

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

Complaint no. : 964 of 2020

Date of decision : 04.10.2021

MAHESH MITTAL, DHARAMRAJ MITTAL
AND GOMTI MITTAL
R/O : L- 49 D , 1st Floor,
Block-L, Saket
New Delhi

Complainants

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

Respondent

APPEARANCE:

For Complainants:

Nilotpall Shyam (Advocate)

For Respondent:

Mr. M K Samwariya (Advocate)

ORDER

1. This is a complaint filed by Mahesh Mittal, Dharamraj Mittal and Gomti Mittal (also called as buyers) under section 31



A.O.

4-10-21



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 complainants, they jointly booked a flat in respondent's project "**Raheja Revanta**", situated at sector-78, Gurugram on 20.12.2011 and made payment of Rs 6,97,273 as booking amount. The respondent issued an allotment letter dated 24.04.2012 and allotted an unit no. A-332 admeasuring 1197.830 sq. ft. for a total consideration of Rs 86,47,202 including BSP, EDC, IDC with taxes etc. A builder buyer agreement (BBA) was executed on 24.04.2012
3. As per Clause 4.2 of BBA, possession of the unit was proposed to be delivered 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 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. The

[Handwritten signature]

A.O.

4/10/21

respondent has failed to complete the finishing work and also to obtain the occupation certificate. The complainants have paid Rs 79,67,716 i.e. 90 % of entire agreed sale 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. Even a new tower of 40 floors has been inducted in the said project, without consent of complainants.
6. The respondent compelled complainants to pay Rs 3,50,000 towards the covered car parking and is under legal obligation to refund the same.
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 entire amount of Rs 79,67,716, alongwith interest @ 18 % per annum 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.

Handwritten signature

A.O.

4-10-21

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-332
2.	Unit measuring	1197.830 sq. ft.
3.	Date of Booking	20.12.2011
4.	Date of Allotment Letter	24.04.2012
5.	Date of Buyer's Agreement	24.04.2012
6.	Due Date of Delivery of Possession	24.04.2016

	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	
7.	Delay in handing over of possession till date	5 years 09 months 10 days
PAYMENT DETAILS		
8.	Total sale consideration	Rs 86,47,202
9.	Amount paid by the complainants	Rs 79,67,716
10.	Payment Plan	Instalment payment plan

9. The respondent contested the complaint by filing written reply. It is claimed that, complaint is not maintainable. This dispute should have been resolved through arbitration as the booking form as well the buyer's agreement contain arbitration clause. Respondent explains that two High Tension (HT) cables were passing through the project site and it (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. Moreover 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

10. As per respondent, although 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 these government authorities.

11. Further, 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.



A.O.

4-10-21


12. As per clause 4.4 of buyer's agreement, complainants had agreed to pay for additional sum for reservation of car parking space and they had also agreed to pay club membership charges as per clause 9.1. The complainants have paid Rs 79,14,345 after availing loan facility of Rs 44,00,000 from HDFC bank vide tripartite agreement dated 10.05.2012.
13. The respondent filed an application and has placed on record order dated 22.01.2020 passed by NCLAT and copy of affidavit filed before NCLAT. It is disclosed that 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.
14. I have perused documents on record and have heard learned counsels for the parties.
15. Respondent did not deny the facts that complainants have been allotted unit in question in project 'Raheja Revanta' being developed by it. A builder buyer agreement was executed between them on 24.04.2012. According to same, possession of unit was to be handed over to complainants within 48 months, with 6 months of grace period. Respondent did not claim that project was 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.

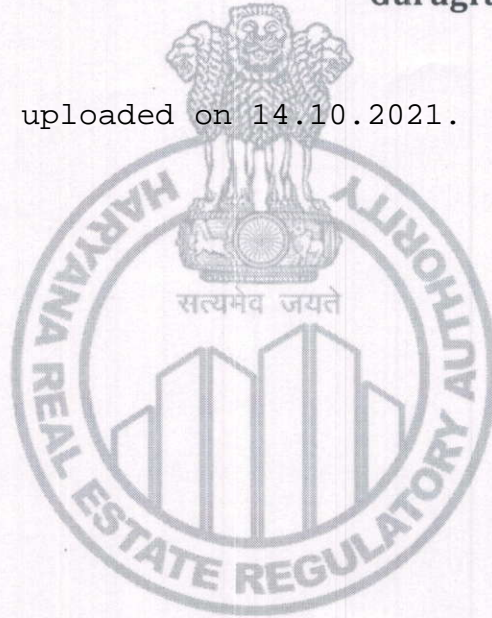
16. It is expected that when respondent thought to develop this project, same would have imagined as how roads will be constructed and how other infrastructure facilities will be provided to buyers. After making provisions of everything respondent was presumed to have entered in BBA with buyers. When buyers have made payment of almost 90 % of total sale consideration of unit, same were well within their rights to claim possession of their 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 too delayed without reasonable explanation. Respondent is liable to refund the amount of complainants /buyers in view of section 18 of the Act.
17. So far as proceeding 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 proceedings are pending now.
18. Considering facts stated above, complaint in hands is allowed and respondent is directed to refund Rs 79,67,716 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 litigation Rs 1 lac is also imposed upon respondent to be paid to complainants.

04.10.2021


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

Judgement uploaded on 14.10.2021.



HARERA
GURUGRAM