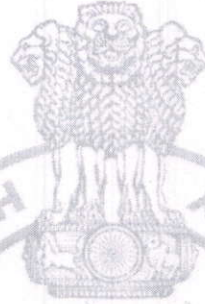


**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 943 of 2019

Date of decision : 29.09.2021

ANURADHA CHADDHA
R/O : D-183, Balair
DLF Phase -5, Gurugram



Complainant

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

Respondent


APPEARANCE:

For Complainant:

Nilotpal Shyam (Adv)

For Respondent:

Mr. M K Samwariya (Adv)


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ORDER

1. This is a complaint filed by Anuradha Chadha (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/developer.
2. As per complainant, she booked a flat in respondent's project "**Raheja Revanta**", situated at sector-78, Gurugram on 28.01.2012 and made payment of Rs 10,26,932 as booking amount. The respondent issued an allotment letter dated 30.05.2012 and allotted unit no. A-153 admeasuring 1612.39 sq. ft. for a total consideration of Rs 1,20,39,274 including BSP, EDC, IDC with taxes etc. A builder buyer agreement (BBA) was executed on 30.05.2012.
3. As per 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 as grace period. The respondent failed to complete the construction work and consequently failed to deliver the possession of the unit till date.
4. The complainant has paid all dues as demanded by the respondent, from time to time. After expiry of said period



of 48 months, the complainant enquired about the progress of the construction, but the respondent failed to provide any clear date of completion of the project to the complainant. The respondent has failed to complete the finishing work and failed to obtain the occupation certificate. The complainant has paid Rs 1,10,05,251 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 complainant.
6. The respondent compelled complainant to pay Rs 3,32,821 towards the covered car parking and is under legal obligation to refund the same. The complainant vide email dated 28.12.2018, requested for refund of amount paid towards the allotted unit but respondent vide email dated 03.01.2019 refused to refund the same.
7. As 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



complainant has prayed for refund of entire amount of Rs 1,10,05,251, alongwith interest @ 18 % per annum compound interest and Rs 1,00,000 as cost of litigation.

8. 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. | A-153 |
| 2. | Unit measuring | 1612.39 sq. ft. |
| 3. | Date of Booking | 28.01.2012 |
| 4. | Date of Allotment Letter | 30.05.2012 (Page No. 34) |
| 5. | Date of Buyer's Agreement | 30.05.2012 |



| | | |
|------------------------|--|----------------------------------|
| 6. | 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 | 30.05.2016 |
| 7. | Delay in handing over of possession till date | 5 years 04 months |
| PAYMENT DETAILS | | |
| 8. | Total sale consideration | Rs 1,20,39,274 |
| 9. | Amount paid by the complainant | Rs 1,10,05,251 |
| 10. | Payment Plan | Construction linked payment plan |

9. The respondent contested the complaint by filing a reply dated 30.03.2021. It took the preliminary objection that provisions of Act of 2016 are not applicable in the present case as the booking was made prior to enactment of the Act. Said Act of 2016 cannot be applied retrospectively. Although the project has been registered under the act in order to avoid any complications. It

is averred that, complaint is not maintainable and the dispute should be resolved by arbitration, as the booking form as well the buyer's agreement contains arbitration clause. The complainant had acknowledged that as per clause 3 and 14 of the application form the building plans as approved by the concerned authorities are tentative in nature and there might be alterations in the layout plans, as and when required.

10. 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 75 % complete and possession of the unit will be handed over to the complainant, after its completion, subject that the complainant 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

11. It is clarified by 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 like 60 metre sector road including 24 metre wide road connectivity which were supposed to be



developed by HUDA, 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, which are not within the power and control of the respondent. The latter cannot be held liable on account of non-performance by government authorities. According to respondent, the time for calculating due date of possession shall starts only when the infrastructure facilities will be provided by the government authorities.

12. As per terms of buyer's agreement, complainant has agreed to pay for additional sum for reservation of car parking space with applicable charges and respondent is not under any legal obligation to refund the same.
13. I have heard ²the learned counsels for the parties and perused the entire documents on record.
14. Respondent did not deny the facts that complainant has been allotted a unit in project 'Raheja Revanta' being developed by it. A builder buyer agreement was executed between them on 30.05.2012. According to same, possession of unit was to be handed over to complainant within 48 months of agreement along with 6 months of grace period. Due date of possession comes to 30.05.2016. 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

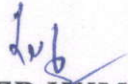
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provide infrastructure facilities such as water, sewer and electricity. Development of roads etc. was to be completed by Govt. agencies which are not under its control.

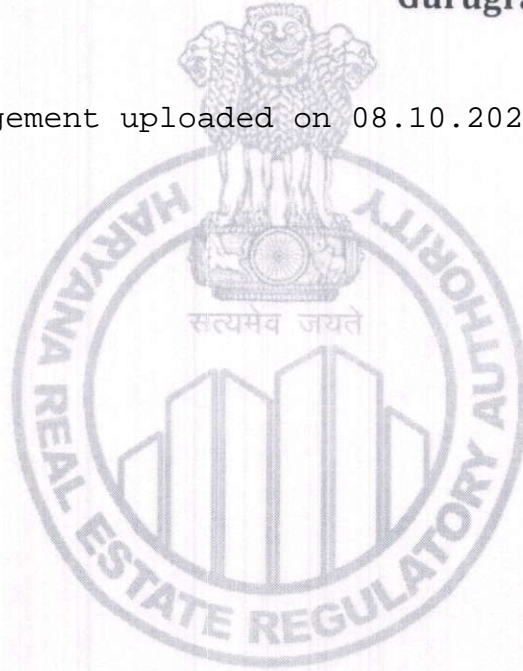
15. It is expected that when respondent thought to develop this project, same would have imagined as how roads will be constructed and how other infrastructure facilities will be provided to buyers. After making provisions of everything respondent was presumed to have entered in BBA with buyers. When 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 buyer to get the same done in time. Aforesaid cannot be termed as force-majeure circumstances. It is well settled that a developer is not entitled to grace period automatically. It has to establish that project could not be completed without any fault/negligence on its part. Project is highly delayed. Respondent is liable to refund the amount of complainant/buyer in view of section 18 of the Act.
16. So far as plea of arbitration clause is concerned. Even respondent did not apply for appointment of arbitrator. Even otherwise, Act of 2016 being a special Act, provisions of same override even covenants of agreement between parties
17. Considering facts stated above, complaint in hands is accordingly allowed and respondent is directed to refund amount received from complainant i.e. Rs 1,10,05,251 to latter within 90 days from today, with interest @ 9.3 % p.a. from the date of each

payment, till realisation of amount. A cost of Rs 1 lac is also imposed upon respondent to be paid to complainant.

29.09.2021


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

Judgement uploaded on 08.10.2021.



HARERA
GURUGRAM