

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

Complaint no. : 1509 of 2021
Date of decision : 02.11.2021

PRAVEEN SUGANDH
AND RASHMI SUGANDH
R/O : 74, Tower No. 13,
Supreme Enclave,
Mayur Vihar Phase-1,
Delhi-110091

Complainants

Versus


M/s VATIKA LIMITED
Address : Vatika Triangle, 4th Floor,
Sushant Lok Phase-I, Block-A
Mehrauli Gurgaon Road
Gurugram, Haryana-122002

Respondent

APPEARANCE:

For Complainants:
For Respondent:

Mr. Harshit Batra Advocate
Mr. D. D. Sharma Advocate


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ORDER

1. This is a complaint filed by Praveen Sugandh and Rashmi Sugandh (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/promoter.
2. As per complainants, on 08.11.2013, they jointly booked a unit in respondent's project " **Tranquil Heights** ", situated at sector-82 A, Gurugram, and made payment of Rs 6,00,000 as booking amount. The respondent issued a provisional allotment letter dated 16.09.2014 and allotted unit No. A-204 on 2nd floor, admeasuring 1645 sq. ft. for a total consideration of Rs 1,17,22,270 /- , including BSP, EDC, IDC, IFMS etc. A builder buyer agreement (BBA) was executed in this regard on 30.07.2015.
3. As per Clause 13 of BBA, possession of said unit was proposed to be delivered within 48 months from the date of execution of said agreement. The respondent failed to complete construction work and consequently failed to deliver possession of the unit, till date.
4. As per payment plan opted by them (complainants), they made timely payment of Rs 68,27,819, but to their utter

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dismay, the possession of unit has not been offered as per the terms of BBA.

5. As possession of the unit was not delivered by 30.07.2019, they (complainants) requested respondent for the update of status of construction work of project. They also sought details of separate bank account for the subject as per the provisions of Act of 2016. The respondent failed to address the queries raised by them. They even visited the office of respondent but no update of construction work was provided to them by respondent.
6. In this way, the respondent has committed gross violation of the provisions of section 18(1) of the Act by inordinately delaying the delivery of possession. The unit was booked in 2013 and till date construction work is nowhere near completion, hence complainants are forced to file present complaint, seeking refund of entire amount of Rs 68,27,810, alongwith interest at prescribed rate, Rs 5,00,000 towards mental agony and Rs 1,25,000 towards cost of litigation.
7. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name	" Tranquil Heights ",

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2.	Project Location	Sector 82 A Gurugram, Haryana
3.	DTCP License	22 of 2011 dated 24.03.2011
4.	RERA Registration	Registered vide registration certificate no. 359 of 2017.

UNIT DETAILS

1.	Unit no.	204
2.	Unit measuring	1645 sq. ft.
3.	Date of Booking	08.11.2013
4.	Date of Allotment Letter	16.09.2014
5.	Date of Buyer's Agreement	30.07.2015
6.	Due Date of Delivery of Possession Clause 13 of buyer's agreement : possession of the unit was proposed to be delivered within 48 months from the date of execution of buyer's agreement	30.07.2019
7.	Delay in handing over possession till date	2 years 3 months

PAYMENT DETAILS

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8.	Total sale consideration	Rs 1,17,22,270 (As per statement of accounts annexed with complaint)
9.	Amount paid by the complainants	Rs 68,27,810

8. The respondent contested the complaint by filing a reply. It is averred that no agreement as referred under provisions of Act of 2016 and Rules 2017 has been executed between respondent and complainants. The agreement has been executed much prior to the coming into force of Act of 2016. The adjudication of the complaint for refund, interest and compensation has to be in reference to the agreement for sale, executed in terms of Act of 2016 and Rules 2017 and no other agreement.
9. The possession of the unit was scheduled to be delivered within 48 months from the date of execution of buyer's agreement subject to timely payment of installments by complainants and force majeure circumstances. The complainants failed to fulfill their obligations and have not paid installments on time. Moreover, construction work of project was hampered due to decision of GAIL to laydown its gas pipeline from within duly pre-approved and sanctioned

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project of the respondent, which constrained it (respondent) to file a writ petition in Hon'ble High Court of Punjab and Haryana, seeking directions to stop disruption caused by GAIL towards the project. Said petition got dismissed on grounds of larger public interest. The construction plans of the respondent were adversely affected and it (respondent) was forced to reevaluate its construction plans, which caused a long delay.

10. Further, the delay was caused by HUDA in acquisition of land for laying down sector roads for connecting the project. The implementation of MNREGA schemes by central government caused shortage of labour supply. The orders passed by Hon'ble Supreme Court and Hon'ble High Court of Punjab and Haryana, prohibiting mining by contractors resulted into shortage of supply of stone and sand and disrupted the construction work. The unusual heavy rains in Gurgaon, delay in supply of cement and steel due to various large scale agitations of in Haryana has badly impacted the construction work. The declaration of Gurgaon as a notified area for the purpose of ground water and restrictions imposed by state government on its extraction for construction purposes, further delayed the project.
11. Again, delay was caused due to re-routing by DHBVN of a 66 KVA high-tension electricity line passing over the project.

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National Green Tribunal (NGT)/Environmental Pollution Control Authority (EPCA) issued directives and measures to counter deterioration in Air Quality in Delhi- NCR region especially during winter months. The bans were imposed between November to December 2019. The imposition of several partial restrictions from time to time prevented respondent from continuing construction work. The governmental of India imposed lockdown in India in March 2020, to curb spread of Covid 19 which also affected the construction work as several workers migrated to their native place. Furthermore, some suppliers of respondent located in Maharashtra are still unable to process orders which have led to more delay.

12. Superstructure of unit in question has been completed. The complainants have paid around 58 % of sale consideration of unit and there is an outstanding amount of Rs 1,15,864 including interest, which is still due to be paid by the complainants.
13. Contending all this respondent prayed for dismissal of complaint.
14. I have heard learned counsels for the parties and have perused documents on record.
15. It is not the plea of respondent that on date, when Act of 2016, came into force, it had obtained completion certificate, for the

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subject project, so it was an ongoing project, and under the Act, respondent was under obligation to get this project registered within three months. The provisions of Act of 2016 and Rules 2017 are thus well applicable in this case

16. So far as plea of respondent regarding, various orders of NGT and Environment Pollution Control Authority regarding stoppage of construction work is concerned, respondent did not place on record any evidence to show ^{as} for how long, the construction work remained halted, due to such orders and how these orders directly impacted the development of project. There is no evidence to prove shortage of stone and sand. Such vague contentions of respondent without evidence cannot be accepted.
17. Even as per respondent, writ petition filed by it against GAIL has been dismissed by High Court. There is no evidence to establish as what portion of project was acquired by government for construction of connecting road.
18. It is not disputed that respondent had agreed to handover possession within 48 months of BBA, executed on 30.07.2015. Due date of possession comes to 30.07.2019. Complainant is sated to have paid Rs 68,27,810 for the unit in question. The occupation certificate for the said unit has not been obtained by respondent till date.

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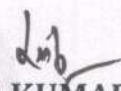
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19. It is well settled that a buyer cannot be made to wait for his/her dream house indefinitely. Even counsel for respondent is not in position to tell as till when project/unit in question will be completed and possession would be offered to the complainants. In such a situation, the complainants are well within their right to seek refund of their amount, along with interest etc.
20. The complaint in hands is, thus, allowed. Respondent is directed to refund the amounts received from complainants till now i.e. Rs 68,27,810/- within 90 days from today , along with interest @ 9.3% p.a. from the dates of receipts till realization of amount. The respondent is also burdened with litigation cost of Rs.50,000/- to be paid to the complainants.

File be consigned to the Registry.

02.11.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 22.11.2021.