

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

Complaint no. : 896 of 2020

Date of decision : 19.10.2021

DHEERAJ RAIKHY
AND BHAVNA PANT
R/O : A-29, Jalvayu
Vihar, Sector-30,
Gurgaon

Complainants

Versus

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

Respondent

APPEARANCE:

For Complainants:

Ms. Vidhi Goel- Advocate


For Respondent:

Mr. M K Samwariya- Advocate

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ORDER

1. This is a complaint filed by Dheeraj Raikhey and Bhavana Pant (also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act of 2016) 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 28.10.2014, under subvention scheme and made payment of Rs 20,46,439 as booking amount. The respondent allotted a unit no. C-205 admeasuring 3434.380 sq. ft. sq. ft. for a total consideration of Rs 3,12,90,569 including BSP, EDC, IDC with taxes etc. The parties entered into MoU dated 11.12.2014 followed by agreement to sell dated 12.12.2014, incorporating terms and conditions towards purchase, payment and buyback of said unit.
3. The respondent had assured to give guaranteed buy back premium of Rs 1400 per sq. ft. after expiry of 36 months from the date of booking, in case they opt to surrender/exit.


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4. The complainants took a loan of Rs 2,25,00,000 from ICICI bank, under subvention scheme, as per plan suggested by respondent. A tripartite agreement was executed among parties for, said transaction.
5. 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 and after providing of necessary infrastructure specially road, sewer and water to the complex by the government, with 6 months grace period.
6. As per payment plan opted by the complainants, they made timely payment of all demands as and when raised by the respondent. An amount of Rs 2,21,13,0235 was disbursed to respondent by ICICI bank and in addition to the said amount, complainants paid Rs 74,66,330/- from 28.10.2016 to 21.03.2016. The respondent has received total amount of Rs 2,95,79,365 towards the subject unit.
7. In June 2017, the complainants exercised their right to surrender in accordance with terms of MoU and agreement to sell. The respondent failed to adhere to said terms and conditions of agreement to sell and MoU. The respondent extended timeline of subvention scheme and buy back by one year i.e. March 2019 and committed to make payment of all EMI of bank and buy back.

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8. The respondent offered a 1 BHK flat in lieu of the defaults being committed by respondent against the assured premium payable to complainants and demanded further payment towards that 1 BHK but the same was not acceptable to complainants.
9. The respondent had committed to foreclose the subvention loan in March 2019 and promised to pay entire amount of Rs 1,22,74,462 but the same failed to do so. The complainants have made payment towards the monthly instalments due towards the subvention loan to ICICI Bank even though all such payments were required to be made by respondent.
10. The complainants issued a demand notice dated 24.10.2019 and requested the respondent to pay Rs 4,43,59,443 along with interest @ 24 %. The respondent did not reply to said notice, till date.
11. Contending all this, complainant sought refund of Rs 4,57,06,893/- out of which a sum of Rs 2,95,79,365 has been paid to respondent by ICICI bank and complainants from their own funds and Rs 1,61,27,528 towards buyback premium and further interest and compensation under section 19(4) of Act of 2016.
12. The particulars of the project as given by complainants , in tabular form are reproduced as under:



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-205
2.	Unit measuring	3434.380 sq. ft.
3.	Date of Booking	28.10.2014
4.	Date of MoU	11.12.2014
5.	Date of Buyer's Agreement	12.12.2014
6.	Due Date of Delivery of Possession As per Clause No. 4.2 : The possession of said premises is proposed to be delivered within	11.12.2018

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	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	2 years 10 months
PAYMENT DETAILS		
8.	Total sale consideration	Rs 3,12,90,569
9.	Amount paid by the complainants	Rs 2,95,79,365
10.	Payment Plan	Subvention payment plan

13. The respondent contested the complaint by filing written reply. It is contended that booking and allotment of unit in question was made prior to enactment of Act of 2016 and hence provisions of said Act are not applicable. Without prejudice and to avoid complications, respondent has registered the project with HARERA vide registration no. 32 of 2017. The construction of the tower in which unit allotted to complainant is located is 75 % complete and respondent shall handover the possession of the same after its completion. The Authority in its various decisions has held that refund of amount will have adverse

effect on other allottees of the project. Further, complaint is not maintainable and the dispute should be resolved by arbitration since the booking form as well the buyer's agreement contain arbitration clause.

14. It is further plea of respondent that 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 done 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. The necessary infrastructure like 60 metre sector roads and 24 meter wide road connectivity, water and sewage which were supposed to be developed by HUDA parallelly, have not been developed. There is no water supply and sewerage lines or 33 KV electric infrastructure, which is important to make project habitable.

15. Further, as per clause 4.4 of agreement, complainants had agreed that they shall not claim any compensation for delay due to non-provision of infrastructure facilities since it is beyond the control of respondent. 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

16. 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. The unit of complainants falls in Surya Tower, which is expected to be completed by end of 2020

17. Respondent, claimed that the time for calculating the due date of possession shall start only when the infrastructure facilities will be provided by the government authorities. It (respondent) has invested huge money towards the project land, construction and other project related expenses and completing the building on fast track and to deliver the apartments to customers as soon as possible.

18. According to respondent through various emails, unavoidable circumstances were explained to complainants, which had occurred after execution of MoU. The respondent, as a gesture of goodwill, has assured that as per terms of MoU it shall honor 18 % interest per annum for delayed period and requested to


share another account details with respondent to credit the loan EMI post expiry of subvention period. As per terms of MoU, it was clearly agreed between the parties that any dispute should be resolved by arbitration only.

19. 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 preferred an appeal against said order passed by NCLT which was subsequently allowed with direction to stick by the construction schedule, as submitted by respondent before NCLT, Delhi.
20. I have heard learned counsels for the parties and perused documents on record.
21. 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 and MoU were executed between them on 12.12.2014 and 11.12.2014 respectively. According to same, possession of unit was to be handed over to complainants within 48 months of buyer's agreement, with 6 months of grace period. Respondent did 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.

22. 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 supposed to have entered into BBA, with buyers. When buyers have made timely payment of instalment as per payment plan, same are well within their rights to claim possession of their dream unit. Even if infrastructure works as alleged 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.

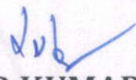
23. The complainants have exercised their right to surrender/exit in terms of clause 8 of MoU in June 2017 but respondent failed to adhere to the same. So far as contention of respondent with respect to arbitration clause is concerned, none of parties appeared serious about this provision. Even respondent did not invoke proceedings under Arbitration Act. Moreover, Act of 2016, being a special legislation for protection of interest of consumers in real estate sector, has overriding effect over other laws in existence, even over agreement between the parties.


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24. As far as proceeding before NCLT are concerned, even as per respondent appeal filed by it against order of NCLT has been allowed and no such proceedings are pending now.
25. Considering facts stated above, complaint in hands is allowed and respondent is directed to refund amount received from complainants or on their behalf from bank under tripartite agreement as stated above i.e. Rs 2,95,79,365 within 90 days from today, with interest @ 9.3 % p.a. from the dates of each payment, till realisation of amount. A cost of litigation Rs 1 lac is also imposed upon respondent to be paid to complainants.

19.10.2021


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

Judgement uploaded on 28.10.2021.