

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 1765 of 2018

Date of decision : 03.09.2021

SURESH GOENKA
R/O Flat No. A-2/20,
Ashoka Apartment
Paschim Vihar,
New Delhi-110063

Complainant

Versus

RAHEJA DEVELOPERS LIMITED.
ADDRESS: W 4D-204, Keshav Kunj
Western Avenue, Sanik Farms,
New Delhi- 110062

Respondent

APPEARANCE:

For Complainant:

Mr Sukhbir Yadav (Adv)

For Respondent:

Mr. M K Samwariya (Adv)

ORDER

1. This is a complaint filed by Sh. Suresh Goenka (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with



- rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/promoter.
2. As per complainant, he booked a flat in respondent's project "**Raheja Revanta**", situated at sector-78, Gurugram on 01.12.2011 and made payment of Rs 9,77,096 as booking amount. The respondent issued an allotment letter dated 23.06.2012 and allotted an apartment admeasuring 1621.390 sq. ft. for a total consideration of Rs 1,10,74,179 including BSP, EDC, IDC etc. A builder buyer agreement (BBA) was executed on 23.05.2012
 3. As per the Clause 4.2 of buyer's agreement, the possession of the unit was proposed to be delivered within 48 months from the date of execution of buyer's agreement, with grace period of 6 months. In this way, the possession ought to have been delivered by 23.11.2016 but respondent failed to complete the construction work and consequently failed to deliver the possession of the unit till date.
 4. He (complainant) paid all dues as demanded by the respondent from time to time. After expiry said period of 48 months plus grace period of 6 months, he enquired about the progress of the construction, but the respondent failed to provide any clear date of completion of the project. Moreover, as per payment plan, respondent could raise the

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demand of electricity and water connection installation charges only on offer of possession, but respondent raised the premature demand towards the electricity and water connection. The respondent has failed to complete the finishing work and failed to obtain the occupation certificate. The complainant has paid Rs 1,06,45,111 e. 95 % of entire agreed consideration along with miscellaneous and additional charges etc on time

5. Contending that the respondent has committed gross violation of the provisions of section 18(1) of the Act, by not handing over the timely possession of the flat in question, the complainant prayed for refund of entire amount of Rs 1,06,45,111, alongwith prescribed rate of interest per annum, compounded from the date of deposits.
6. The particulars of the project are reproduced here as under in tabular form:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" Raheja Revanta", Sector 78, Gurugram, Haryana
2.	Project area	18.72311 acres
3.	Nature of the project	Residential Group Housing Colony

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3-9-21



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 Swaroop and 4 others
6.	RERA Registered/ not registered	Registered vide no. 32 of 2017 dated 04.08.2017

UNIT DETAILS

1.	Unit no.	B- 242, Tower B (Pg. No 29 of complaint)
2.	Unit measuring	1621.390 sq. ft. sq. ft. (Page No. 27)
3.	Date of Booking	01.12.2011
4.	Date of Allotment Letter	23.05.2012
5.	Date of Buyer's Agreement	23.05.2012 (Pg. No 24 of compliant)
6.	Due Date of Delivery of Possession As per Clause No. 4.2 : The possession of said premises is proposed to be delivered within 48 months from the date of execution of buyer's agreement and after providing of necessary infrastructure specially road, sewer and water to the complex by the government with 6	23.11.2016

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	months grace period (Page No. 39 of the compliant)	
7.	Delay in handing over of possession till date	4 years 09 months
PAYMENT DETAILS		
8.	Total sale consideration	Rs 1,10,74,179 /-
9.	Amount paid by the complainants	Rs 1,06,45,111 /- (Statement of accounts annexed with complaint Page No. 79)
10.	Payment Plan	Instalment payment plan

7. The respondent contested the complaint by filing a reply dated 05.03.2019. It is averred that, the tower in which unit in question is located, is 75 % complete and the possession of same will be handed over to the complainant, after its completion, subject that the complainant is making payment of all dues and on availability of infrastructure facilities such as sector roads and laying/providing basic external infrastructure facilities, such as water, sewer, electricity etc.
8. The respondent denied that complainant has made payment of Rs 1,06,45,111 as contended, according to it, complainant has paid Rs 1,06,21,441 only.
9. It is further the plea of respondent that although the same (respondent) is willing to fulfil its obligations, the Government

agencies have failed to provide essential basic infrastructure facilities such as roads' sewerage line, water and electricity supply in the sector, where project in question is being developed. The development of roads, sewerage etc has to be completed by the governmental authorities and same are not within the power and control of respondent. The latter cannot be held liable on account of non-performance by the concerned government authorities.

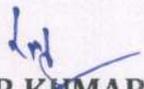
10. Moreover, according to respondent, the time for calculating the due date of possession shall start only when the infrastructure facilities will be provided by the government authorities. All this is beyond the control of respondent and thus falls within the definition of 'Force Majeure' i.e a condition as stipulated in Clause 4.4 of the Agreement to sell.
11. I have perused the documents on record and have heard the learned counsels for the parties.
12. Respondent did not deny the facts that complainant has been allotted a unit in project 'Raheja Revanta' being developed by it. A builder buyer agreement was executed between them on 23.05.2012. According to same, possession of unit was to be handed over to complainant within 48 months + 6 months grace period. Counting in this way, date of possession comes out at 23.11.2016. Even as per respondent, complainant has paid Rs 1,06,21,441 out of total Rs 1,10,74,179. Respondent does not claim that project is complete, even now. According to it, it was

delayed, not due to its (respondent) fault but due to Govt. agencies, having failed to provide infrastructure facilities such as water, sewer and electricity, development of roads etc, which are not under its control.

13. It is expected that when respondent thought to develop this project, same would have imagined as how roads will be constructed and how other infrastructure facilities will be provided to buyers. After making provisions of everything respondent was presumed to have entered in BBA with buyers. When a buyer made payment in time, same was well within his right to claim possession of his dream unit. He cannot be made to wait indefinitely. Even if infrastructure works as stated by respondent, was to be done by Govt. agencies, it was responsibility of respondent towards buyers to get the same done in time. Project is delayed by several years. Respondent is liable to refund the amount of complainant /buyer in view of section 18 of the Act.

14. Complaint is accordingly allowed and respondent is directed to refund entire amounts received from complainant to the latter, within 90 days from today, with interest @ 9.3 % p.a. from the date of taking payments till realisation. A cost of Rs 1 lac is also imposed upon respondent to be paid to complainant.

03.09.2021


(RAJENDER KUMAR)
Adjudicating Officer

Haryana Real Estate Regulatory Authority
Gurugram

Page 7 of 7