

**PROCEEDINGS OF THE DAY**

|                                |  |
|--------------------------------|--|
| Day and Date                   | Friday and 08.02.2019  |
| Complaint No.                  | 1018/2018 Case Titled As Moinak Roy V/S M/S Raheja Developers Ltd.                                       |
| Complainant                    | Moinak Roy   |
| Represented through            | Shri Piyush Tiwari AR on behalf of the complainant   |
| Respondent                     | M/S Raheja Developers Ltd.   |
| Respondent Represented through | Mr. Naveen Raheja CMD in person with Shri Mukul Sanwariya proxy counsel for Shri Kamal Dahiya, Advocate. |
| Last date of hearing           | First hearing  |
| Proceeding Recorded by         | Naresh Kumari & S.L.Chanana  |

**Proceedings**

**Project is not registered with the authority.**

Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

Arguments heard.

Complaint was filed on 22.10.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 23.10.2018, 15.11.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 15.11.2018 and on 29.11.2018 for non-filing of reply even after service of notices. However, despite due and proper service of notices, the

respondent neither filed the reply nor come present before the authority. From the above stated conduct of the respondent, it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to proceed ex-parte against the respondent and to decide the matter on merits by taking into account legal/factual propositions, as raised, by the complainant in his complaint.

A final notice dated 31.01.2019 by way of email was sent to both the parties to appear before the authority on 08.02.2019.

As per statement made by the complainant that he wants to wriggle out the project as there is no progress w.r.t. construction of work. Since there is no hope and scope for completion of project, therefore, no choice is left with the authority but to direct the respondent to refund the amount deposited by the complainant after deducting earnest money i.e. 10% of the basic sale price with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order. Mr. Naveen Raheja CMD has given his consent to refund the balance amount to the complainant alongwith prescribed rate of interest i.e 10.75% per annum.

Since both the parties agreed to the terms mentioned above, complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar  
(Member)  
8.2.2019

Subhash Chander Kush  
(Member)

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

Complaint No. : 1018 of 2018  
First date of hearing : 08.02.2019  
Date of Decision : 08.02.2019

Mr. Moinak Roy  
R/o 2795, 1<sup>st</sup> floor, Sector 23  
Bajghera, Carterpuri, Gurugram

**Complainants**

Mrs. Shilpa  
R/o H.no. 41/8, near Gramin Bank,  
Vedant Nagar, Bahadugrah  
Jhajjar, Haryana

Versus

M/S Raheja Developers Ltd.  
W4D-205/5, keshavkunj, Western Avenue,  
Carriapa Marg, Sainik Farms, New Delhi

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Piyush Tiwari

Authorised representative on  
behalf of complainant

Shri Mukul Sanwariya

Advocate for the respondent

Mr. Naveen Raheja

CMD in person

**EX-PARTE ORDER**

1. A complaint dated 22.10.2018 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 complainants Mr. Moinak Roy and Mrs. Shilpa, against the promoter M/s Raheja Developer Pvt. Ltd.

2. Since the application form dated 31.01.2017 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 non compliance 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's Vanya,<br>Sector- 99A,<br>Gurugram |
| 2. | unit no.                         | 4 <sup>th</sup> floor, phase 1              |
| 3. | Nature of real estate project    | Residential group<br>housing colony         |
| 4. | DTCP license no.                 | 64 of 2013<br>72 of 2014                    |
| 5. | Total unit area                  | 1252.13 sq.ft.                              |
| 6. | RERA registered/unregistered     | <b>Unregistered</b>                         |



|     |  |   |
|-----|--|---|
| 7.  | Application form   | <b>31.01.2017</b>                                       |
| 8.  | Date of execution of builder buyer agreement   | Not executed  |
| 9.  | Payment Plan   | Construction linked payment plan                        |
| 10. | Total consideration amount   | Rs. 59,51,860.75/- (as per annx. A of application form) |
| 11. | Total amount paid by the complainant (annx. 2)   | Rs. 8,72,000/-  |
| 12. | Due date of delivery<br>Clause 18.1 48 months + 12 months grace period from the date of execution of agreement | 31.01.2022  |
| 13. | Delay in handing over possession till date   | Premature   |

4. The details provided above have been checked as per record available in the case file which has been provided by the complainants. Application form is available on record dated 31.01.2017 for the aforesaid unit. However, the due date of possession is 21.01.2022 and the complaint is premature.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Despite service of notice the respondent neither appeared nor filed their reply to the complaint and case is being proceeded exparte against the respondent.



### Facts of the complaint

6. The complainants submitted that they booked an apartment in the respondent projects “**Raheja Vanya**” Phase -1 situated at sector 99A, Gurugram- Manesar urban complex, Haryana- 122001 with carpet area admeasuring 806.59 sq.mt. at 4<sup>th</sup> floor with super area of 1252.13 sq. mt. and paid a sum of Rs. 5,22,000/- as a booking amount vide cheque no. 000054 dated 31.01.2017. An agreement was signed between the parties on 31.01.2017. The complainant again paid a sum of Rs. 3,50,000 on 19.04.2017. In total a sum of Rs. 8,72,000/- was paid for the said flat in two instalments.
7. The complainants submitted that on 06.07.2017, complainants had to withdraw from the project because mother of complainant no.1 was suspected of breast cancer. Due to this unfortunate event, complainants could not further invest in the project and they needed their hard earned money for the treatment of complainant no.1 mother. The complainants had informed the respondent of this unfortunate issue that they had to face and requested



respondent several times for refund of their amount paid in the project but respondent either ignored it or did not give any proper reply regarding refund till date.

8. The complainant submitted that respondent has cheated the complainants by misappropriating and not refunding their hard earned money .

**Issues to be decided:**

- i. Whether the complainants are entitled to withdraw from the project?
- ii. Whether the complainants are entitled for refund and interest on the amount deposited by them?

**Reliefs sought-**

The complainants are seeking the following reliefs:

- i. Direct the respondent to refund the amount of Rs. 8,72,000/- along with interest at the rate of 18%.

**Determination of issues: -**

9. With respect to **first issue** raised by the complainants, as per the present circumstance of the case, the complainants



will be entitled to withdraw from the project after deducting the 10% of the earnest money out of the total consideration.

10. With respect to the **second issue** raised by the complainant, as per clause 18.1 of the application form dated 31.01.2017, the possession of the unit was to be handed by 31.01.2022. Therefore, the complaint is premature. Moreover, the project is not registered, and no buyer's agreement has been signed. There is no likelihood of hope to ascertain the exact status of the completion of project and the complainant do not want to continue with the project. Hence, the authority left with no other option and decided to order refund of the paid amount by the complainants.

#### Findings of the authority

11. 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 complainants 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.

12. 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/-.
13. Such notices were issued to the respondent on 23.10.2018 and on 15.11.2018 and on 29.11.2018.
14. 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 complainants in their pleadings.



15. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has decided to observe that since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

16. Complaint was filed on 22.10.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 23.10.2018, 15.11.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 15.11.2018 and on 29.11.2018 for non-filing of reply even after service of notices. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the authority. From the above stated conduct of the respondent, it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to proceed ex-parte against the respondent and



to decide the matter on merits by taking into a count legal/factual propositions, as raised, by the complainant in his complaint. A final notice dated 31.01.2019 by way of email was sent to both the parties to appear before the authority on 08.02.2019.

17. As per statement made by the complainant that he wants to wriggle out the project as there is no progress w.r.t. construction of work. Since there is no hope and scope for completion of project, no choice is left with the authority but to direct the respondent to refund the entire amount deposited by the complainant after deducting 10% of the basic sale price with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order. Mr. Naveen Raheja CMD has given his consent to refund the balance amount to the complainant along with prescribed rate of interest i.e. 10.75% per annum



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

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

1. The respondent is directed to refund the entire amount deposited by the complainant after deducting 10% of the basic sale price with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order. Mr. Naveen Raheja CMD has given his consent to refund the balance amount to the complainant along with prescribed rate of interest i.e 10.75% per annum.
2. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Real Estate (Regulation and Development) Act, 2016 by the registration branch.
19. The order is pronounced.
20. Case file be consigned to the registry.
21. Copy of this order be endorsed to the registration branch.



**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated: 08.02.2019

Judgement Uploaded on 13.02.2019