

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

Complaint no. : 433 of 2020

Date of decision : 06.09.2021

SHYAM KUMAR GUPTA
AND UPMA
R/O B-80, 2nd Floor,
Freedom Fighter Enclave
Neb Sarai,IGNOU
New Delhi-110068

Complainants

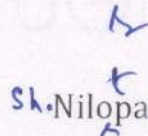
Versus

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

Respondent

APPEARANCE:

For Complainants:

 Sh. Nilopal Shyam (Adv)

For Respondent:

Mr. M K Samwariya (Adv)

ORDER

1. This is a complaint filed by Shyam Kmar Gupta and Upma (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 respondent/promoter.

2. As per complainants, they jointly booked a flat in respondent's project "**Raheja Revanta**", situated at sector-78, Gurugram on 08.09.2012 and made payment of Rs 14,87,850 as booking amount. The respondent issued an allotment letter dated 16.04.2013 and allotted unit no. C-062 admeasuring 2225.90 sq. ft. for a total consideration of Rs 1,01,36,025 including BSP, EDC, IDC with taxes etc. A builder buyer agreement (BBA) was executed on 16.04.2013
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 48 months from the date of execution of buyer's agreement, with 6 months grace period. The 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 respondent from time to time. After expiry of said period of 48 months, the complainants enquired about the progress of the construction, but the respondent failed to provide any clear date of completion of the project to the

complainants. The respondent has failed to complete the finishing work and failed to obtain the occupation certificate. The complainants have paid Rs 93,43,927 i.e. 95 % of entire agreed consideration along with miscellaneous and additional charges etc on time.

5. The respondent has revised and expanded the project and obtained the revised environmental clearance dated 31.07.2017 wherein it has been mentioned that built up area of project has been increased to 2,97,575 sq.mt. from 146173 sq. mt. the number of floors have been increased and even a new tower of 40 floors has been inducted in the said project, without consent of complainants.
6. 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 unit in question, the complainants have prayed for refund of entire amount of Rs 93,43,927, alongwith interest @ 18 % per annum compound interest, compensation @ 18 % interest, Rs 10,00,000 for mental agony, Rs 20,00,000 towards loss of opportunity, refund parking charges with interest @ 18 %, refund service charges, Rs 1,00,000 as cost.
7. 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
UNIT DETAILS		
1.	Unit no.	C-062
2.	Unit measuring	2225.90 sq. ft.
3.	Date of Booking	08.09.2012
4.	Date of Allotment Letter	16.04.2013 (Page No. 34)
5.	Date of Buyer's Agreement	16.04.2013
6.	Due Date of Delivery of Possession	16.10.2017
	As per Clause No. 4.2 : The possession of said premises is proposed to be delivered within 48 months from the date of execution of buyer's agreement	



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	and after providing of necessary infrastructure specially road, sewer and water to the complex by the government with 6 months grace period (Pg. No. 51-52)	
7.	Delay in handing over of possession till date	3 years 11 months
PAYMENT DETAILS		
8.	Total sale consideration	Rs 1,01,36,025
9.	Amount paid by the complainants	Rs 93,43,927
10.	Payment Plan	Instalment payment plan

8. The respondent contested the complaint by filing a reply dated 30.03.2021. 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. It is contended that the two High Tension (HT) cables were passing through the project site and respondent got the same removed and relocated at its own cost. As multiple government and regulatory agencies were involved for shutdown of HT lines, it took considerable time which falls within the force majeure circumstances. The construction work is 80 % complete and possession of the unit will be handed over to the

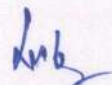


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complainants, after its completion, subject that the complainants make payment of all dues and on availability of infrastructure facilities such as sector roads and laying/providing basic external infrastructure facilities such as water, sewer, electricity etc

9. 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 cannot be held liable on account of non-performance by the concerned government authorities.
10. 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.
11. As per clause 3.3 of buyer's agreement, complainants have agreed to pay for additional sum for reservation of car parking space and they had also agreed to pay club membership charges



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- as per clause 9.1. It is submitted that complainants have paid Rs 93,35,186 and not Rs 93,43,927 as claimed by complainants.
12. The Corporate Insolvency Resolution Proceedings were initiated against the respondent company by NCLT on 28.08.2019 in matter of **Ms. Shilpa Jain v M/s Raheja Developers Ltd.** and respondent had preferred an appeal against the order passed by NCLT which was subsequently allowed with direction to stick by the construction schedule as submitted by respondent before NCLT, Delhi.
13. I have perused the entire documents on record and have heard the learned counsels for the parties.
14. 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 16.04.2013. According to same possession of unit was to be handed over to complainants within 48 months with 6 months grace period. Counting in this way, date of possession comes out at 16.10.2017. 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.
15. 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

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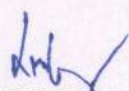
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provided to buyers. After making provisions of everything respondent was presumed to have entered in BBA with buyers. When a buyer has made payment of almost 95 % of total consideration of unit , same was well within his right to claim possession of 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 three years. Respondent is liable to refund the amount of complainants /buyers in view of section 18 of the Act.

16. So far as proceedings before NCLT are concerned, as per respondent, appeal filed by it against order of NCLT has been allowed and same i.e. respondent has been directed to abide by construction schedule. It is not clarified as what was that construction schedule, in relation to project under consideration. Even according to respondent no such proceeding are pending now.
17. Considering facts stated above, complaint in hands is accordingly allowed and respondent is directed to refund Rs 93,43,927 to complainants within 90 days from today, with interest @ 9.3 % p.a. from the date of payment, till realisation of amount. A cost of Rs 1 lac is also imposed upon respondent, to be paid to complainants.

06.09.2021


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