

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

Complaint no.: 1406 of 2020
Date of filing of complaint: 17.03.2020
Ordre reserved on: 19.04.2023
Order pronounced on: 05.07.2023

1. Mr. Rakesh Kumar
2. Mrs. Anamika Das

Both RR/o: - E-102, Indiabulls Centrum Park, Sector-103, Gurugram

Complainants

Versus

M/s Raheja Developers Limited.

Regd. office: W4D, 204/5, Keshav Kunj, Western Avenue, Sainik Farms, New Delhi- 110062

Corporate Office at: - Raheja Mall, 3rd floor, Sector- 47, Sohna Road, Gurugram- 122001

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Vivek Tanwer (Advocate)

Sh. Garvit Gupta (Advocate)

Complainants
Respondent

ORDER

1. This complaint has been filed by the complainant/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

under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project details

2. The particulars of unit, 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. N.	Particulars	Details	
1.	Name of the project	"Raheja Sampada", Sector-92&95, Gurugram.	
2.	Project area	17 acres	
3.	Nature of the project	Residential group housing colony	
4.	DTCP license no. and validity status	216 of 2007 dated 05.09.2007 valid till 04.09.2024	
5.	Name of licensee	NA Buildwell Pvt. Ltd	
6.	RERA Registered/ not registered	Unregistered	
7.	Shop no.	053, booked in the year 2013, in the project namely Raheja Trinity (As alleged by the complainant in the CRA dated 18.04.2022)	054, booked in the year 2013, in the project namely Raheja Trinity (As alleged by the complainant in the CRA dated 18.04.2022)



8.	Unit area admeasuring	512.64 sq. ft. (As alleged by the complainant in the CRA dated 18.04.2022)	512.64 sq. ft. (As alleged by the complainant in the CRA dated 18.04.2022)
9.	Unit No.	T2-064, 6 th floor, in tower- T2 (Page no. 57 of the reply)	
10.	Unit area admeasuring	1850 sq. ft. (Page no. 57 of the reply)	
11.	Date of execution of agreement to sell	05.04.2018 (Page no. 54 of the reply)	
12.	Allotment letter	N. A	
13.	Possession clause	4.2 Possession Time and Compensation <i>That the company shall endeavors to give possession of the Apartment to the Allottee(s) within thirty-six (36) months from the date of the execution of this Agreement and after providing necessary infrastructure in the sector by the Government, but subject to force majeure, circumstances and reasons beyond the control of the Company. The company on obtaining certificate for occupation and use by the Competent Authorities shall hand over the shop/ commercial space to the</i>	



		<p><i>Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over possession and /or occupy and use the shop /commercial space provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."</i></p> <p>(Page no. 66 of the reply)</p>
14.	Due date of possession	05.04.2021 [Note: - 36 months from date of execution of builder buyer's agreement i.e., 05.04.2018]
15.	Basic sale consideration	Rs.78,96,250/- (As per payment plan page no. 85 of the reply)
16.	Total sale consideration	Rs.79,39,450/- (As per applicant ledger dated 01.10.2019 page no. 15 of complaint)



17.	Amount paid by the complainants	Rs.79,39,450 /- (As per applicant ledger dated 01.10.2019 page no. 15 of complaint)
18.	Occupation certificate /Completion certificate	11.11.2016 [Download from the website from the DTPC Haryana]
19.	Offer of possession	Not annexed
20.	Conveyance deed	31.08.2018 (Page no. 93 of the reply)

B. Fact of the complaint

3. The complainants have made the following submissions: -

- I. That the complainant no. 1, was an NRI based in New York City, United States of America, prior to his return to the Republic of India in the month of August 2019. He with an intent to invest his hard earned money, decided to invest in commercial property, accordingly, on one visit to India, the complainants booked two commercial shops; he and his wife Anamika Das (i.e., complainant no. 2) being the co-applicants vide booking application no. FAPPRT/ 00035/13-14 and FAPPRT/00036/13-14 and the unit nos. 53 & 54 were allocated to him in the project named as "Raheja Trinity" situated at Sector-84, Gurugram. They were apprised the total cost of unit no. 53 as Rs.71,90,126/- and that of unit no. 54 as Rs.71,89,259/-.
- II. That in pursuance to his application, the complainant had issued cheques to the tune of Rs.2,27,000/-, Rs.4,40,000/- and



Rs.13,33,000/- on 07.11.2013, as the initial investment and thereafter they have paid the company represented by the respondent an amount to the tune of Rs.70,50,000/- till 15.12.2015. The assured time of possession was fixed by the esteemed concern of the respondent as August 2017; however, the complainants came to know that nothing had been finalized by respondent's company regarding the said project and in the year 2017, the complainants were surprised to receive an offer calling upon him to change his purchase preference and he was offered fresh property. They went in utmost distress after knowing that the property for which he had paid such a huge chunk of money was not being given to him after that he was offered replacement of property and assured a good replacement. *The complainant in the year 2018 was offered a flat in your project Raheja Sampada against the originally booked properties and it was contended by the officials of your esteemed company that the property that was being offered was worth the value of Rs.90,00,000/-.*

- III. That the complainants, who had heavily invested a huge chunk of money, finding no option agreed to the said proposal despite being fully aware that the residential property market in the year 2018 in Gurugram was seeing a downtrend, however his utmost concern at that time was to safeguard the amount of Rs.70,50,000/- that had been paid by them to respondent's esteemed concern.
- IV. That accordingly, the respondent was given the consent *to transfer the money put by the complainant(s) in the commercial project to a residential project and finally he was handed over the keys of the residential unit situated at project Sampada in the month of July, 2019*

after a long ordeal. Now, to the utter surprise of the complainants, the property that had been sold to them and had cost him Rs.82,00,000/- the similar units in the same project were auctioned in bid conducted by respondent company at JW Marriot Aero city, at a cost of Rs.50,00,000/- in the month of March 2019. Thus, it becomes clear that the property was not worth the price on which it had been sold and hence the sale was on the basis of false declaration and misrepresentation.

C. Relief sought by the complainants:

4. The complainants sought following relief(s):

- I. That the complainants may kindly be allowed to withdraw from the project and the respondent may kindly be directed to refund the amount paid by the complainants, including excess amount charged with respect to the sale of the property situated at project "Sampada" as the same had been offer of two other allottees at the price of Rs.49,48,750/- whereas, the complainants were given the same property at the price of Rs.79,65,865/- the difference being Rs.30,17,865/-
- II. Direct the respondent to pay an interest of 9.30% on the amount paid by the complainants, i.e., Rs.79,65,865/- for the delay of two years in delivery of possession of both the originally booked commercial shops as well as the alternate residential unit offered in lieu of them.

5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions 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

6. The respondent contested the complaint on the following grounds. The submission made therein, in brief is as under: -

- 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 residential 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 the present complaint is for seeking refund, interest and compensation for alleged excess amount charged with respect to the property situated in project "Sampada". They have no locus standi to file the present complaint as this authority has no jurisdiction to decide matters pertaining to completed projects.
- III. That License no. 216 of 2007 dated 05.09.2007 was issued in favour of M/s Raheja Developers Limited for an area measuring 14.81 acres and 0.8 Acres respectively for the development of the residential group housing project situated in Sector 92 & 95, Wazirabad. The said

project has already been developed and completed by the promoter and subsequently, occupation certificate has also been issued by the Directorate of Town and Country Planning, Haryana on 11.11.2016 with respect to the said project.

- IV. 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 was precluded from registration under the provisions of the said rules.
- V. That the respondent was 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.
- VI. That they have booked shop nos. 53 and 54, in "Raheja Trinity" situated at Sector - 84, Gurugram, Haryana vide application form dated 13.07.2014. The booking of the said allotted shop was done prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA, 2016") and the provisions laid down in the said Act cannot be applied retrospectively.



- VII. That based on the application for booking, the respondent vide its allotment offer letter dated 01.08.2014 allotted to the complainant commercial shop no. 53 and 54 admeasuring 512.64 sq. ft. (tentative) each for a total sale consideration without taxes of Rs.68,70,472/-. 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 was known to the complainant from the very inception.
- VIII. 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. The respondent can't be blamed in any manner on account of non-completion of the work by the government authorities.
- IX. That the complainants have not approached the 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. The true and correct facts are as follows:
- That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers.



It has developed and delivered several prestigious projects such as 'Raheja Atharva', 'Raheja Shilas' and 'Raheja Vedanta' 'Raheja Highway Arcade', 'Raheja Square', 'Raheja Trade Tower' and 'Raheja SCO Market 83&84' and in most of these projects large number of allottees have taken possession and are functioning their offices/shop without any problem.

- That the complainants are a real estate investor that had booked the unit in question with a view to earn quick profit in a short period. However, it appears that its calculations have gone wrong on account of severe slump in the real estate market and the complainant is now raising untenable and illegal pleas on highly flimsy and baseless grounds. Such malafide tactics of the complainants cannot be allowed to succeed.
- That based on the application for booking, the respondent allotted shop nos. 53 and 54, Raheja Trinity, Gurugram admeasuring 512.64 sq.ft. each to the complainant. They signed and executed the agreement to sell on 01.08.2014 and the complainants agreed to be bound by the terms contained.
- That the respondent raised payment demands from the complainant in accordance with the mutually agreed terms and conditions of allotment as well as of the payment plan and the complainant made the payment of the earnest money and part-amount of the total sale consideration and is bound to pay the

remaining amount towards the total sale consideration of the unit along with applicable registration charges, stamp duty, service tax as well as other charges payable at the applicable stage.

- That the complainants failed to make the payments demanded by it, which was agreed in the terms and conditions during signing of the agreement. The respondent vide letter dated 18.11.2014 and 19.11.2014 sent the demands to complainants and through various emails requested the complainant to make the payment.
- That the complainants requested the respondent to cancel the allotment of the shop nos. 53 and 54 in the project Trinity and the amount paid till date with respect to both the shops be transferred towards the booking of the residential flat offered by the respondent in another project name Sampada.
- That the complainants, after checking the veracity of the project namely, 'Raheja Sampada', Sector 92, Gurugram had applied for allotment of a flat vide its booking application form. Thereafter vide allotment letter date 05.04.2018, the respondent allotted flat No. T2-064, Raheja Sampada, Gurugram admeasuring 1850 sq. ft. for a total sale consideration with taxes of Rs.79,39,450/- to the complainants. The complainant signed and executed the agreement to sell on 05.04.2018 and the complainant agreed to be bound by the terms and condition herein.

- That on 31.05.2018 the amount paid by them with respect to the shop nos. 53 and 54 in “Raheja Trinity” was transferred to towards the booking of the allotted flat no. T2-064, Raheja Sampada with the request and consent of the complainants and the amount was transferred Rs.33,57,596/- and Rs.33,48,51/-. Thereafter, the complainants were handed over the keys of the residential unit in the month of July 2019 and they without any objection or protest took the keys for the residential unit. Further, a complaint is also to be examined from two angles:
 - The specific contract.
 - The general level of service delivery in the field.
 - The complainants were not ‘awaiting’ construction as per terms and tenure of application form and agreement signed but made complaints only to earn profits from the respondent/builder in the pretext of the Act, 2016.
7. Copies of all the relevant documents have been filed and placed on the record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents as well as written submissions made by both the parties.

E. Jurisdiction of the authority

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of

jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

9. 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.

E. II Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (C), 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

E. Findings on the objections raised by the respondent

E.I Objections regarding that the respondent has obtained the occupation certificate before coming into force of RERA.

14. The respondent/promoter has raised the contention that the said project of the respondent is a pre-RERA project as the same has already obtaining occupation certificate from the competent authority on 11.11.2016 i.e., before the coming into force of the Haryana Real Estate (Regulation and Development) Rules, 2017 on 28.07.2017. As per proviso to section 3 of Act of 2016, ongoing projects on the date of this Act i.e., 28.07.2017 and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

15. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. Since no completion certificate has yet been obtained by the promoter-



builder with regards to the concerned project, the plea advanced by it is hereby rejected.

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

16. The objection raised the respondent that the authority is deprived of the jurisdiction to go into the interpretation of or rights of the parties inter-se in accordance with the flat 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)** decided on 06.12.2017 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."*

17. 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."

18. 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.

F.III Objections regarding the complainants being investors.

19. The respondent has taken a stand that the complainants are investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyer and have paid total price of Rs.79,39,450/- to the promoter towards purchase of unit in the project of the promoter.



At this stage, it is important to stress upon the definition of term allottees under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

20. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement cum provisional allotment letter executed between promoter and complainants, it is crystal clear that they are allottee(s) as the subject unit allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants

- G. I** That the complainants may kindly be allowed to withdraw from the project and the respondent may kindly be directed to refund the amount paid by the complainants, including excess amount charged



with respect to the sale of the property situated at project "Sampada" as the same had been offer of two other allottees at the price of Rs.49,48,750/- whereas, the complainants were given the same property at the price of Rs.79,65,865/- the difference being Rs.30,17,865/-.

G. II Direct the respondent to pay an interest of 9.30% on the amount paid by the complainants, i.e., Rs.79,65,865/- for the delay of two years in delivery of possession of both the originally booked commercial shops as well as the alternate residential unit offered in lieu of them.

21. The complainants have submitted that earlier they booked two shops bearing no. 53 and 54 in the project of respondent named "*Raheja Trinity*" situated at Sector-92 & 95, Gurugram and paid a sum of Rs.70,50,000/- towards total sale consideration of both the units in the year 2015. The due date for handing over of possession of the shops was fixed as August 2017. However, the complainants came to know that neither allotment letters were issued in respect of the aforesaid shops, nor the respondent has finalized anything regarding completion of the said project. Thereafter, the complainants wrote multiple emails to the respondent, calling upon the respondent to show cause for the lack of progress in the construction of the project. However, the respondent never gave any satisfactory answer to any communication rather offered to adjust the paid-up amount in an alternative residential property in its another project namely "*Raheja Sampda*" for which occupation certificate has already been obtained. Thereafter, by mutual consent sale deed cum conveyance deed for the alternative unit bearing no. T2-064, 6th floor, in tower- T2, situated in "*Raheja Sampada*", Sector-92&95, Gurugram was executed in August 2018, and it further handed over the keys of the allotted unit to them in the month of July 2019.



22. They have further submitted that the respondent has allotted the alternative residential unit at the cost of Rs.79,65,865/- whereas other similar units in the same project were auctioned in a bid conducted by respondent at JW Marriot Aero City at a cost of Rs.49,48,750/- in the month of March 2019 with a difference of Rs.30,17,865/-. Thus, it is clear that the property was not worth the price on which it had been sold and hence, the sale was done on the basis of false declaration and misrepresentation.
23. However, on bare perusal of the documents available on record the authority observes that the agreement to sell dated 05.04.2018 in respect of unit bearing no. T2-064, 6th floor, in tower- T2 was signed by the parties by their mutual consent and the respondent has handed over the keys after execution of conveyance deed in their favour. The complainants have signed the agreement to sell and conveyance deed with wide open eyes and now cannot raise question with respect to the terms agreed therein. Hence, now at this stage, no objection can be raised regarding cost of the unit, and they should have been put up before it only before execution of conveyance deed as after execution of conveyance deed in their favour, the respondent-builder make itself free from all of the obligation towards the said unit.
24. Further section 11(4)(a) of the Act of 2016, provides obligation, responsibility and functions of the promoter which is reproduce as under for ready reference: -




- (a) shall be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

25. Moreover, proviso to section 11(4)(a) provides that the promoter can be held liable ^{sub} for structural defect or any other defect even after execution of conveyance deed for such period as prescribed under sub-section (3) of section 14 of the Act 2016. Complainants needed to be vigilant before purchasing the alternative unit and at this stage no other relief can be granted in their favour for their negligence. The due procedure of law cannot be allowed to be misused by the litigants. In light of the above, the reliefs sought by way of present complaint are disallowed and the complaint stands dismissed on merits. File be consigned to registry.

Dated: 05.07.2023


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram