rate of interest.



**Decision and directions of the authority: -**

21. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions: -

- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 13.8.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the offer of possession. If the respondent fails to give possession as per re-revised date in that case complainant is entitled for refund alongwith prescribed rate of interest.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10<sup>th</sup> of subsequent month.
- iii. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

14. The order is pronounced.

15. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated:30.01.2019

Judgement Uploaded on 08.02.2019





**HARERA**  
GURUGRAM

