



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

Complaint no. : 4897 of 2020
Date of decision : 24.08.2021

SUNIL KUMAR
R/O : N-117, Panchsheel Park,
1st Floor, New Delhi-110063

Complainant

Versus

1. RAHEJA DEVELOPERS LIMITED.
ADDRESS: W 4D-204, Keshav Kunj
Western Avenue, Sanik Farms,
New Delhi- 110062.
2. NAVIN M RAHEJA
ADDRESS: W 4D-204, Keshav Kunj
Western Avenue, Sanik Farms,
New Delhi- 110062.

Respondents

APPEARANCE:

For Complainant:

For Respondent:

Mr Sukhbir Yadav (Adv)

Mr. M K Samwariya (Adv)

ORDER

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1. This is a complaint filed by Sh. Sunil Kumar (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondents/promoters.
2. As per complainant, he booked an independent floor in respondent's project **Raheja Atharva**, situated at sector-109, Gurugram on 17.04.2011 and made payment of Rs 1,00,000 as booking amount. The respondent issued an allotment letter dated 23.06.2011 and allotted a floor admeasuring 2317 sq. ft. for a total consideration of Rs Rs 1,26,39,106 including BSP, EDC, IDC etc. A builder buyer's agreement (BBA) dated 23.06.2011 was executed between them incorporating respective obligations in respect of said unit.
3. As per the Clause 4.2 of BBA, possession of the said premises was proposed to be delivered by the developers to the allottee within 24 months from the date of execution of buyer's agreement with grace period of 6 months. In this way, the possession ought to have been delivered by 23.12.2013 but respondent failed to complete the construction work and consequently failed to deliver the possession of the unit till date.

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4. He (complainant) paid all dues as demanded by the respondent from time to time. After expiry said period of 24 months plus grace period of 6 months, the complainant enquired about the progress of the construction but the respondents failed to provide any clear date of completion of the project. As per the payment plan opted by him (complainant) the latter timely made payment of Rs 1,13,03,164 i.e. 90 % of entire agreed consideration, along with miscellaneous and additional charges etc.
5. Contending that the respondent has committed gross violation of the provisions of section 18(1) of the Act, by not handing over the timely possession of the flat in question, the complainant has sought refund of entire amount of Rs 1,13,03,164, alongwith interest at the rate of 18 % and compensation on account of actual loss against lapse of rental benefits, loss of capital gain and escalated differential in circle rate and further compensation for physical, mental harassment and litigation cost.
6. The particulars of the project, the details of sale consideration etc are reproduced here as under in tabular form:

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S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" Raheja Atharva", Sector 109, Gurugram, Haryana
2.	Project area	14.812 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	257 of 2007 dated 07.11.2007 valid up to 06.11.2017
5.	Name of licensee	Brisk Construction ltd and 3 others
6.	RERA Registered/ not registered	Registered vide no. 90 of 2017 dated 28.08.2017
UNIT DETAILS		
1.	Unit no.	IF2-04 (Independent Floor) (Pg. No 53 of complaint)
2.	Unit measuring	2317 sq. ft. sq. ft. (Page No. 52)
3.	Date of Allotment Letter	23.06.2011 (Page no. 56 of reply)
4.	Date of Booking	17.04.2011
5.	Date of Buyer's Agreement	23.06.2011 (Pg. No 51 of compliant)
6.	Due Date of Delivery of Possession	23.12.2013

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	As per Clause No. 4.2 : The possession of said premises is proposed to be delivered within 24 months from the date of execution of buyer's agreement and after providing of necessary infrastructure specially road, sewer and water to the complex by the government with 6 months grace period (Page No. 61 of the compliant)	
7.	Delay in handing over of possession till date	7 years 08 months
PAYMENT DETAILS		
8.	Total sale consideration	Rs 1,26,39,106 /-
9.	Amount paid by the complainants	Rs 1,13,03,164 /- (Statement of accounts annexed with complaint Page No. 49)
10.	Payment Plan	Instalment payment plan

7. The respondent contested the complaint by filing a reply dated 02.07.2021. It is averred that, the construction work of the tower in which unit in question is located is complete and the possession of the same will be handed over to the complainant, after its completion, subject that the complainant is making

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payment of all dues and on availability of infrastructure facilities such as sector roads and laying/providing basic external infrastructure facilities such as water, sewerage, electricity etc. the complainant has failed to pay the outstanding dues of Rs 1,27,34,350, despite several demand letters.

8. It is further the plea of respondents that although the same (respondent) are willing to fulfil their 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 is to be completed by the governmental authorities and same are not within the power and control of the respondents and hence the matters cannot be held liable on account of non-performance by the government authorities.

9. 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. The respondent has applied for the occupation certificate vide application dated 27.04.2017 which is pending before the government authorities. The District Town Planner, Gurugram, has sent a report on

31.07.2018 to the Senor Town Planner, Gurugram circle, wherein it is evident that the construction work of the project is complete.

10. I have perused the entire documents on record and have heard learned counsels for the complainant and respondents.

11. As stated above, respondents referred a report of District Town Planner, Gurugram, telling about project being complete but it is admitted by Id. Counsel for respondents during arguments that no completion certificate has been received till now.

12. According to complainant possession was to be handed over till 23.12.2013. There is no substance in the claim of respondents saying that due date of possession was to be calculated from the date when infrastructure facilities are provided by government agencies. No such vague and uncertain term could be incorporated. A buyer cannot be made to wait indefinitely for the unit, for which same has already paid about 90 % of sale consideration. Surprisingly, despite completing the project the respondent opted to impose penalty on complainant for not making entire payment, where construction of unit is nowhere in sight, when it was expected to be complete.

13. So far as plea of respondent that government agencies failed to provide infrastructure facilities is concerned, it was responsibility of respondents to ensure timely completion of

project. They cannot shift their responsibility to government agencies.

14. Complaint in hands is thus allowed and respondents are directed to refund entire amount received from complainant i.e Rs 1,13,03,164 /-within 90 days from today, with interest @ 9.3 % p.a. A cost of Rs 1 lac is also imposed upon respondents, to be paid to the complainant.

24.08.2021



(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 03.09.2021

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