



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

Complaint no. : 109 of 2021
First date of hearing: 04.03.2021
Date of decision : 09.07.2021

Bhagwan Dass Pahuja
S/o Late Sh. Ditta Ram Pahuja,
R/o: - House No. 371, Sector-14,
Gurugram- 122001

Complainant

Versus

1. M/s Raheja Developers Limited.
2. Realcare Building Maintenance Services
Private Limited.
Both Having Regd. office: W4D, 204/5,
Keshav Kunj, Western Avenue, Sainik Farma,
New Delhi- 110062

Respondents

CORAM:

Dr. K.K Khandelwal
Shri Samir Kumar
Shri Vijay Kumar Goyal

Chairman
Member
Member

APPEARANCE:

Sh. Rishabh Jain Advocate for the complainant
Sh. Mukul Kumar Sanwariya Advocate for the respondent no. 1

ORDER

1. The present complaint dated 12.01.2021 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 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*.

A. Unit and project related details

2. The particulars of unit details, 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 Mall", Sector-47 Gurugram.
2.	Project area	2.718 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	455 of 2006 dated 27.01.2006 valid till 26.01.2012.
5.	Name of licensee	Smt. Bishan Devi
6.	RERA Registered/not registered	Unregistered
7.	Unit no.	shop/commercial and office space no. UG- 030B [Page 38 of complaint]



8.	Unit measuring	580.54 sq. ft.
9.	Date of execution of agreement to sell	18.09.2006 [Page 37 of complaint]
10.	Payment plan	Construction linked payment plan. [Page 58 of complaint]
11.	Total consideration	Rs.39,24,450.40 /- [as per customer ledger report Page 94 of complaint and 52 of reply]
12.	Total amount paid by the complainant	Rs.42,23,573/- [as per customer ledger report Page 94 of complaint and 52 of reply]
13.	Due date of delivery of possession as per clause 4.2 of the agreement to sell: 30 months from the date of execution of agreement. [Page 44 of complaint]	18.03.2009
14.	Date of offer of possession of the shop	11.02.2010 [Page 68 of complaint]
15.	Possession letter	19.02.2014 [Page 99 of complaint]
16.	Delay in handing over possession till offer of possession i.e. 11.02.2010	10 months and 24 days

B. Fact of the complaint

3. The respondent no. 1/promoter/developer published very attractive brochure highlighting the commercial project, 'Raheja's Mall' at Sector- 47, Gurugram, Haryana. The



respondent claimed to be one of the best and finest in construction and one of the leading real estate developers of the country in order to lure prospective customers to buy shops in the project. They were fraudulent misrepresentations, incorrect and false statements in the brochure. The complainant invites attention of the Haryana Real Estate Regulatory Authority, Gurugram to section 12 of the Act, 2016. The project was launched in 2006 with the promises to deliver in time and huge funds were collected over the period by the respondent no. 1.

4. The complainant was approached by the representatives of the developer. The sale representatives claimed the project as the world class project. The complainant was invited to the sales office and was lavishly entertained, and promises were made to him that the project is complete including parking and other common area facilities. The complainant was impressed by their statements and oral representations and ultimately lured to pay Rs.3,63,361/- via cheque no. 351377 dated 02.03.2006 as booking amount, duly acknowledged by the respondent no. 1, for the shop on 27.04.2006. It is further submitted that the agreement to sell for the shop no. UG-030B



measuring 580.54 sq. ft. was executed between the complainant and the respondent no. 1 on 18.09.2006.

5. The complainant has submitted that as per the agreement, the date of possession is 30 months from the date of execution of the agreement, which comes out to be 18.03.2009, whereas the respondent no. 1 made vexatious, unlawful, illegal, deceptive offer of possession on 11.02.2010. Moreover, it was shocking for the complainant that the respondent no. 1 had fraudulently issued two different vexatious, unlawful, illegal, deceptive offer of possession of the subject unit with demand of different amounts of Rs.7,46,371/- and Rs.9,55,270/-. Moreover, the respondent no. 1 deceptively, illegally, fraudulently increased the super area of the shop from 580.54 square feet to 622.71 square feet in the offer of possession. Further, none of the offer of possession letters provide clarification regarding the increase in area and amount demanded.
6. The complainant further submitted that on 04.03.2010, the complainant wrote letter seeking clarification regarding the demand raised by the respondent no. 1 in the two different offer of possession letters. The respondent no. 1 through letter dated 05.03.2010 requested the complainant to make the payment of Rs.9,55,270/-. The respondent no. 1 failed to



provide any clarification or justification towards the concerns raised by the complainant. The complainant again wrote letter dated 18.03.2010 seeking point-wise clarification regarding the demand raised by the respondent no. 1 in the offer of possession. The complainant also highlighted some important clauses of the agreement to sell, but to no avail. The respondent no. 1 through letter dated 05.04.2010 avoided the concerns of the complainant by simply stating in the letter to refer to the letter dated 05.03.2010. The respondent no. 1 again failed to provide any clarification or justification towards the concerns raised by the complainant. The complainant again wrote letter dated 16.04.2010 seeking clarification regarding the demand raised by the respondent no. 1 in the offer of possession but the respondent no. 1 completely avoided the concerns raised by the complainant.

7. The complainant was left with no other option but to comply with the demand raised by the respondent no. 1 and the complainant made the payments. A total of Rs.47,54,925/- has been paid including the stamp duty, legal charges, registration charges, deed charges, maintenance, electricity charges, etc by the complainant. It is further submitted that the respondent no. 1 again offered possession vide letter dated 19.02.2014



wherein the actual super area of 580.54 square feet, as promised in the agreement to sell, was offered to the complainant. It was only then that the complainant was able to use the premise of the shop bought by him paying his lifetime hard-earned money.

8. The respondent no. 1 was duty bound to execute the conveyance deed in favour of the complainant but till date the respondent no. 1 has failed to execute the conveyance deed for the shop. This is violation of section 11(4)(f) read with section 17 of the Act, 2016. Initially in February 2010, and thereafter, since February 2014 instead of executing the conveyance deed, the respondent no. 1 along with maintenance agencies, and the respondent no. 2, started raising unlawful, arbitrary, and unjustified bills towards the shop bought by the complainant. The respondents have fetched enough money in the name of maintenance charges without maintaining the project premises. Neither has the conveyance deed been executed despite numerous requests, nor have the maintenance bills been rectified.
9. The complainant has further submitted that the respondent no. 1 has failed to mark the exclusive car parking area for the



shop bought by the complainant. The complainant paid Rs.2,50,000/- for covered car parking.

10. The complainant had also paid Rs.58,054/- on the account of Interest-Bearing Maintenance Security (IBMS) in 2010 but no interest is being paid to the complainant by the respondents since then, contrary to the terms and conditions of the agreement.

11. After a delay of more than ten (10) years after receiving the total consideration, the respondent no. 1 has failed to execute the conveyance deed for the shop, bought by the complainant. The complainant approached the respondent no. 1 many times and pleaded for execution of conveyance deed for his shop as per the commitments in the agreement. The respondent no. 1 did not submit any justified response to his letters, emails, telephone calls and personal visits seeking information about the status of the execution of conveyance deed for his shop.

C. Relief sought by the complainant:

12. The complainant has sought following relief(s)

- I. To direct the respondent to pay interest for every month of delay, in offer of possession of the shop since February 2009, to the complainant, on the amount taken from the complainant for the sale consideration for the shop along



with additional charges, at the prescribed rate as per the Act, 2016.

- II. To direct the respondent no. 1 to execute a legitimate and lawful conveyance deed for the shop bought by the complainant.
- III. To direct the respondent no. 1 to pay interest for every month of delay, since February 2010, on the amount which the complainant paid for the charges for stamp duty, legal charges, registration charges and deed charges and additional charges for the aforesaid shop, at the rate prescribed by the Act, 2016 till the respondent no. 1 executes a registered conveyance deed in the favour of the complainant.
- IV. To direct the respondents to rectify the defects /anomalies in the maintenance bills raised by maintenance agencies and the respondent no. 2 and issue justifiable, legal, and lawful maintenance bills.
- V. To direct the respondent no.1 to pay interest on Rs.58,054/- on the amount of interest-bearing maintenance security (IBMS), which was deposited in March 2010 by the complainant, as per the prescribed rules of Act, 2016.



