

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

Complaint no. : 2613 of 2019
Date of decision : 24.08.2021

KULDIP SINGH SANGWAN
AND SAROJ DEVI
R/O Flat No: P-102, Palam Apartments
Main Road, Bijwasan
New Delhi-110061

Complainants

Versus

1. RAHEJA DEVELOPERS LIMITED
 2. VENIKA KAPOOR
 3. ADIL ALTAF
- ADDRESS: W 4D-204, Keshav Kunj
Western Avenue, Sanik Farms,
New Delhi- 110062

Respondent

APPEARANCE:

For Complainants: S.S. Hooda (Adv)
For Respondent: Mr. M K Samwariya (Adv)

ORDER

1. This is a complaint filed by Kuldeep Singh Sangwan and Saroj Devi (also called as buyers) 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 complainants, they jointly booked a shop in respondent's project "**Raheja Revanta**", situated at sector-78, Gurugram on 19.07.2015 and made payment of Rs 3,98,210 as booking amount. The respondent issued an allotment letter dated 04.02.2016 and allotted shop no. 2 admeasuring 318.470 sq. ft. for a total consideration of Rs 41,04,708 including BSP, EDC, IDC etc. A builder buyer agreement (BBA) was executed on 05.02.2016
3. As per the Clause 4.2 of buyer's agreement, the possession of the unit was proposed to be delivered by the developer to the allottee within 36 months from the date of execution of buyer's agreement. In this way, the possession ought to have been delivered by 05.02.2019 but respondent failed to complete the construction work and consequently failed to deliver the possession of the unit till date.
4. The complainants have paid all dues as demanded by the respondents from time to time. After expiry said period of 36 months, the complainants enquired about the progress of the construction, but the respondents failed to provide any clear date of completion of the project to the complainants. The respondent has failed to complete the

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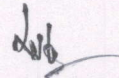
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finishing work and failed to obtain the occupation certificate. The complainants have paid Rs 34,93,258 i.e. 85 % of entire agreed consideration along with miscellaneous and additional charges etc on time

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 shop in question, the complainant has prayed for refund of entire amount of Rs 34,93,258, alongwith punitive interest @ 24 % per annum from the date of payment.,
6. The particulars of the project are reproduced here as under in tabular form:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" Raheja Revanta", Sector 78, Gurugram, Haryana
2.	Project area	18.72311 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	49 of 2011 dated 01.06.2011 valid up to 31.05.2021
5.	Name of licensee	Sh. Ram Chander, Ram Swaroop and 4 others
6.	RERA Registered/ not registered	Registered vide no. 32 of 2017 dated 04.08.2017



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UNIT DETAILS

1.	Unit no.	Shop No. 2
2.	Unit measuring	318,470 sq. ft.
3.	Date of Booking	19.07.2015
4.	Date of Allotment Letter	04.02.2016 (Annexure C-11)
5.	Date of Buyer's Agreement	05.02.2016
6.	Due Date of Delivery of Possession As per Clause No. 4.2 : The possession of said premises is proposed to be delivered within 36 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	05.02.2019
7.	Delay in handing over of possession till date	2 years 06 months

PAYMENT DETAILS

8.	Total sale consideration	Rs 41,40,708 /-
9.	Amount paid by the complainants	Rs 34,93,258 /-
10.	Payment Plan	Instalment payment plan

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7. The respondent contested the complaint by filing a reply dated 08.08.2019. It is averred that, complaint is not maintainable and the dispute should be resolved by arbitration since the booking form as well the buyer's agreement contains arbitration clause. As per the terms of the allotment letter, respondent had raised a demand of Rs 3,99,149 vide demand letter dated 25.04.2016 but complainants have failed to credit the due amounts till date. Complainants have been defaulter from the very inception. It is contended that the construction work is 75 % complete and possession of the unit will be handed over to the complainants, after its completion, subject that the complainants make 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
8. 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 has to be completed by the governmental authorities and same are not within the power and control of the respondent. The latter

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cannot be held liable on account of non-performance by the concerned 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 13 of the Agreement to sell.
10. I have perused the entire documents on record and have heard the learned counsels for the complainant and respondent.
11. Respondent did not deny the facts that complainants have been allotted a unit in project 'Raheja Revanta' being developed by it. A builder buyer agreement was executed between them on 05.02.2016. According to same possession of unit was to be handed over to complainant within 36 months. Counting in this way, date of possession comes out at 05.02.2019. Respondent does not claim that project is complete even now. According to it, it was delayed not due to its (respondent) fault but due to Govt. agencies having failed to provide infrastructure facilities such as water, sewer and electricity. Development of roads etc. was to be completed by Govt. agencies which are not under its control.
12. It is expected that when respondent thought to develop this project, same would have imagined as how roads will be constructed and how other infrastructure facilities will be provided to buyers. After making provisions of everything respondent was presumed to have entered in BBA with buyers.

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When a buyer has made payment of almost 85 % of total consideration of unit , same was well within his right to claim possession of his dream unit. A buyer cannot be made to wait indefinitely. Even if infrastructure works as stated by respondent above, was to be done by Govt. agencies, it was responsibility of respondent towards buyers to get the same done in time. Project is delayed far more than two years. Respondent is liable to refund the amount of complainants /buyers in view of section 18 of the Act.

13. Complaint is accordingly allowed as respondent is directed to pay Rs 34,93,258 within 90 days from today, with interest @ 9.3 % p.a. A cost of Rs 1 lac is also imposed upon respondent to be paid to complainant.

24.08.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 07.09.2021