



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

Complaint No. : 1121/2020

Date of Decision : 13.07.2021

Surinder Nath Chowdhary
R/o House No.5, KC Mansion, Near AG Office
Shakti Nagar, Jammu-180001
Complainant

V/s

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

Respondent

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

Present:

For Complainant:

For Respondent:

Ms. Charu Rustagi, Advocate

Mr. Mukul Kumar Sanwaria, Advocate

ORDER

This is a complaint filed by Shri Surinder Nath Chowdhary, complainant(also referred as buyer) under Section 31 of The Real Estate(Regulation and Development) Act, 2016 (in brief 'The Act') read

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with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 against M/s Raheja Developers Ltd.(also called as promoter) seeking directions to refund a sum of Rs.1,91,60,050/- (Rupees One crore, ninety one lack sixty thousands and fifty only) alongwith interest @24%p.a. from 16.05.2016 till the date of filing of this complaint and Rs.5,00,000/- as compensation for mental harassment.

2. As per case of complainant, the respondent promoted/developed a group housing colony known as "Raheja's Revanta" which is comprising of apartment buildings, car parking spaces, recreational facilities, landscaped gardens etc. on land measuring 18.7213 acres situated in Sector 78, Village, Shikohpu, District Gugurgram, Haryana. The Director of Town and Country Planning, Government of Haryana duly granted a licence to the respondent/promoter in this regard on 01.06.2011. The complainant applied for an apartment in said project of the respondent on 21.07.2014 and paid Rs.10,68,851/- as booking amount. He was allotted a unit bearing No.C-051, Tower C, 5th floor admeasuring (super area) 2165.850 sq ft. for a total sale consideration of Rs.1,91,75,596/-. The allotment letter in this regard was issued by the respondent to the complainant on 31.08.2015. An agreement to sell was entered between them on 31.08.2015. As per clause 4.2 of Agreement to Sell, the possession of unit was to be handed over to the complainant within a period of 48 months, after execution of agreement of sell i.e. on 31.08.2019. After addition of six months of grace period the date of possession come to 29.02.2020. As per statement of account of respondent dated 24.07.2019, the complainant had made a payment of Rs. 1,91,60,050/- till May, 2015. The possession of said unit has not been handed over by the respondent till now.

3. The respondent was declared as insolvent, due to which an IRP was appointed. The complainant submitted form CA before the IRP but there is

stay on the insolvency proceedings by the National Company Law Appellate Tribunal, New Delhi vide order dated 17.09.2019.

3. Citing all this, the complainant has prayed for directions to the respondent to refund the entire amount paid by him to the respondent alongwith interest @24% p.a. and compensation of Rs.5,00,000/-as stated earlier.

4. Details of the complainants' case in tabular form is reproduced as under:

Project related details		
I.	Name of the project	"RAHEJA'S REVANTA"
II.	Location of the project	Sector 78, Gurugram
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	C-051
V.	Tower No. / Block No.	
VI.	Size of the unit (super area)	Measuring 2165.850 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)	21.07.2014
XI.	Date of Allotment(original)	31.08.2015
XII.	Date of execution of BBA (copy of BBA be enclosed)	31.08.2015

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XIII	Due date of possession as per BBA	29.02.2020 including six months grace period
XIV	Delay in handing over possession till date	More than 1 year
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per clause 4.2. of BBA	Rs.7/- per sq ft per month of the super area for the period of entire delay.

Payment details

XVI	Total sale consideration	Rs. 1,91,75,596/-
XVII	Total amount paid by the complainants	Rs.1,91,60,050/-


5. The facts that such a unit was booked by the complainant with the respondent, the latter agreed to hand over the possession of the said unit within 48 months of agreement to sell and six months of grace period and that no such possession has been handed over till now, are not disputed by the respondent. The latter challenged the maintainability of the present complaint alleging that the booking of the unit in question was done prior to the enactment of the Real Estate(Regulation and Development) Act, 2016(In brief the Act) and hence the same is not applicable in the present case. According to it, the tower in which the unit in question is situated in 75% complete and the possession will be handed over to the complainant subject to latter making payment of due instalments and also on availability of infrastructure facilities as such sector's road, laying/providing of basic external and infrastructural facilities such as water, sewerage, electricity etc, as per terms of agreement to sell.

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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. 1,91,60,050/- 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.

13.07.2021


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram