



**HARERA**  
**GURUGRAM**

; .,HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM

गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी डब्ल्यू डी. विश्राम

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

**Complaint No. : 1504/2019**  
**Date of Decision : 09.04.2021**

**Raj Kishore Gupta & Kulyash Gupta**  
**C-490, Vikas Puri, New Delhi-110018**

**Complainant**

**V/s**

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

**Respondent**

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

**Argued by:**

**For Complainants ;**

**Shri S. C Gulati, Advocate**

**For Respondent:**

**Shri M K Sanwaria, Advocate**

**ORDER**

This complaint has been preferred by Shri Raj Kishore Gupta & another 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

*Shri S. C Gulati*

*9/4/2021*

the Rules of 2017) seeking refund of Rs.22,31,505/- deposited for booking a residential unit bearing No.B-501 in its project known as 'RAHEJA MAHESHWARA PROJECT', situated in Sectors 11 & 14, Sohna (Gurugram) for a sum of Rs.33,55,918/- besides taxes etc on account of violation of obligations 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:

<b>Project related details</b>		
I.	Name of the project	"RAHEJA MAHESHWARA PROJECT" Sector 11 & 14, Sohna, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
<b>Unit related details</b>		
IV.	Unit No. / Plot No.	B-501 5 <sup>th</sup> floor
V.	Tower No. / Block No.	
VI.	Size of the unit (super area)	Measuring 1098 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	Residential
X.	Date of booking(original)	08.02.2016
XI.	Date of Allotment(original)	10.02.2016
XII.	Date of execution of BBA	21.09.2016 (A-3)
XIII.	Due date of possession as per BBA	21.09.2021(60 months)

Success  
9/4/2021

XIV	Delay in handing over possession till date	NA
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	-do-

**Payment details**

XVI	Total sale consideration	Rs. 33,55,918/-
XVII	Total amount paid by the complainants upto 22.02.2018	Rs.22,31,505/-

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

A project known by the name of RAHEJA MAHESHWARA PROJECT' situated in Sectors 11/14, Sohna Road, Sohna, (Gurugram) was being developed by the respondent-builder. The complainants coming to know about that project decided to book a residential unit measuring 1098 sq ft for a total sale consideration of Rs.33,55,918/- on 08.02.2016. A Builder Buyer Agreement with regard to booked unit was executed between the parties on 21.09.2016. The respondent-builder promised to complete the project and hand over possession of the booked unit to the complainants by 21.09.2020. The complainants deposited a sum of Rs.22,31,505/- upto 22.02.2018. It is the case of the complainants that due to some unfortunate events, they were unable to continue with the project and had to withdraw from the same. So, they requested for refund of the amount deposited with the respondent by sending an email of 25.03.2018 followed by a legal notice dated 17.01.2019 but nothing materialised. So, it ultimately led to filing of the complaint seeking refund of the amount mentioned above besides interest and compensation on 12.04.2019.

*Shree*  
94  
2021

3. But the case of the respondent-builder as set up in the written reply is that though the complainants booked a unit in their above mentioned project but committed default in making various payments and which led to issuance of various reminders. It was denied that the construction of the project is not going up to the mark and the claimants were entitled to withdraw from the project and seek refund of the amount already deposited with it. Moreover, if the claimants are allowed to seek refund, then it would be detrimental for the project as well as to the interest of other allottees who are waiting for the possession of their dream homes. Lastly, it was pleaded that the complaint filed by them seeking refund of the amount is not maintainable.

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

6. During the course of arguments, the respondent placed on file certain additional documents and which were taken on record.

7. I have heard the learned counsel for both the parties and have also perused the case file.

8. It is not disputed that on 08.02.2016, the complainants booked a unit with the respondent for a sum of Rs.33,55,918/- by paying a sum of Rs.3,50,000/-. A builder buyer agreement Annexure A/3 was executed between the parties with regard to unit in question on 21.09.2016. The due date for completion of the project and offer of possession was 36 months. So, in this way, the respondent was required to complete the project and offer possession of the allotted unit to the complainants by 21.09.2019. The claimants admittedly paid a sum of Rs.22,31,505/- upto 22.02.2018 with the respondent and withdrew from the project on 25.03.2018 by sending email A/4. When it has no desired results, then a legal notice A/6 dated 17.01.2019 was also sent and which ultimately led to filing of

Shri C. C. E. W.  
9/4/2019

complaint seeking refund before the Hon'ble Authority in April, 2019. The version of the respondent is that the complainants could not have withdrawn from the project. In fact, they committed default in depositing various payments and which led to issuance of remainders R/2 on 08.11.2017 and 13.11.2017 respectively. Secondly, the project was to be completed by the respondent within a period of 48 months with a grace period of 12 months i.e. upto 21.09.2021. So, the complaint filed by them is premature. Thirdly, the construction of the project is going at a fast pace and is likely to be completed very soon. Since the claimants are defaulters, so they were not entitled to withdraw from the project and seek refund of amount deposited and the same is liable to be forfeited.

9. It is not disputed that on 08.02.2016, the complainants booked a residential unit with the respondent for a total sale consideration of Rs.33,55,918/- and paid a sum of Rs.22,31,505/- upto 22.02.2018. A builder buyer agreement A-3 with regard to allotted unit was executed between the parties on 21.09.2016. The due date for completion of the project and offer of possession of the allotted unit as per that document comes to be 48 months with grace period of 12 months i.e. five years upto 21.09.2021. There is clause 16 of that document and which besides providing other things runs as under:

*Further if any Allottee at any stage wants to withdraw his booking for any reasons whatsoever, it shall be deemed as cancellation by the allottee and that eventuality, Company in its sole, absolute and unfettered discretion be entitled to forfeit earnest money paid by the Allottee and cancel the allotment letter and terminate the allotment thereof. Company will issue a Cancellation/Termination letter without any further notice to the allottee. The balance amount(after deducting the Earnest Money, outstanding interest for delayed payments, brokerage/commissions already paid etc, if any) shall be refundable to the Allottee without any interest, after the said Apartment is allotted to some other allottee and the refundable amount substituted after*

collection.

9/7/2021

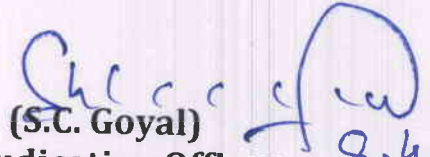
10. It is evident from a perusal of this document that by exercising an option under that clause, the complainants withdrew from the project and sought refund. A reference in this regard also be made to the mail dated 25.03.2018 sent by the complainants and which is self-explanatory in nature. When that has no desired results, then the complainants sent a legal notice Annexure 7 on 17.01.2019 to the respondent but with no positive results. So, all this shows that the complainants withdrew from the project prior to the due date and as such are not entitled to seek refund of the amount deposited with the respondent as per clause 16 of Agreement A-3.

11. Thus, in view of my discussion above, the complaint filed by the complainant is 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.22,31,505/- to the complainants with interest @ 9.30%p.a. from the date of each payment till the whole amount is paid;
- ii) The above mentioned directions be complied with by the respondent within a period of 90 days and failing legal consequences would follow.

10. File be consigned to the Registry.

09.04.2021

  
(S.C. Goyal)  
Adjudicating Officer, 9.4.2021  
Haryana Real Estate Regulatory Authority  
Gurugram

Judgement uploaded on 16.04.2021