13. The respondent no. 1 filed reply on 30.03.2021. However, neither respondent no. 2 put in appearance nor plead any reply.
14. On the date of hearing, the authority explained to the respondents/ promoters on 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.

D. Reply by the respondent no. 1.

15. The respondent no. 1 has contested the complaint on the following grounds.
- i. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. It is submitted that the instant complaint is absolutely malicious, vexatious, and unjustifiable and accordingly has to pave the path of singular consequence, that is, dismissal. The booking of the commercial unit was made 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.
 - ii. That license no. 455 of 2006 dated 27.01.2006 was issued in favour of M/s Raheja Developers Limited for an area measuring 2.718 acres for the development of the



commercial project situated in Sector 47, Gurugram. It is submitted that said project has already been developed and completed by the promoter and subsequently, occupation certificates have also been issued by the Directorate of Town and Country Planning, Haryana on 25.01.2010 and 12.01.2012 with respect to the said project.

- iii. That the said project does not fall under the definition of "ongoing" project" as per Rule 2(o) of the Haryana Real Estate (Regulation & Development) Rules, 2017 and therefore, the said project is precluded from registration under the provisions of the said Rules. The relevant provision of the said Rules is reproduced below: -

"2(o) "on going project" means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:

(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and

that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules."



- iv. The respondent no. 1 has submitted that he had traversing and dealing with only those allegations, contentions and/or submissions that are material and relevant for the purpose of adjudication of present dispute. It is further submitted that save and except what would appear from the records and what is expressly admitted herein, the remaining allegations, contentions and/or submissions shall be deemed to have been denied and disputed by the respondent.
- v. That the complainants booked shop no. UG-030B, measuring 580.54 sq ft. in Raheja Mall at Sector - 47, Gurugram, Haryana vide application form dated 06.07.2010. It is submitted that the booking of the said allotted shop was done 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.
- vi. The respondent no. 1 has submitted that the application for booking, the shop which was allotted to the complainant was commercial shop no. UG-030B, measuring 580.54 sq ft. in Raheja Mall for a total sale consideration of Rs.38,31,564 /-, it is submitted that 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. And further submitted that an agreement to sell was executed between parties on 18.09.2006. It is submitted that the application form dated 02.03.2006 contained all the terms and conditions providing full disclosure of all the material terms and conditions, which were thereafter incorporated in the inter-se agreement.

- vii. The respondent no.1 has submitted that the present complaint seeking, interest and compensation for alleged delay in executing conveyance deed of the office/shop space booked by the complainant. The complaints pertaining to possession, compensation and refund are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and not by this Hon'ble authority. The present complaint is liable to be dismissed on this ground alone.

- viii. The respondent no.1 has further 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 installments are entitled to receive compensation under the buyer's agreement. As per the statement of account dated 03.03.2021 the outstanding amount including the stamp duty and delayed maintenance charges payable by the complainant to the respondent is Rs. 2,83,929/-.
- ix. That the respondent has filed the present reply as per the provisions of Real Estate (Regulation and Development) Act, 2016. That the complainant has no locus standi to file the present complaint. That there is no cause of action to file the present complaint.
- x. That this authority does not have the jurisdiction to decide on the interest claimed by the complainant. It is submitted that in accordance with Section 71 of RERA, 2016 read with Rules 21(4) and 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 the authority shall appoint an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being

heard. It is submitted that even otherwise it is the adjudicating officer as defined in section 2(a) of RERA, 2016 who has the power and the authority to decide the claims of the complainant.

- xi. The Hon'ble Haryana Real Estate Appellate Tribunal vide its judgment/Order dated 02.05.2019, in the matter of appeal no. 06 of 2018, titled as Sameer Mahawar Vs. MG Housing has held that this hon'ble authority has no jurisdiction to adjudicate upon the issues regarding refund, interest and compensation. The Hon'ble Haryana Real Estate Appellate Tribunal has also explicated that for avoidance of the situation of multiplicity of litigation and conflicting findings, there should not be two forums to adjudicate issues arising through same cause of action. The comprehensive complaint filed under sections 11, 12, 13, 19 should not be treated as "Independent Relief". In view of the above, it is abundantly clear that the complainant has sought, interest with respect to the conveyance of the said unit in the said project through the present complaint and hence is liable to be dismissed.
- xii. The respondent no.1 has submitted that the outstanding sum of Rs.2,83,939/- towards the stamp duty, legal fee



and registration charges are pending. It is submitted that the conveyance deed has not been registered as the complainant has not been able to pay the outstanding amount. The complainant had made a booking at his own free will and only after reading, understanding, and verifying the terms and conditions stipulated in the documents executed by him. It is submitted that the complainant was aware from the very inception that the commercial space in the said project was to be completed and the possession of the same was to be handed over to him strictly as per the terms of the allotment. The complainant had only after being satisfied and only after getting all the information and clarifications as sought by him from the respondent had made a booking in the said project.

- xiii. The respondent no. 1 has failed to execute the conveyance deed for the shop, bought by the complainant. The complainant approached the respondent no. 1 many times and pleaded for execution of conveyance deed for his shop as per the commitments in the agreement. That the respondent no. 1 despite receiving the payments on time has not developed the project as per the

commitments made at the time of booking and has even failed to maintain the project premises till date. The respondent no. 1 has in an unfair manner siphoned off funds meant for the project and utilized the same for his own personal benefits for no cost and left the complainant high and dry at his own fate. The respondent no. 1 being builder and developer, whenever in need of funds from banks or investors ordinarily has to pay heavy interest per annum. It is submitted that no cause of action arises, and this Hon'ble court has no jurisdiction to hear the matter as it does not fall under the definition of ongoing project as the occupational certificate was received in 2010.

- xiv. That the respondent no. 1 has always worked in accordance with the terms and conditions mentioned in the agreement to sell and application form. It is submitted that as per clause 34 of the booking application form, the complainant had admitted and acknowledged that the respondent shall endeavor to complete the construction of the shop in question within 30 months from the date of the execution of the agreement to sell or sanction of building plans and environment clearance whichever is



later but subject to force majeure and circumstances beyond the reasonable control of the respondent and that it shall handover the shop to the complainant only after obtaining the certificate for occupation.

16. 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 submissions made by the parties.

E. Jurisdiction of the authority

17. The respondents have contended that the relief regarding refund and compensation are within the jurisdiction of the adjudicating officer and jurisdiction w.r.t the same does not lie with the authority. It seems that the reply given by the respondents is without going through the facts of the complaint as the same is totally out of context. The complainant has nowhere sought the relief of refund and regarding compensation part the complainant has stated that he is reserving the right for compensation and at present he is seeking only delay possession charges. 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.* (complaint no. 7 of



2018) leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. The said decision of the authority has been upheld by the Haryana Real Estate Appellate Tribunal in its judgement dated 03.11.2020, in appeal nos. 52 & 64 of 2018 titled as *Emaar MGF Land Ltd. V. Simmi Sikka and anr.*

F. Findings on the objections raised by the respondent no. 1

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

18. The respondent no. 1 raised the objection that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt



with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....."

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

19. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-



“34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored.”

20. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings of the authority on the relief sought by the complainant.



- (a). To direct the respondent no.1 to execute a legitimate and lawful conveyance deed for the shop bought by the complainant.

Whether the respondent no. 1 is liable to execute a legitimate and lawful conveyance deed for the shop bought by the complainant?

