

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

Complaint no. : 1513 of 2021
Date of decision : 02.11.2021

PRAVEEN PAHUJA AND
SUBHASH CHAND PAHUJA
R/O : H.No. 358, Sector-15 A,
Noida, Uttar Pradesh

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 Pahuja and Subhash Chand Pahuja (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 07.11.2013, they jointly booked a unit in respondent's project " **Tranquil Heights** ", situated at sector-82 A, Gurugram. They paid Rs 6,00,000 as booking amount. The respondent allotted unit No. A-203 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 unit was proposed to be delivered within 48 months from the date of execution of buyer's agreement. The respondent failed to complete construction work and consequently to deliver possession of the unit, till date.
4. As per payment plan opted by them (complainants), they made timely payment of Rs 68,28,052 but to their utter

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dismay, the possession of the unit has not been offered as per the terms of buyer's agreement.

5. They (complainants) requested the respondent for update of status of construction work of project. They sought details of separate bank account also for the project as per provisions of Act of 2016. The respondent failed to address queries raised by them (complainants). They even visited the office of respondent but no update of construction work was provided by the respondent. The possession was ought to have been delivered in the year 2019 but there is no progress at work site.
6. In this way, the respondent has committed gross violation of the provisions of section 18(1) of the Act, by inordinately delaying delivery of possession. The unit was booked in the year 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 68,28,052, along with 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 ",



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.	203
2.	Unit measuring	1645 sq. ft.
3.	Date of Booking	07.11.2013
4.	Date of Buyer's Agreement	30.07.2015
5.	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
6.	Delay in handing over possession till date	2 years 3 months

PAYMENT DETAILS

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7.	Total sale consideration	Rs 1,17,22,270/- (As per statement of accounts annexed with complaint)
8.	Amount paid by the complainants	Rs 68,28,052/-

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 it and complainants. The builder buyer's agreement in the present complaint has been executed much prior to the coming into force of Act of 2016. 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 the installments on time.

9. Further, the construction work of project was hampered due to decision of GAIL to laydown its gas pipeline from within the duly pre-approved and sanctioned project of the respondent, which constrained it (respondent) to file a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop disruption caused by GAIL towards the project. Said petition was dismissed on grounds of larger public interest.



The construction plans of the respondent were adversely affected and same (respondent) was forced to reevaluate its construction plans which caused long delay.

10. Again, 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 stones and sand required for construction work. The unusual heavy rains in Gurgaon, delay in supply of cement and steel due to various large scale agitations in Haryana has badly impacted the construction work. 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, also hampered construction.
11. It is further averred that delay was caused due to re-routing by DHBVN of a 56 KVA high-tension electricity line passing over the project. The 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 construction work remained stopped between November



to December 2019. 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 led to more delay.

12. The construction work has been re-started now and it is going on, in full swing. Superstructure of unit in question has been completed. Further, the complainants have not made payment of outstanding dues and hence they are not entitled to get any refund or compensation, as claimed by them.

13. Contending all this respondent prayed for dismissal of complaint.

14. I have heard learned counsels for both of parties and have perused the documents on record.

15. It is not the plea of respondent that on the date, when Act of 2016, came into force, it had obtained the completion certificate for the project in question, 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 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 has not placed on record any evidence to show for how much period the construction work remained halted due to such orders. The respondent has failed to prove shortage of stone and sand. Such vague contentions of respondent without evidence to substantiate the same, cannot be accepted.

9. Even as per respondent, writ petition filed by it against GAIL has been dismissed by High Court. True, pandemic of covid19 gripped entire nation and government of India was constrained to impose lockdown but all this happened on and after 23rd March 2020 i.e. much after lapse of agreed period for handing over possession of unit to complainants.

17. It is not disputed that respondent had agreed to handover possession within 48 months of BBA, which was executed on 30.07.2015. Due date of possession comes to 30.07.2019. Complainant is stated to have paid Rs 68,28,052 for the unit in question. It is not case of respondent that occupation certificate for the said unit has been obtained till date or that construction work is complete.

18. 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 or possession of same will be offered to the complainants. Respondent did not adduce any

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2-11-21



evidence to show progress of work, status of work done so far. In such a situation the complainants are well within their right to seek refund of their amount along with interest etc.

19. The complaint in hands is, thus, allowed. Respondent is directed to refund amounts received from complainants till now i.e. Rs 68,28,052 /- within 90 days from today , along with interest @ 9.3% p.a. from the date of each receipts till realization of amount. The respondent is also burdened with litigation cost of Rs.1,00,000/- 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.