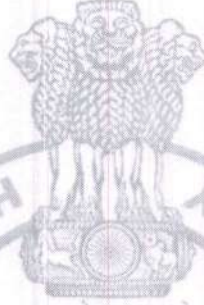


**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 856 of 2020

Date of decision : 28.10.2021

COL. SACHIT SARDANA,
MONICA SARDANA AND
SHUBHIKA SARDANA
R/O : L-49 D, First Floor,
Block L, Saket, New Delhi



Complainants

Versus

1. RAMPRASTHA PROMOTERS AND DEVELOPERS
ADDRESS : Plot No. 114, Sector-44
Gurgaon-122002
2. BLUEBELL PRPTECH PVT. LTD.

Respondents

For Complainant:

Mr. Nilotpal Shyam Advocate

For Respondents:

Mr. Anuj Malhotra Advocate

ORDER

1. This is a complaint filed by Col. Sachit Sardana, Ms. Monica Sardana and Ms. Shubhika Sardana (also called as buyers)



under section 31 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 respondents/developers.

2. As per complainant, on 14.11.2011, they booked a unit in respondent's project **RISE**, situated at sector-37 D, Gurugram and made payment of Rs 6,84,357 as booking amount. The respondents vide allotment letter dated 28.01.2012 allotted a unit ² bearing unit No. E-1401, admeasuring 1825 sq. ft for a total consideration of Rs 82,11,375 including BSP, PLC, EDC etc. A buyers agreement dated 16.06.2012 was executed between parties in this regard.
3. As per clause 15 (a) of buyer's agreement, possession of the said premises was to be delivered by September 2015 with a further grace period of 120 days. The respondents failed to complete construction work and consequently failed to deliver the same till date.
4. As per the payment plan opted by the complainants, they made timely payment of Rs 74,28,845/- i.e 90 % of the entire agreed sale consideration along with miscellaneous and additional charges etc, but to their utter dismay, the possession of the apartment has not been offered as agreed in buyer's agreement.

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5. The respondents gave false assurances regarding new dates of handing over the possession without assigning any reason for such a prolonged delay. Delivery of possession of unit can not be expected in near future as respondents have not received occupation certificate till date and has not even applied for it. The respondents deliberately not maintaining necessary information such as copy of RERA registration, layout plans, sectioned plan etc on their website.
6. Contending that the respondents have committed gross violation of the provisions of section 18(1) of the Act, they (complainants) opted to file present complaint. Booking of the unit was made in year 2011 and till date, the project is not complete. The complainants have sought seeking refund of entire amount of Rs 74,28,845, along with interest @ 18 % p.a. compounded quarterly to be calculated from the date of payments, Rs 5,00,000 towards mental torture and harassment and Rs 1,00,000 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 and location	" RISE", Sector 37 C, Gurugram,
2.	Project area	60.511 acres

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3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	33 of 2008 dated 10.02.2008 valid up to 18.02.2025
5.	Name of licensee	Ramprastha builders and 11 others.
6.	RERA Registered/ not registered	Registered vide no. 278 of 2017
UNIT DETAILS		
1.	Unit no.	E-1401
2.	Unit measuring	1825 sq. ft.
3.	Date of Booking	14.11.2011
4.	Date of Allotment	28.01.2012
5.	Date of Buyer's Agreement	16.06.2012
6.	Clause 15 (a) of buyer's agreement As per clause 15 (a) of buyer's agreement, possession of the said premisses was to be delivered by September 2015 with a further grace period of 120 days	September 2015
7.	Delay in handing over possession till date	6 years 1 month
PAYMENT DETAILS		
8.	Total sale consideration	Rs 82,11,375

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9.	Amount paid by the complainant	Rs 74,28,845/-
10	Payment Plan	Construction linked payment plan

11. The respondents raised preliminary objection about jurisdiction of Adjudicating Officer to adjudicate complaints seeking refund. It is averred that statement of object and reasons as well as the preamble of the Act of 2016 clearly state that it is enacted for effective consumer protection and to protect the consumers in real estate sector and not of the speculative investors. As ~~the~~ said Act has not defined the ^{term} consumer therefore the definition of consumer as provided under ^{The} Consumer Protection Act, has to be referred for adjudicating the present complaint. The complainants are speculative investors and do not fall under the purview of consumers. Further, complainants had never raised any issue whatsoever and have now concocted a false story and raised frivolous issues.

12. As per respondents, they have completed the construction of the project and will be able to apply for occupation certification by 30.12.2020 or within such extended time as may be extended by the Authority. According to them, lot of allottees including complainants

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did not pay their installments, on time which affected the progress of construction work. The complainants are defaulters and have deliberately failed to make payment of installments which resulted in outstanding dues of Rs 1,22,133 on account of delay charges/interest as reflected in the statement of accounts.

13. It is averred further that due to situations beyond their control, the construction of the project could not be completed till 30.06.2019 and extension of one year with revised date as 30.12.2020 was granted by the Real Estate Regulatory Authority, Gurugram. Moreover, due to covid - 19 pandemic the construction of the project has been hampered and in view of the same extension was provided by Authority, to all such ongoing projects for 6 months and revised date of completion of the project is 30.06.2021.

14. All the queries of complainants were duly replied by them(respondents) and revised date as 30.06.2019 is matter of record. Construction status is also updated on the website of respondents. Such huge projects do take reasonable time for completion and timelines are not absolute.

15. Contending all this respondents prayed for dismissal of complaint.

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16. I have heard learned counsels for parties and perused the record.

17. So far as preliminary objection raised by respondents that complainants are not entitled to refund being speculative investors is concerned, I do not find much substance in this plea. True, one of objects of Act of 2016 is to 'protect the interests of consumers in real estate sector'. The word 'consumer' has not been defined in this Act. According to learned counsel for respondents, word "consumer" in Act of 2016 can have same meaning as defined by The Consumer Protection Act, 1986.

Section 2(d) of The Consumer Protection Act, 1986 defines consumer as under: सत्यमेव जयते

"consumer" means any person who,-

- (i) Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any use of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or.....

18. According to this definition, consumer does not include a person, who obtains goods for resale or for any commercial purpose. It is worth notice that the legislature not only left word 'consumer' undefined, it did not clarify that 'consumer' will have same meaning as defined under The Consumer Protection Act.

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Despite mentioning words 'consumer' in real estate sector in ~~its~~ preamble, the Act of 2016, word 'allottee' is used repeatedly inside the Act. For example, Section 19 tells about rights and duties of 'allottee' and not rights and duties of 'consumer'. It appears that legislature did not intend to impart definition of word 'consumer' here in Act of 2016 as found in Consumer Protection Act, 1986. Said definition may be good about all 'goods' other than 'real estate'. Even otherwise, there is nothing on record to substantiate that complainants intended to earn profit by resale of unit in question. Learned counsel for complainants vehemently denied the fact that his clients were speculative investors, as alleged on behalf of respondents.

19. As discussed above, counsel for respondents claims that his clients have been given liberty to complete project upto 30.12.2020, due to extension of one year's time by Real Estate Regulatory Authority, Gurugram and hence they (respondents) are not obliged to hand over possession of unit, as per ABA i.e. by September, 2015. Possession can be handed over till 30.12.2020.

20. I am not in consonance with learned counsel for respondent in this regard. ^{also.} It is not disputed that parties executed Apartment Buyer's Agreement on 16.06.2012. As per clause 15(a) of ABA, subject to allottee having complied with all terms and conditions of this agreement, the developer had agreed to hand over possession of unit in question till September, 2015, with grace period of 120 days for getting occupation certificate. It is apparent that developer was entitled to benefit of this grace period only for applying and obtaining occupation certificate. Due date, when the respondents

were liable to hand over possession lapsed in September 2015. There is no denial that project was not even near completion till September, 2015. Even as per respondents, same intended to apply for occupation certificate till 30.12.2020.

21. Respondents claim that due to Covid-19 Pandemic, ^{the} same could not complete construction. As mentioned above, respondent had agreed to complete the project till September, 2015, there was no such pandemic at that time.

22. It is not denied that complainants have already paid Rs 74,28,845/-. The claim that they have paid all of their dues in time, is not denied during arguments. If other allottees failed to pay their instalments in time, complainants can not be made to suffer. The respondents are not in position to deliver the possession even now as ^{same have} ~~it has~~ not received occupation certificate. What so, if respondents gave declaration, while applying for registration under Act of 2016, that same may complete the project till 30.06.2019 or as ^{per} revised date by 30.12.2020, same is not binding upon the complainants. It is well settled that a buyer cannot be made to wait for his/her dream unit, indefinitely. Respondents have grossly failed in obligation to complete and handover possession of unit to complainants, within agreed time.

22. The complaint in hands is allowed and respondents are directed to refund the amount paid by the complainants i.e. Rs 74,28,845/- within 90 days from date of this order along with interest @ 9.30 % p.a from the date of each payment till its realisation. Cost of

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litigation of Rs 1,00,000/- is imposed upon respondents to be paid to the complainants.

23. File be consigned to registry.


(RAJENDER KUMAR)
Adjudicating Officer
Haryana Real Estate Regulatory Authority
Gurugram
28.10.2021



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Judgement uploaded on 23.12.2021