21. Section 11 of the Act, 2016 provides certain functions and duties of the promoters and one of the same under sub clause (f) of clause (4) of section 11 provides duties of the promoters to execute a registered conveyance deed of an apartment, plot or building as the case may be in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottee's or competent authority as the case may be as provided under section 17 of the Act. It is not in dispute that the complainant is an allottee of a unit allotted by a promoters/builder and he is in possession of the same on the basis of occupation certificate dated 25.01.2010 he took possession on 19.02.2014. But despite a lapse of more than 10 years, the promoters/builder failed to execute a conveyance deed of the said unit. The title of the said unit by the complainant can only be perfected by executing a conveyance deed which is his statutory right. No, doubt the complainant



approached this authority after a period of 10 years the execution of conveyance deed of the allotted unit but in view of statutory obligations there is no bar for issuance of directions in this regard. Hence, in view of provisions of section 11(4)(f) and section 17 of the Act, 2016, the respondents/promoters are directed to execute conveyance deed of the allotted unit in favour of the complainant within a period of one month from the date the necessary charges such as stamp duty and registration charges etc. are deposited by him with the builder.

- (b). To direct the respondent no. 1 to pay interest for every month of delay, since September 2010 on the amount which the complainant paid for the charges for stamp duty, legal charges, registration charges and deed charges and additional charges for the aforesaid shop, at the rate prescribed by the Act, 2016 till the respondent no.1 executes a registered conveyance deed in the favour of the complainant.

Whether the complainant is entitled for delay possession charges or not?

22. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as



provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

23. On the basis of documents available on the record and submission made by both the parties, the authority observes that the agreement to sell was executed between the complainant and the respondent no. 1 on 18.09.2006. The respondent no. 1/promoter/developer company had obtained occupancy certificate on 25.01.2010 (page no. 21 of reply). Thereafter, the respondent no. 1/promoter company had issued offer of possession of the commercial shop on 11.02.2010. Copies of the same have been placed on record. In this present matter, there is no admissibility of payment of delayed possession charges till execution of conveyance deed. Accordingly their delayed possession charges cannot be allowed to the complainant due to following reasons.
24. Clause 4.2 of the agreement to sell provides for handing over of possession and is reproduced below:



“4. POSSESSION

4.2 “The Developer shall endeavor to give possession of the Shop/ Commercial Space/ Office space/ site to the Purchaser within thirty (30) months from the date of the execution of this Agreement, but subject to force majeure, circumstances and reasons beyond the control of the Developer. The Developer on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Shop/Commercial Space/ office space/ site to the purchaser for his/ her occupation and use and subject to the purchaser having complied with all the terms and conditions of the this Agreement to Sell. In the event of his/her failure to take over and/or occupy and use the shop/space/site provisionally and/or finally allotted within thirty (30) days from the date of intimation in writing by the Developer, then the same shall lie at his/her risk and cost and the purchaser shall be liable to pay compensation @ Rs.5/- sq. ft. of the super area per month as holding charges for the entire period of such delay.....”

25. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that though the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement but by virtue of clause 4.2 of the agreement to sell executed between the parties on 18.09.2006, the possession of the subject plot was to be delivered within a period of 30 months from the date of execution of this agreement which comes out to be 18.03.2009. Occupation certificate was received by the respondent on 25.01.2010 and the possession of the subject unit was offered



to the complainant on 11.02.2010. It is not evident from any document on the record that after offer of possession of the allotted unit, the complainant made any representation against delay before any authority. Secondly rather there is some delay in offer of possession of the allotted unit by the respondents/promoters to the complainant, but he filed this complaint before this authority only on 12.01.2021. i.e. after a gap of about 11 years. If he had any grievance w.r.t. delayed offer of possession, then he could have approached this authority within reasonable time and not beyond the period of limitation as prescribed under the General Clause Act 1860. So, in such a situation there is no admissibility of payment of delayed possession charges in favour of complainant till execution of conveyance deed. Accordingly this delayed possession charges cannot be allowed to the complainant as demanded by him.

H. Directions of the authority

26. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):



- i. To direct the respondent no. 1 to get the conveyance deed done within one month from the date the necessary charges and stamp duty etc. are deposited by the complainant.

27. Complaint stands disposed of.

28. File be consigned to registry.


(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 09.07.2021

Judgement uploaded on 02.09.2021