



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 SH. RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

**Complaint No. : 949/2020
Date of Decision : 13.07.2021**

**Sh. Sanjeev Bhatia
C-6/6214, Vasant Kunj,
New Delhi**

Complainant

V/s

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

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

Present:

**For Complainant:
For Respondent**

**Mr Aarush Bhatia, Advocate
None**

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ORDER

This is a complaint under Section 31 of the Real Estate(Regulation and Development) Act, 2016 (also referred as the Act) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 (also referred as the Rules) filed by Sh. Sanjeev Bhatia, seeking refund of Rs 1,65,69,616.90 deposited for booking of a residential unit in the project known as 'Raheja's Revanta Project' situated in Sector 78, Gurugram, against total sale consideration of Rs 1,66,22,899/- alongwith interest @ 18% per annum.

2. According to the complainant, (also called as buyer) the Respondent (also mentioned as developer) launched a residential project known as 'Raheja's Revanta' situated at Sector-78, Gurugram, Haryana. Relying upon the reputation of respondent/developer, he i.e. buyer applied for allotment of a residential unit in the said project. The respondent was pleased to allot an Apartment No. A-051 and measuring 2165.850 Sq. Ft (super built up area allotment letter dated 16.09.2014). An Agreement to Sell was also executed vide between the parties on same date i.e. 16.09.2014. The developer had agreed to complete the project and handover possession of said unit, within 48 months of execution of agreement to sell, well described in Clause 4.2 of the agreement. The developer was entitled to grace period of six months calculated after the expiry of aforesaid period of 48 months.

3. The complainant paid all dues as demanded by the respondent from time to time. After expiry said period i.e. 48 months plus 6 months, the complainant enquired about the progress of the construction but the respondent failed to provide any clear date of completion of project. The complainant visited the office of the respondent and enquired about the

expected date of completion of the project. He was informed that the project was much behind its schedule. Contending that there was no hope of getting possession of his unit, as promised by the respondent and he (complainant) has already paid about 88 per cent of the total amount of sale consideration, the complainant prayed for refund of amount i.e. Rs. 1,65,69,616.90 alongwith interest @ 18% per annum from the dates of deposit of said amount and litigation expenses of Rs. 50,000/-.

4. Particulars of case are reproduced hereunder in tabular form:

I.	Name of the project	'Raheja's Revanta Project' situated in Sector 78, Gurugram
II.	Location of the project	-Do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	A-051
V.	Tower No. / Block No.	A
VI	Size of the unit (super area)	Measuring 2165.85 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)	16.09.2014
XI	Date of Allotment(original)	16.09.2014

XII	Date of execution of BBA	16.09.2014
XIII	Due date of possession as per BBA Clause 26	
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 BBA	As per clause 4.1 of Buyer Developer Agreement @ Rs. 7/- per sq. feet per month for delay
Payment details		
XVI	Total sale consideration	1,66,22,899/-
XVII	Total amount paid by the complainants.	Rs. 1,65,69,616.90

5. Respondent contested the claim of buyer, by filing written reply. Even maintainability of this complaint has been disputed, alleging that booking of unit by the complainant was done prior to the enactment of the Act and hence, provisions of said Act are not applicable in this case. According to the respondent/developer, the tower in which unit in question is located is 75 % complete and the possession of the same will be handed over to the complainant, after its completion, subject that the complainant is making payment of all dues and on availability of infrastructure facilities such as sector roads and laying/providing basic external infrastructure facilities such as water, sewer, electricity etc.

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6. It is further the plea of respondent that although the same (respondent) is willing to fulfil its obligations, the Government agencies have failed to provide essential basic infrastructure facilities such as roads, sewerage line, water and electricity supply in the sector, where project in question is being developed. The development of roads, sewerage etc. have to be completed by the governmental authorities and same are not within the power and control of the respondent and hence the latter cannot be held liable on account of non-performance by the concerned government authorities. Moreover, according to it, the time for calculating the due date of possession shall start only when the infrastructure facilities will be provided by the government authorities. All this is beyond the control of respondent and thus falls within the definition of 'Force Majeure' i.e. a condition as stipulated in Clause 4.4 of the Agreement to sell.

7. The Real Estate (Regulation and Development) Act, 2016 came into force on 1st May 2016 with Section 61 to 92 having been notified and remaining sections came into force w.e.f 1st May 2017. As per record, Agreement to sell between the buyer and developer was executed on 16th September 2014. Apparently, the Act had not come into effect at that time. Proviso added to Section 3 of the Act prescribes that the projects that are ongoing on the date of commencement of the act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the project within a period of 3 months from the date of commencement of this Act. According to section 3 (2) notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required: --

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(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c)-----

8. It is not the case of respondent even that same had received completion certificate of project in question, prior to commencement of this Act. On this reason, even if the project had been launched much prior to coming the Act into force, no completion certificate was received by the promoter till the act came in force, the respondent was legally bound to apply for registration of project in question within a period of 3 months of the date of commencement of this Act and provisions of this Act are applicable in this case. I do not find any substance in the plea of learned counsel for respondent, challenging applicability of provisions of the Act in this matter.

9. As mentioned earlier, according to respondent the project is not complete due to Government agencies, having failed to provide essential basic infrastructure facilities such as roads, sewerage line, water and electricity supply in the area, where project in question is situated. Clause 3.5 of the Agreement to Sell entered between the parties mentions that external development charges (EDC) and internal development charges (IDC) for the external and infrastructural services respectively, which are to be provided by the Haryana Government/ HUDA have been charged on pro-rata approximate basis. Same clause obliges the allottee to make payment, in case there is any increase in the charges of said facilities by the Government agencies and if allottee fails to pay these extra charges, same is to be treated as non-payment of charges, as per agreement to sell. The seller in that case is entitled to withhold the delivery of possession to the purchaser, until

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payment of above said EDC and IDC charges alongwith applicable interest etc.

10. Although provisions of the Act override covenants in the Agreement to Sell etc, entered between the parties, it is not the plea of respondent even that the complainant failed to make payment of any such charges. The only contention raised by the respondent is that Government agencies have failed to complete developmental work. As per Section 11 (3) (b) of the Act, it is the duty of promoter to give information to the allottee about stage-wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity. Similarly, Section 19(2) reminds that allottee, shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale. There is nothing on record to show that the promoter ever provided any such information to the allottee i.e. complainant. As is clear from agreement to sell, and referred earlier, the builder/respondent has already charged for basic amenities from the buyers including the complainant. Even if those facilities were to be provided by the Government agencies and were not within power of the respondent, there is no evidence to show as when the latter had applied to the Government agencies or actively pursued the matter with those authorities. The respondent cannot claim a relief citing its own negligence, particularly at the stage, when same has wasted about seven years.

11 Section 18 of the Act provides for return of amount and compensation, if the promoter fails to complete or is unable to give possession of an apartment, plot or building---

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- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein.
- (b) as mentioned earlier, the respondent had agreed to handover possession of the unit to the complainant in 48 months plus six months, (grace period) well described in Clause 4.2 of Agreement to Sell.
- 12 Said time limit expired long ago. The complainant wishes to withdraw from the project now and has demanded for refund of amount already paid by him i.e. Rs. 1,65.69,616.90. Receipt of this amount is not denied by the respondent. On the basis of reasons mentioned above, I allow complaint in hands, the respondent is directed to refund said amount of the complainant, received from time to time, along with interest @ 9.30% p.a. from each date when amount were received, alongwith litigation expenses of Rs. 50, 000/- within 90 days from today.
- 13 Announced in open Court today i.e. 13.07.2021.
- 14 File be consigned to the Registry.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram