



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह. सिविल लाईंस. गुरुग्राम. हरियाणा

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY**

**Complaint No.1985/2018)
Date of Decision: 26.03.2021**

**Saroj Kansal W/o Shri Raj Kumar Kansal
R/o House No.503, Swarn Jayanti Apartment
Sector 54,Gurugram-122001**

Vs

**M/s Raheja Developers Ltd.
406, 4th Floor, Rectangle-1
D-4,District Centre, Saket
New Delhi-110017**

Respondent

II

**Complaint Case No.445/2020)
Date of Decision: 26.03.2021**

**Sripardha Govindraaj
C-13, Plot No. 79,Karan Residency
Sector56, Gurugram,**

Vs

**M/s Raheja Developers Ltd.
406, 4th Floor, Rectangle-1
D-4,District Centre, Saket
New Delhi-110017**

Respondent

Shc c c 26/3/2021

**Complaints under Section 31
of the Real Estate(Regulation
and Development) Act, 2016**

Argued by:

For Complainant-Saroj Kansal

Shri Hemant Gupta, Advocate

For Complainant-Sripradha Govindraaj

Shri Sushil Yadav, Advocate

For Respondent:

Shri MK Sanwaria, Advocate

ORDER

This common order of mine seeks to dispose of above mentioned two complaints filed by the complainants detailed above against the respondent-builder named above seeking refund of deposited amount of Rs.28,29,977/- and Rs.18,16,477/- deposited with the respondent-builder upto 01.12.2015 and 10.09.2016 respectively besides interest and compensation.

2. The above mentioned complaints filed under Section 31 of the Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 (hereinafter referred as the Rules of 2017) by Mr Saroj Kansal and Mrs. Sripradha Govindraaj seek ⁱⁿrefund of amount as mentioned in their respective tabulated form below deposited with the respondent-builder against the booking of commercial units in the project known as "Raheja Trinity" situated in Sector 84, Gurugram besides taxes etc on account of violation of obligations on the part of the respondent/promoter under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of the complainants, the reproduction of the following details is must and which are as under:

Shc c
26/3/2021

Project related details Complaint No.1985 of 2018

I.	Name of the project	"Raheja Trinity" Sector 84, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Commercial

Unit related details

IV.	Unit No. / Plot No.	Shop No.040
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 512.64 sq ft
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Commercial
X	Date of booking(original)	12.10.2013
XI	Date of provisional allotment(original)	01.08.2014
XII	Date of execution of BBA	01.08.2014
XIII	Due date of possession as per BBA	01.08.2017
XIV	Delay in handing over possession till date	More than three years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	

Payment details

XVI	Total sale consideration	Rs. 56,89,279/-
-----	--------------------------	-----------------

Shc c 26 2/2021

XVII	Total amount paid by the complainant	Rs.28,29,977/-
------	--------------------------------------	----------------

II

Project related details Complaint No.445 of 2020		
I.	Name of the project	"Raheja Trinity" Sector 84, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Commercial
Unit related details		
IV.	Unit No. / Plot No.	179
V.	Tower No. / Block No.	Ist Floor,
VI	Size of the unit (super area)	Measuring 300 sq ft
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Commercial
X	Date of booking(original)	10.09.2013
XI	Date of provisional allotment(original)	05.02.2016
XII	Date of execution of BBA	-
XIII	Due date of possession as per commitment made at the time of booking	10.09.2016
XIV	Delay in handing over possession till date	More than three years

Shree C C 26/3/2021

XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	
Payment details		
XVI	Total sale consideration	Rs.56,79,279/-
XVII	Total amount paid by the complainant	Rs.18,16,477/-

3. Brief facts of the case as mentioned in the above tabulated form for deciding the controversy in question are that a project known by the name of "RAHEJA TRINITY" situated in Sector 84. Gurugram was to be developed by the respondent-builder. The complainants coming to know about that project booked commercial units detailed above for a total sale consideration of Rs.56,79,279/- and deposited different amounts. When the respondent-builder was unable to complete the project and offer possession of the allotted units, then the complainants filed the above mentioned complaints against the respondent-builder seeking refund of the amount i.e. Rs.28,29,977/- and Ra.18,16,477/- deposited with it upto 01.12.2015 and 10.09.2016 respectively besides interest and other charges. It is the case of the complainant in first case that builder buyer agreement was executed between the parties on 01.08.2014. The due date for completion of the project and offer of the possession of the allotted unit was fixed as 01.08.2017. In the second case, it is pleaded by the complainant that no builder buyer agreement was executed between the parties and the respondent-builder failed to complete the project and offer possession of the allotted unit within a period of 36 months w.e.f. 10.08.2013. **Since the respondent-builder failed to complete the project and offer possession of the allotted units to the complainants, so they filed the**

Shee c
26/3/2021

above mentioned complaints against it seeking refund to the tune of Rs.28,29,977/- and Rs.18,16,477/- respectively besides interest and compensation.

4. But the case of the respondent-builder as set up in the separate written replies is otherwise and who took a plea that though the complainants were allotted commercial units in its project detailed above but they were not good pay masters and committed default in the same. It was denied that the project is not going to be completed in the near future. Though the builder buyer agreement was executed in the first complaint case but the allottee did not adhere to the contractual obligations and committed default in the same. Moreover, the complainants are investors and who just want to earn profit from booking of the units in question. Lastly, it was pleaded that the respondent-builder has developed several prestigious projects like Raheja Atlantis, Reheja Athrva, Raheja Shilas and Raheja Vedanta and in most of these projects a large number of families have already shifted after taking possession. Even the residents' welfare associations have been formed which are taking care of the day to day needs of the allottees. It was denied that the project has been abandoned. Every effort is being made to complete the project and hand over possession of the allotted units to the respective allottees. It also pleaded that the complaints filed by the complainants against the respondent are not maintainable and the same are premature.

5. During the course of arguments, the respondent placed on file copies of affidavits dated 17.09.2019 and order dated 22.01.2020 passed by the Hon'ble National Company Law Appellate Tribunal, New Delhi- in case titled Navin Raheja Vs Shilpa Jain & Ors. depicting the stage and extent of various projects to be developed by it and the likely date of completion of the projects.

Shc = 26/5/2021

6. I have heard the learned counsel for both the parties and have also perused the case files.

7. It is not disputed that the complainants booked commercial units detailed above in the project of the respondent known as 'Rahaja Trinity' for a sum of Rs.56,79,279/- and paid a sum of Rs.28,29,977/- and Rs.18,16,477/- upto 01.12.2015 and 10.09.2016 respectively. Though the builder buyer agreement dated 01.08.2014 between the parties in dispute was executed in the first case but admittedly, there is no builder buyer agreement executed between the parties in the second case. The possession of the allotted unit was to be delivered to the complainants within a period of 36 months. It is not disputed that upto to now neither the project is complete nor possession of the allotted unit has been offered to the complainants by the respondent-builder. Some additional documents were placed on the file during the course of arguments and a perusal of the affidavit(copy) dated 17.09.2019 at page 42 shows the details of the project and which may be reproduced as under:

TRINITY

Project name	Location	Total units	Booked/sold units	Sales value	Amount collected	Committed cash flow	Cost to handover	Estimated value	Surplus	Date of completion
Raheja Trinity	Sec.84 Gurugram	215	133	64.37	34.56	29.81	55.00	80.00	54.81	July 22

8. It evident from a perusal of document detailed above that though the version of the respondent is that construction of the project is in full swing and the project is likely to be completed by July, 2022. The due date for possession of the allotted units admittedly was August, 2017 and 10.09.2016 and there is delay of more than three years in completing the project and offer possession of the allotted units to the complainants. So, in such a

situation whether the complainants can be asked to wait upto July, 2022

Shc = 26/2/2021

for completion of the project and offer of possession of the allotted units. The answer is in the negative. First of all, the respondent failed to honour its contractual obligations. Secondly, even the construction of the project is stated to be at full swing, whether the respondent filed any quarterly progress report with the Hon'ble Authority and copy of the same is annexed with the written reply. The answer is in the negative. In cases **Fortune Infrastructure & Anr Vs Trevor D'Lima & Ors, 2018(5) SCC 442** and followed by another judgement in case of **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019** decided on 11.01.2021, it was held by the Hon'ble Apex Court of the land that a person cannot be allowed to wait indefinitely for possession of the unit allotted to him and is entitled to seek refund of amount paid by him alongwith compensation. Moreover, when the due dates have already expired then, the allottee cannot be made to wait to seek and refund of the amount deposited with the respondent and offer of possession. Then, Section 18 of Real Estate (Regulation and Development) Act, 2016 provides for return of the amount with interest and compensation to an allottee when the developer fails to complete the construction and give possession as per agreement of sale. So, the plea of the respondent that it would complete the construction by July, 2022 and hand over possession of the allotted unit to the complainant is devoid of merit.

9. The second plea advanced on behalf of the respondent is that though there is delay in completion of the project but that is due to various reasons such as shortage of labour, building material, demonetisation and various restraint orders passed by statutory authorities. Moreover, the project is at an advanced stage and after completion, the possession of the allotted units would be handed over to the complainants by July, 2022. But again the plea advanced in this regard is devoid of merit. The due for completion of the

Shc = 26/3/2021

project and handing over the possession of the allotted units to the complainant was September 2016/ 2017. The complainants waited for more than three years for completion of the project and to get possession of the allotted unit. But despite that nothing materialised. So ultimately, the same led to filing of complaints seeking refund of the amount deposited with the respondent. There may be shortage of labour, building material and various restraint orders of the statutory authorities etc. but the same are not sufficient reasons to condone delay in completion of the project. It could have been understandable if there is delay of one year or so in completion of the project but a period of more than 3 years is going to expire after the due date. Even, during the course of arguments, it is pleaded that construction of the project would be completed by July, 2022 and then possession of the allotted units would be offered to the complainants. So, all this shows that the respondent failed to fulfil its contractual obligations to complete the project in time and offer possession of the allotted unit to the complainants by the due date. The second plea of the respondent is that the Government failed to provide roads and other infrastructure despite paying the external development charges. So, no fault on the part of the respondent is there to complete the project and handing over of possession of allotted unit to the complainants. But again the plea advanced in this regard is devoid of merit. The due date for completion of the project and handing over possession of the allotted unit to the complainants was September 2016/2017. The complainants waited for more than three years for completion of the project and possession. However, nothing materialised and the same led to filing of complaints seeking refund of the amount deposited with the respondent in the year 2018 and 2019

respectively. So, all this shows that the respondent has miserably failed to

fulfil its contractual obligations to complete the project in time and offer possession of the allotted units to the complainant by due date.

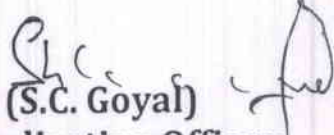
10. Thus, in view of my discussion above, the complaints filed by the complainants are hereby ordered to be accepted. Consequently, the following directions are hereby ordered to be issued:

- i) The respondent is directed to refund a sum of Rs.28,29,977/- and Rs.18,16,477/- respectively to the complainants with interest @ 9.30% p.a. from the date of each payment till the whole amount is paid;
- ii) The respondent is also directed to pay a sum of Rs.10,000/- as compensation inclusive of litigation charges to each of the complainant;
- iii) The above mentioned directions be complied with by the respondent-builder within a period of 90 days and failing legal consequences would follow.

11. A copy of this order be placed in the connected case file No.445/2020

12. File be consigned to the Registry.

26.03.2021


(S.C. Goyal)
Adjudicating Officer
26.3.2021
Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 02.04.2021