



HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

गृह सिविल लाइस, गुरुग्राम, हरियाणा

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्वाम

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

**Complaint No. : 1831/2018
Date of Decision : 09.04.2021**

**Pritika Sinha,
H. No. 651, Kamal Vihar CGHS,
Plot No.5, Sector 7, Dwarka,
New Delhi-110075**

Complainant

V/s

**M/s Raheja Developers Ltd.
W4D-204/5 Keshav Kunj,
Cariappa Marg Western Avenue
Sainik Farm, New Delhi-110062**

Respondent

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

Argued by:

For Complainant: Shri A.K. Sinha, AR

For Respondent: Shri M K Sanwaria, Advocate

O R D E R

This complaint has been preferred by the above named complainant 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

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Estate(Regulation and Development) Rules, 2017 (hereinafter referred as the Rules of 2017) seeking refund of Rs.20,86,366/- deposited for booking a residential unit against total sale consideration of Rs.57,18,499/- (Rs.62,33,763/-) in the project of the respondent known as 'Trinity', Sector 84, Gurugram besides taxes etc on account of violation of obligations of the respondents/promoter under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of the complainant, the reproduction of the following details is must and which are as under:

Project related details		
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.	
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)	04.09.2013
XI	Date of Allotment(original)	02.02.2015(A-2)
XII	Date of execution of BBA (copy of BBA A-3)	29.04.2015
XIII	Due date of possession as per ABA	28.04.2018(36 months)

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XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	Rs.7/- per sq ft per month for the first year and Rs.10/- per sq ft per month for subsequent period
Payment details		
XVI	Total sale consideration	Rs.62,33,773/-
XVII	Total amount paid by the complainant upto 15.01.2016	Rs.20,86,360/-

2. Brief facts of the case can be detailed as under.

A project known by the name of Raheja "Trinity" situated in Sector 84 Gurugram was to be developed by the respondent-builder. The complainant coming to know about the project decided to book a unit for a total sale consideration of Rs.62,33,773/- on 04.09.2013. A letter of allotment dated 29.04.2015 Annexure A/2 was issued in this regard by the respondent. It is the case of the complainant that after receiving demand letter Annexure A/1 and execution of Builder Buyer Agreement Annexure A/3 on 29.04.2015, she started depositing various amounts and paid a sum of Rs.20,86,360/- upto 15.01.2016. In between a number of demand letters Annexure A/4, A/5, A/6, A/7 and A/8 dated 19.11.2015, 02.01.2016, 10.01.2016 and 25.02.2016 were received for making remaining payment to the respondent. But when the complainant visited the site of the project, she was astonished to find no construction going at the spot. In fact, she was told that the respondent has certain sanctions of new proposals by the Government and after which construction would commence. So, a fraud was committed on her and which led to writing of certain letter dated 07.07.2019 A/9. It is also the case of the complainant that she paid a huge amount on the basis of booking dated

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04.09.2013 of the allotted unit but was cheated and a fraud was committed upon her. So, she withdrew from the project and sought refund of the amount deposited with the respondent besides interest and compensation.

3. But the case of the respondent as set up in the written reply is that though the complainant booked a unit with it but she failed to adhere to the payment schedule and committed default in the same. A number of reminders detailed by her were issued but with no positive result. It was denied that the construction of the project was not going at a required pace for its completion upto the due date. Though there is some delay but that is due to certain factors beyond its control such as non-development of infrastructure by the Government, shortage of raw material, man-power, demonetisation and various restraint orders passed by the statutory authorities. It was pleaded that the project is registered with the HARERA Authority, Gurugram and every effort would be made to complete it and offer possession of the allotted unit to the complainant.

4. All other averments made in the complaint were denied in toto.

5. During the course of arguments, the respondent placed on file certain documents i.e. copies of affidavit, press release, chart detailing its financial working, photographs of the project, complete picture of facilities by various financial institutions and complete repayment plan alongwith chart of principal payment in relation to each financial institution filed before the National Company Law Appellate Tribunal, New Delhi and which were taken on record.

6. I have heard the learned counsel of both the parties and have also perused the case file.

7. Some of the admitted facts of the case are that vide letter of allotment Annexure A/2 dated 29.04.2015, the complainant was allotted a unit

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detailed above for a total sale consideration of Rs.62,33,773/- by the respondent in its project known as Raheja Trinity situated in Sector 84,Gurugram and which led to execution of BBA Annexure A/3 dated 29.04.2015. The complainant then started depositing various amounts against the allotted unit and paid a total sum of Rs.20,86,360/- upto 15.01.2016. It has come on the record that as per clause 32 of the BBA, the possession of the allotted unit was to be offered to the complainant within a period of 36 months and failing which the respondent was liable to pay compensation on different rates. So, after calculation, the due date for completion of the project and offer of possession of the allotted unit comes to 29.04.2018. It is the case of the complainant that though she received a number of reminders but the construction at the spot was not going on at a proper and required pace and which led her to issue various communications on 10.07.2017, 12.07.2012, 22.08.2013 and 30.08.2017, 02.09.2017 and 13.09.2017 respectively. When the above detailed communications did not have the desired results, then the complainant was left with no option but to withdraw from the project seeking refund of the amount deposited with the respondent. It is pleaded by the respondent that the complainant was not paying ^{the} due amount regularly and committed default. But whether it ~~also~~ started construction as per the schedule agreed upon or not ?. No doubt, a number of reminders were issued by the respondent-builder as detailed in reply as Annexure 4/5 dated 02.01.2016 and 25.01.2016 respectively but it was also requisite for it to complete its contractual obligations and only then, the issue with regard to repayment can be raised. There is nothing on record that when the complainant send first letter dated 02.01.2016 , what was the stage and extent of construction. No doubt, complainant was at a fault and did not adhere to the schedule of payment but it was also the duty of the respondent to start construction of

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the project and offer possession of the allotted unit to the complainant. There are copies of emails dated 01.09.2015, 02.09.2015, 12.08.2017, 22.08.2017 | 30.08.2017, 13.09.2017 which makes the things clear. The complainant was continuously following the respondent with regard to stage and extent of construction of the project as well as the allotted unit. The booking of the unit was made by the complainant on 04.09.2013 vide Annexure R/2 and as per BBA of 29.04.2015, the possession was to be handed over within a period of 36 months. But there is an email dated 02.09.2015 send by the respondent-builder to the complainant which makes the things clear and the same runs as under:

(Annejuxre -5)

Wed. Sept 2, 2015 at
10.10 AM ✓

Dear Ms Sinha

Greetings!!!

We would like to inform you that construction of the project will start in next moths tentatively

Should you require further assistance or any clarification, please free free to contact us on 0111-40611112 or write to us on customercare@raheja.com.

Thanks & Regards

Nitika Singh

Assistant-Manager Customer Relations

Raheja Developers Limited

Tel+91-11-40611111

Website: www.raheja.com

8. It is evident from a perusal of the above mentioned communication that the respondent proposed to start construction of the project in October, 2015 when it has already received more than Rs.17,00,000/- from the complainant. Then, vide email dated 13.09.2017, the respondent was processing the request of the complainant for refund as per clause 3.7 of BBA. So, keeping in view of these things, it is evident that construction of the

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project was not going on as per the schedule. So, the complainant was not bound to wait for its completion and offer of possession to her.

9. The matter in issue may be taken from another angle. The complainant booked a unit in the project of the respondent known as 'Raheja Trinity' Sector 84, Gurugram on 04.09.2013 vide Annexure R/2 and which led to allotment of the unit in question in her favour on 02.02.2015 Annexure A/2 and execution of BBA between the parties in dispute on 29.04.2015. As per that document, the due date for completion of the project and offer of possession was 36 months. But when the construction of the project was not going on at a required pace, then the complainant withdrew from the project on 07.07.2017 by writing a letter Annexure A/9 and that fact is confirmed from the email dated 13.09.201. So, the plea of the respondent that the project is registered with HARERA, Gurugram and tentative date of completion of the project is July, 2022 is untenable. No doubt, it has filed certain documents before the Hon'ble National Company Law Appellate Tribunal, New Delhi but the same cannot be taken into consideration to dislodge the claim of the complainant for refunds. So, the plea of the respondent that the complaint filed by the complainant seeking refund ^{being} ~~is~~ pre-mature is untenable.

10. The learned counsel for the respondent took a plea that due to certain force majeure events beyond its control, the construction of the project could not be take place. Even the Hon'ble Apex Court of the land took into consideration these facts and allowed time to the respondent to complete the project and hand over its possession to various allottees. Though there may be certain circumstances such as demonetisation, various restraint orders passed by the statutory authorities, shortage of labour, raw material but these factors are not sufficient to show that delay in completion of the project was beyond the control of the respondent. In case of **DLF Universal**

Shri - [Signature] 9/11/2021

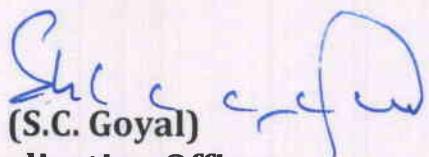
Ltd & Anr Vs Capital Greens Flat Buyers Association etc. Civil Appeal No. 3864-3889 of 2020 decided on 14.12.2020, the same issue arose for consideration as in the present case before the Hon'ble Apex Court and the plea advanced on behalf of the respondent was declined. It is a fact on record that upto now neither any occupation certificate of the project in which the complainant was allotted a unit has been received nor any offer of possession has been made. So, the plea of the complainant seeking refund of the deposited amount in view of ratio of law down in case of **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019** decided on 11.01.2021, by the Hon'ble Apex Court is maintainable.

11. Thus, in view of my discussion above, the complaint filed by the complainant is hereby ordered to be accepted. Consequently, the respondent is directed to refund a sum of Rs.20,86,360/- with interest @ 9.30% p.a. to the complainant from the date of each payment till the date of actual payment.

12. The above mentioned directions be complied with by the respondent within a period of 90 days failing which the legal consequences would follow.

13. File be consigned to the Registry.

09.04.2021


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
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Judgement uploaded on 16.04.2021