



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
GURUGRAM**

Complaint No. : 249/2019
Date of Decision : 09.04.2021

Nisha Chandra
H.No.B4-209, Aloha Apartment
Tapovan Rishikesh Tehri
Garhwal, PO Shivanand-249192
Uttrakhand

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 Complainants:
For Respondent:

Shri Sushil Yadav, Advocate
Shri M K Sanwaria, Advocate

ORDER

This complaint has been preferred by Nisha Chandra, 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

Estate(Regulation and Development) Rules, 2017 (hereinafter referred as the Rules of 2017) seeking refund of Rs.58,32,324/- deposited for booking a Plot measuring 243.92 sq yds. in the project known as 'RAHEJA ARANYA CITY', situated in Sectors 11 & 14, Sohna(Gurugram) for a sum of Rs.74,21,260/- 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 complainant, the reproduction of the following details is must and which are as under:

Project related details		
I.	Name of the project	"Raheja Aranya City" Sectors 11 & 14, Sohna (Gurugram)
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	F-108
V.	Tower No. / Block No.	
VI.	Size of the unit (super area)	Measuring 243.92 sq yds
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)	04.04.2012
XI.	Date of Allotment(original)	30.06.2014(Annexure-4)
XII.	Date of execution of ABA (copy of ABA be enclosed as annexure-B)	30.06.2014(Annexure-5)
XIII.	Due date of possession as per ABA	31.11.2017

Handwritten signature and date:
 9/11/2017

3. But the case of the respondent-developer as set up in the written reply is that though the complainant booked a plot with it for the amount mentioned above but she committed default in making various payments due. It was denied that the project is not going to be completed in the near future. It was admitted that the BBA was executed between the parties but the complainant did not adhere to the contractual obligations casted upon her and committed default in the same. Though there is some delay in completion the project but that was due to various reasons such as shortage of labour, building material, various orders passed by the statutory authorities and non-payment of amount due by various allottees including the complainant. It was also pleaded that the local authorities also failed to provide necessary infrastructure facilities for the project resulting in delay of its completion. It was also pleaded that the respondent has developed several other prestigious projects like Raheja Atlantis, Raheja Atharva, Raheja Shilas and Raheja Vedanta and in most of those projects, a number of allottees have already moved after taking possession. Even residents' welfare associations have been formed which are taking care of the day to day needs of the allottees. It was also denied that the project has been abandoned. Every effort is being made to complete the project and offer possession of the allotted unit to various allottees including the complainant. Lastly, it was pleaded that the complaint against the respondent is not maintainable and the same being premature is liable to be dismissed.

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

5. During the course of arguments, the respondent-developer placed on file certain documents and which are taken on record.

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6. I have heard the learned counsel for the parties and have also perused the case file in depth.

7. It is not disputed that the complainant booked a unit in question with the respondent-developer in its project detailed above on 04.04.2012 for a sum of Rs.74,21,660/-. An allotment letter dated 30.06.2014 (Annexure 4) dated 30.06.2014 in this regard was issued and which led to execution of an agreement to sell (Annexure 5) on 30.06.2014. A perusal of that document's clause 4.2. shows as under:

"That the possession of the plot is supposed to be offered to the complainant in accordance with the agreed terms and conditions of the Buyer's Agreement. It is submitted that Clause 4.2 of the Agreement to Sell states that : That the seller shall sincerely endeavour to give possession of the plot to the purchaser within thirty six(36) months from the date of the execution of the Agreement to Sell and after providing of necessary infrastructure specially road sewer and water in the sectors by the Government but subject to force majeure conditions or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the Sellers. However, the seller shall be entitled for compensation free grace period of six(6) months in case the development is not completed within the time period mentioned above....."

8. The due date of possession for offer to be 36 months with six months grace period. So, in this was, the respondent was required to complete the project and offer possession of the allotted plot to the complainant by 31.12.2017. It is also a fact that upto 29.03.2016, the complainant deposited a sum of Rs.58,32,324/- with the respondent-developer as depicted in Annexure 06. Though as per clause 4.2. the respondent was required to pay

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compensation @ Rs.50/- per sq yds of the super area per month but the complainant opted to withdraw from the project after expiry of due date and filed a complaint for refund of the deposited amount. Now, the question arises for consideration as to what is the status of the project in which the complainant was allotted a plot and secondly when its possession would be offered to the complainant. Some additional documents were placed on the record during the course of arguments and a perusal of the same shows the details of the project and which can be reproduced as under:

Aranya Township

Project name	Location	Total units	Booked/sold units	Sales value	Amount collected	Committed cash flow	Cost to handover	Estimated value	Surpluses	Date of completion
Raheja Aranya City	Sohna, Gurugram	313	172.00	307.61	284	23.21	34.55	81.00	69.66	Aug 22

9. It is evident from the perusal of the above mentioned table that the construction of the project is going on and is likely to be completed by August 2022, but the due date for possession of the allotted plot has already expired on 31.12.2017. There is delay of more than three years in completing the project and offer of possession to the complainant. So, in such a situation, whether the complainant can be asked to wait indefinitely for completion of the project and offer of possession of the allotted plot. The answer is in the negative.

10. The matter in issue may be taken from another angle. The complainant booked a plot in the project of the respondent known as 'Raheja Aranya' Sectors 11 & 14, Sohna(Gurugram) on 04.04.2012 and which led to allotment of the unit in question in her favour on 30.06.2014(Annexure A/04) and execution of BBA between the parties in dispute on 30.06.2014.

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As per that document, the due date for completion of the project and offer of possession was 36 months. But when the development of the project was not going on at a required pace, then the complainant withdrew from the project. 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 refund. So, the plea of the respondent that the complaint filed by the complainant seeking refund is pre-mature is untenable.

11. The learned counsel for the respondent took a plea that due to certain force majeure events beyond its control, the development 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 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

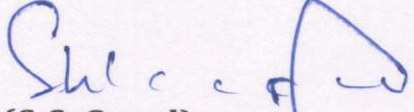
of 2019 decided on 11.01.2021, by the Hon'ble Apex Court is very much maintainable.

12. 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.58,32,505/- to the complainant 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.

13. File be consigned to the Registry.

09.04.2021


(S.C. Goyal) 9-4-2021
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram