

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

Complaint no. : 481 of 2021

Date of decision : 13.09.2021

RIYA DEY AND SOMNATH DEY
R/O : Hyatt Hyderabad Gachibowli
Road No. 2, IT Park Nanak Ramguda
Hyderabad.

Complainants

Versus

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

Respondent

APPEARANCE:

For Complainants:

Paras Agarwal (Adv)

For Respondent:

Mr. M K Samwariya (Adv)

ORDER

1. This is a complaint filed by Riya Dey and Somnath Dey (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 25.09.2014 and made payment of Rs 15,25,485 as booking amount. The respondent issued an allotment letter dated 25.11.2014 and allotted unit no. A-003 admeasuring 1621.390 sq. ft. for a total consideration of Rs 1,67,71,536 including BSP, EDC, IDC etc. A builder buyer agreement (BBA) was executed on 25.11.2014 followed by MoU dated 09.01.2015.
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 availed home loan facility of Rs 1,22,00,000 and entered into tripartite agreement dated 14.11.2014. 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 respondent has received Rs Rs 1,68,78,303 i.e, more than the agreed consideration along with miscellaneous and additional charges etc on time.

5. The complainants were not satisfied with the progress of the project, as the project was not likely to be completed in the near future. On 20.03.2017, they gave intimation to respondent to exercise option of buy-back scheme, in terms of the MoU dated 09.01.2015. As per terms of MoU, respondent was under an obligation to cancel the booking, within 60 days of expiry of 36 months from booking. The said period expired in December 2017. Till date, respondent did not refund the amount paid by them (complainants) and the guaranteed premium compensation, as was agreed between them.
6. Moreover, the respondent stopped making payment of EMI towards the loan in violation of terms of MoU, post May 2019 and from June 2019 till January 2021, complainants



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have paid Rs 13,98,536 to HDFC bank towards the repayment of that loan

7. 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 Rs 43,80,234 which has been paid by them directly to the respondent, Rs 13,98,535 paid to the bank towards the EMI of loan amount, Rs 28,30,534 towards the guaranteed premium compensation alongwith interest @ 18 % per annum Rs 10,00,000 for mental agony, *चुका* ————— Rs 1,00,000 as cost.
8. The case of complainants and 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 Swarocp and 4 others



6.	RERA Registered/ not registered	Registered vide no. 32 of 2017 dated 04.08.2017
UNIT DETAILS		
1.	Unit no.	A003
2.	Unit measuring	sq. ft.
3.	Date of Booking	25.09.2014
4.	Date of Allotment Letter	25.11.2014 (Page No. 83)
5.	Date of Buyer's Agreement	25.11.2014
6.	Date of Moli	09.01.2015
7.	Due Date of Delivery of Possession 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 and after providing of necessary infrastructure specially road, sewer and water to the complex by the government with 6 months grace period	25.05.2019
8.	Delay in handing over of possession till date	2 years 04 months
PAYMENT DETAILS		
9.	Total sale consideration	Rs 1,67,71,536

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10.	Amount paid by the complainants	Rs 1,68,78,303
11.	Payment Plan	Instalment payment plan

9. The respondent contested the complaint by filing a reply dated 23.07.2021. 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. On merits of case, it is explained 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. As per respondent, construction work is 80 % 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.

10. 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

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within the power and control of the respondent. The latter cannot be held liable on account of non-performance by the concerned government authorities.

11. 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 same also falls within the definition of 'Force Majeure' i.e a condition as stipulated in Clause 4.4 of the Agreement to sell.
12. The respondent denied that as on 29.09.2016 entire sale consideration of Rs 1,68,78,303 was paid. It is contended that complainants have defaulted in making timely payment of instalment. Total sale consideration as on 28.05.2021 was Rs 1,68,84,947. As per MoU entered between the parties, respondent had agreed to pay the pre EMI for 12 months which are paid till July 2019. The respondent denied that it was under obligation to discharge the loan amount. According to it, the complainants are not entitled to guaranteed premium compensation.
13. I have heard ~~the~~ learned counsels for the parties and gone through the documents on file.
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 25.11.2014. According to same, possession of unit was to be

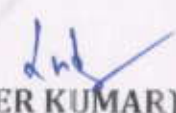
handed over to complainants within 48 months with 6 months grace period. Counting in this way, date of possession comes to 25.05.2019. Respondent does not claim that project is complete even now. According to it, it was delayed, not due to its (respondent) fault but due to Govt. agencies having failed to provide infrastructure facilities such as water, sewer and electricity. Development of roads etc. which which was to be completed by Govt. agencies and are not under its control.

15. It is expected that when respondent decided to develop project in question, same would have proposed as how roads will be constructed and how other infrastructure facilities will be provided to the buyers. After making provisions ^{for} of everything, respondent was presumed to have entered in EBA with buyers. When buyers have made payment of almost entire sale consideration of unit, same are well within their right to claim possession of their dream unit. Same cannot be made to wait indefinitely.
16. Respondent did not deny the execution of MoU with complainant on 09.01.2015. As per clause 8 of this MoU, the purchaser within 33 months to 36 months from the date of booking, shall be entitled to call upon the developer in writing to cancel the aforesaid booking at a guaranteed premium compensation of Rs 1400/- per sq. ft. and developer shall cancel the booking within 60 days of expiry of 36 months from the date of booking. It was also clarified that the developer shall over and above the guaranteed premium compensation amount shall also be liable for refund of entire amount paid by the purchaser, in case of delay in making payment by the developer to the purchaser

beyond 60 days, the developer shall be liable to pay interest @ 18 % p.a.

17. The respondent is bound by the terms of the said MoU. The complainants vide their letter dated 20.03.2017 (Annexure J) exercised their option of cancellation of booking. Receipt of said letter is not denied on behalf of respondent. As per clause 8 of MoU, as reproduced above, respondent is bound to give a guaranteed premium compensation of Rs 1400/- per sq. ft and also to refund the entire amount paid by the complainants with 18 % interest p.a.
18. Complaint in hands is thus allowed and respondent is directed to refund amounts received from complainants within 90 days from today and other benefits as agreed through said MoU. Same (respondent) is also burdened with cost of litigation Rs 50,000 to be paid to the complainants.

13.09.2021


(RAJENDER KUMAR)
Adjudicating Officer

Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 25.09.2021.