

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

**Complaint no. : 1020 of 2018**

**Date of decision : 13.10.2021**

REENA SAHNI AND  
RAJIV SAHNI  
R/O : C-3, 1<sup>st</sup> Floor,  
Subhadra Colony,  
Sarai Rohilla,  
Delhi-110035

**Complainants**

Versus

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

**Respondent**


**APPEARANCE:**

For Complainants:

Mr. S.P. Chopra (Advocate)

For Respondent:

Mr. M K Samwariya (Advocate)

  
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**ORDER**

1. This is a complaint filed by Reena Sahni and Rajiv Sahani (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 17.09.2013 and made payment of Rs 45,92,767 as booking amount. The respondent issued an allotment letter dated 06.02.2014 and allotted an unit no. A-124 admeasuring 1621.390 sq. ft. for a total consideration of Rs 1,37,71,388 including BSP, EDC, IDC with taxes etc. A builder buyer agreement (BBA) was executed on 06.02.2014
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.

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4. At the time of booking the respondent had assured for one free car parking space but illegally levied Rs 3,50,000 as charges for car parking. Upon several request of complainants, said charges were reduced to Rs 1,50,000 vide email dated 04.02.2014. The respondent through email dated 18.09.2015 admitted delay in construction work, on its part.
5. The complainants availed loan facility of Rs 75,00,000 from SBI Bank vide arrangement letter dated 28.10.2016, and said bank conducted its independent investigation regarding the progress of work at construction site on 07.12.2016 and found that the construction work is not complete and is still going on.
6. On 21.10.2017, the respondent raised demand along with interest against alleged delay in payment. Complainants vide their letter dated 27.01.2017, objected to said demand and interest, as said demand was premature. The respondent through its letter dated 07.02.2017 admitted that structure was not completed and hence demand could not have been raised against it. The respondent by email dated 28.07.2017 undertook that structure would be completed by July 2018 and no interest with respect to delay payment will be charged and again through email



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dated 24.08.2018, that project would be completed by end of 2019.

7. The complainants have paid all dues as demanded by the respondent, from time to time. When they visited the office of respondent, they (complainants) were informed that project will be completed by the year 2020. The respondent has failed to complete the finishing work and also to obtain occupation certificate. The complainants have paid Rs 70,17,990 i.e. 50 % of entire agreed sale consideration, along with miscellaneous and additional charges etc, on time.
8. Contending that 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 70,17,990, alongwith interest @ 18 % compounded monthly or as per RERA Rule 15 with prevailing applicable SBI highest marginal cost of lending rate plus , levy penalty of 5 % of estimated cost, Rs 10,00,000 as compensation for loss of reputation, physical discomfort, mental agony.
9. The particulars of the project are reproduced here as under, in tabular form:

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S.No.	Heads	Information
<b>PROJECT DETAILS</b>		
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
<b>UNIT DETAILS</b>		
1.	Unit no.	A-124
2.	Unit measuring	1621.390 sq. ft.
3.	Date of Booking	17.09.2013
4.	Date of Allotment Letter	06.02.2014
5.	Date of Buyer's Agreement	06.02.2014
6.	Due Date of Delivery of Possession  As per Clause No. 4.2 : The possession of said premises is proposed to be delivered within 48 months from the date of	06.02.2018

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	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	3 years 08 months
<b>PAYMENT DETAILS</b>		
8.	Total sale consideration	Rs 1,37,71,388
9.	Amount paid by the complainants	Rs 70,17,990
10.	Payment Plan	Instalment payment plan

10. The respondent contested the complaint by filing written reply. It is contended 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 are no water supply and sewerage lines or 33 KV electric infrastructure, which is important to make project habitable. As per clause 4.3. 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.

11. The respondent further claimed 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. The unit of complainants falls in Surya Tower, which is expected to be completed by end of 2020
12. Further, according to respondent, 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 delivering the apartments to customers as soon as possible.


13. The respondent, by filing an application placed on record order dated ~~10.02.2020~~ <sup>22.01.2020</sup> 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 the 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 the respondent before NCLT, Delhi.
14. I have heard learned counsels for the parties and perused documents on record.
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 06.02.2014. 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 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 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.
17. So far as proceeding before NCLT are concerned, as per respondent appeal filed by it against order of NCLT has been allowed and no such proceedings are pending now.
18. Considering facts stated above, complaint in hands is allowed and respondent is directed to refund Rs 70,17,990 received from complainants to latters within 90 days from today, with interest @ 9.3 % p.a. from the dates of payment, till realisation of amount. A cost of litigation Rs 1 lac is also imposed upon respondent to be paid to complainants.

**13.10.2021**

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