

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

Complaint no. : 774 of 2021

Date of decision : 16.09.2021

SURAJ PRAKASH GUPTA  
R/O : b-303, Sarve Satyam  
Apartments, Plot No. 12,  
Sector-4, Dwarka  
New Delhi-110078

**Complainant**

Versus

RAMPRASTHA PROMOTERS AND  
DEVELOPERS  
ADDRESS : Plot No. 114, Sector-44  
Gurgaon-122002

**Respondent**

For Complainant:

Dhruv Dutt Sharma (Advs)

For Respondents:

Dhiraj Kapoor

**ORDER**

1. This is a complaint filed by Suraj Prakash Gupta (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 respondent/promoter.

2. As per complainant, on 12.03.2011, he booked a flat in respondent's project **SKYZ**, situated at sector-37 D, Gurugram and made payment of Rs 5,74,420 as booking amount. The respondent issued welcome letter dated 29.04.2011 and allotted a flat to him bearing No. C-102, for a total consideration of Rs 69,23,750 including BSP, PLC, EDC etc.
3. The respondent assured him (complainant) that the possession of the unit will be delivered within 3-4 years from the date of booking. He (complainant) on various occasions requested respondents to execute buyer's agreement but no agreement is executed till now. When he visited the site of project, he found that construction work was lying unfinished and is far from completion. Delivery of possession of unit could not be expected in near future.
4. As per demands raised by the respondent, he (complainant) made timely payment of Rs 62,24,702 i.e 90 % of entire agreed consideration, along with miscellaneous and additional charges etc, but to his utter dismay, neither

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buyer's agreement was executed nor possession of the apartment was offered, as assured by the respondent.

5. As respondent did not give any information as when construction of project will complete or when the buyer's agreement will be executed, he (complainant) requested for refund of the amount, paid by him with interest. He served a legal notice dated 28.05.2018 upon respondent. Till date respondent has not replied to the said notice.
6. The respondent has committed gross violation of the provisions of section 18(1) of the Act, and hence complainant opted to file present complaint, seeking refund of entire amount of Rs 62,24,702, along with interest @ 18 % p.a. Rs 5,00,000 towards mental torture and harassment and Rs 55,000 towards cost of litigation.
7. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
<b>PROJECT DETAILS</b>		
1.	Project name and location	" SKYZ", Sector 37 C, Gurugram,
2.	Project area	60.511 acres
3.	Nature of the project	Residential Group Housing Colony





4.	DTCP license no. and validity status	33 of 2008 dated 10.02.2008 valid up to 18.02.2025
5.	Name of licensee	Ramprastha builders and 11 others.
6.	RERA Registered/ not registered	Registered vide no. 320 of 2017

**UNIT DETAILS**

1.	Unit no.	C-102
2.	Unit measuring	Not mentioned
3.	Date of Booking	12.03.2011
4.	Date of Allotment	Not issued
5.	Date of Buyer's Agreement	Not executed

**PAYMENT DETAILS**

6.	Total sale consideration	Rs 62,24,702
7.	Amount paid by the complainant	Rs 62,24,702

8. The respondent raised preliminary objection about jurisdiction of Adjudicating Officer to adjudicate complaints seeking refund. It is averred that no agreement has been executed between parties as referred under the Act of 2016. Booking form dated 12.03.2011 was filed up much prior to coming into force of the said Act of 2016. Accordingly, no

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relief can be granted to complainant under said Act. It is again plea of respondent that construction work is in progress and occupation certificate of the said apartment will be applied by 30.06.2022. Further that booking was made by Suraj Prakash and the <sup>Complainant</sup> ~~complainant~~ has been filed by some Suraj Prakash Gupta, who has no privity of contract with respondent.

9. The respondent denied that it assured to offer the possession within 3-4 years from the date of booking. According to it the total sale consideration of unit in question is Rs 71,11,725 and complainant has made payment of Rs 62,24,702 only, out of which Rs 59,96,251 only has been paid towards the sale consideration. As per clause 13 of booking application form, the proposed estimate time of handing over possession was 36 months from the date of execution of Apartment Buyer's Agreement, which complainant never signed. Despite repeated reminders, the complainant failed to execute buyer's agreement. Now, he cannot be allowed to take advantage of his own wrong.

10. Further, a declaration has been made by respondent in its application for registration with RERA. As per section 4(2)(1)(C), it would complete the project by 30.06.2022. In this way, no cause of action arose in favour complainant before

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said date. Contending all this respondent prayed for dismissal of this complaint.

11. I have heard ld. counsels for parties and perused the record.

12. It is not the plea of respondent that on the date, the Act of 2016, came into force, it had obtained the completion certificate for the project in question. So, it was an ongoing project and under the Act, respondent was under obligation to get this project registered within three months. By applying for registration during said period of three months, the respondent opted to apply provision of Act of 2016. No substance in pre-objection raised by respondent.

13. Admittedly, no BBA was executed between the parties. Even if it is presumed that parties reached an oral agreement, when complainant booked unit in question on 12.03.2011, the respondent was bound to deliver possession in reasonable time, like three to four years as claimed by complainant.

14. It is not denied that complainant has already paid Rs 62,24,702 and respondent is not in position to deliver the possession of unit in near future. What so, if respondent gave declaration, while applying for registration under Act of 2016, that same may complete the project till 30.06.2022, same is not binding upon the complainant. It is well settled that a buyer cannot be made to wait for his/her dream unit, indefinitely. Respondent has grossly failed in its obligation to



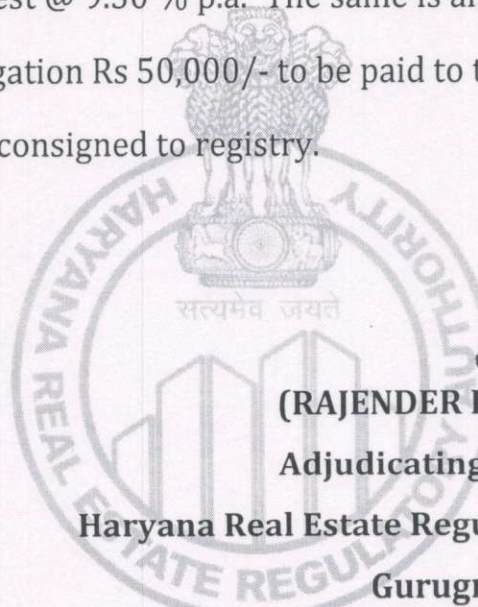


execute the buyer's agreement and again to complete and handover possession of unit to complainant, within reasonable time.

15. The complaint in hands is allowed and respondent are directed to refund the amount paid by the complainant i.e Rs 62,24,702 within 90 days from date of this order along with interest @ 9.30 % p.a. The same is also burdened with cost of litigation Rs 50,000/- to be paid to the complainant.

File be consigned to registry.

16.09.2021



(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 30.09.2021