

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1099 OF 2017

1. ASHISH VOHRA

S/o. Sh. Om Prakash Vohra, R/o. 3199, Sector - 23,

GURGAON - 122017

HARYANA

.....Complainant(s)

Versus

1. M/S. RAHEJA DEVELOPERS LTD.

Through its Director/M.D. W4D 204/5, Keshav Kunj, Carippa

Marg, Western Avenue, Sainik Farms,

NEW DELHI - 110062

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING
MEMBER**

HON'BLE DR. INDER JIT SINGH, MEMBER

FOR THE COMPLAINANT : MS. PADMAPRIYA, ADVOCATE

FOR THE OPP. PARTY : MR. SIDDHARTH BANTHIA, ADVOCATE

Dated : 26 June 2023

ORDER

1. Heard Ms. Padmapriya, Advocate, for the complainant and Mr. Siddharth Banthia, Advocate, for the opposite party.
2. Ashish Vohra has filed above complaint, for directing the opposite party to (i) handover possession of the unit allotted to him in the project "Raheja Revanta" and pay delay compensation in the form of interest @18% per annum on his deposit, from due date of possession till the delivery of possession; (ii) pay Rs.1000000/-, as compensation for deficiency in service, mental agony and harassment; (iii) pay Rs.200000/-, as litigation costs; and (iv) any other relief which is deemed fit and proper in the facts of the case. At the time of argument, the counsel for the complainant prayed for refund of entire amount deposited by the complainant with interest.
3. The complainant stated that M/s. Raheja Developers Limited (the opposite party) was a company, registered under the Companies Act, 1956 and engaged in the business of development and construction of group housing project. The opposite party launched a group housing project, in the name of "Raheja Revanta" at Sector-78, Gurgaon, in the year, 2011 and made wide publicity of its amenities and facilities. Believing upon the representations of the opposite party, the complainant booked an independent floor and deposited booking amount of Rs.1601033/- on 11.02.2012 and Rs.2401549/- on 14.04.2012. The opposite party issued Allotment Letter on 23.05.2012 allotting Apartment No.IF1-04 "Tapas", admeasuring 2548.70 sq.ft. and executed Agreement to Sell on 23.05.2012, in favour of the complainant, in which, total consideration of Rs.18838955/- has been mentioned. Annexure-A of the

agreement contained payment plan as “construction link payment plan”. Article-4.2 of the agreement provides 36 months period from the date of execution of the agreement with grace period of six months for delivery of possession. As per demand, the complainant deposited Rs.14402973/- till December, 2015. The opposite party was raising demand of the instalments without attaining the stage of construction for which demand used to be raised. The period of 36 months expired on 22.05.2015 and grace period of six months expired on 22.11.2015. The complainant gave a legal notice dated 02.02.2016, calling upon the opposite party to handover possession within one month. In spite of service of legal notice, the opposite party did not respond. The complainant filed CC/756/2016 before State Consumer Disputes Redressal Commission, Delhi, which dismissed as withdrawn by order dated 19.08.2016 with liberty to file the complainant before appropriate forum. Then this complaint was filed on 19.04.2017, alleging deficiency in service.

4. The opposite party filed its written reply on 19.07.2017, in which, booking of the floor, allotment of the floor, execution of agreement and the deposits made by the complainant, have not been disputed. The opposite party stated that the construction was delayed for force majeure reasons and liable to be condoned under clause-4.4 of the agreement. Several home buyers of the project, including the complainant committed default in payment of instalment, which created paucity of the fund. The complainant always delayed payment of the instalment and around an amount of interest of Rs.4.5 lacs for delayed payment was waived by the opposite party. High Tension Electricity line was passing through middle of the project land. DHVBNL took unreasonable time in making it underground. The contractor engaged by the opposite party created dispute. Acquisition of the land of Dwarka Expressway got entangled into litigation. Although 10 years expired but HUDA failed to provide basic infrastructure facilities such as road, sewer line, water line and electricity supply although EDC & IDC etc. have been deposited by the opposite party and several other builders of the locality. The opposite party, vide letter dated 26.02.2017, informed the buyers about tentative date for completion of the project. Slow pace of construction was due to non-availability of basic infrastructure. The construction of the project is at advance stage. The opposite party is making all efforts to complete the construction at the earliest. Article 4.2 provides for delay compensation and the interest of the complainant is secured. The agreement provides for arbitration in case of any dispute and the complaint is not maintainable. Haryana Real Estate Regulatory and Development Authority (HRERA) has been notified under Real Estate (Regulation and Development) Act, 2016, which is a special enactment on the subject. The complainant can file complaint before the HRERA and this complaint is not maintainable. The complainant already owned a house and this floor was booked for commercial purposes and the complainant is not a consumer. The complaint has no merit and liable to be dismissed.

5. The complainant filed Rejoinder Reply, Affidavit of Evidence, Affidavit of Admission/Denial of documents of Ashish Vohra and documentary evidence. In Affidavit of Evidence, Ashish Vohra stated that till filing the affidavit, he had deposited Rs.16897797/-. The opposite party filed Affidavit of Evidence, Affidavit of Admission/Denial of documents of Surender Kumar and Additional Affidavit of Rajesh Kumar Singh and documentary evidence. Both the parties have filed their written synopsis. Till filing the synopsis, the complainant had deposited Rs.17291807/-. The opposite party, through IA/1336/2023, filed a copy of Writ Petition (C) No. 609 of 2023, filed by the opposite party for directing Haryana

Urban Development Authority to provide external infrastructures viz, sector roads, electricity distribution system, water supply, sewage line etc. and to provide essential civil amenities to the project "Raheja Revanta" and the order of Punjab and Haryana High Court dated 12.01.2023, directing the respondents to file reply. The opposite party filed IA/1335/2023, for impleading Haryana Urban Development Authority and Gurugram Municipal Development Authority as the opposite parties in the complaint.

6. We have considered the arguments of the parties and examined the record. The opposite party has filed IA/1335/2023, for impleading Haryana Urban Development Authority and Gurugram Municipal Development Authority as the opposite parties in the complaint. There is no privity of contract between the complainant and Haryana Urban Development Authority and Gurugram Municipal Development Authority. Scope of consumer dispute cannot be enhanced. IA/1335/2023 is rejected. The opposite party has filed IA/1336/2023, for bringing on record subsequent event. IA/1336/2023 is allowed.

7. Article-4.2 of the agreement provides 36 months period from the date of execution of the agreement with grace period of six months for delivery of possession. The period of 36 months expired on 22.05.2015 and grace period of six months expired on 22.11.2015. Annexure-A of the agreement provides "construction link payment plan". As per demand, the complainant deposited Rs.14402973/- till December, 2015 and till filing the synopsis, the complainant had deposited Rs.17291807/-. From Writ Petition (C) No. 609 of 2023, filed by the opposite party, it is proved that none of the basic amenities, necessary for habitation are available to the project. About 8 years have expired from due date of possession and there is no hope that the project would be ready for habitation in near future. Supreme Court in **Fortune Infrastructure Vs. Trevor D' Limba, (2018) 5 SCC 442, Pioneer Urban Land Infrastructure Ltd. Vs. Govindan Raghavan, (2019) 5 SCC 725, Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, 2019 (6) SCALE 462**, held that the home buyer cannot be made to wait for possession for an unlimited period.

8. The opposite party took preliminary objection that the complainant already owned a house and this floor was booked for commercial purposes and the complainant is not a consumer but has not adduced any evidence to prove that the complainant was engaged in the business of purchasing and selling the properties. Merely owning one residential house does not mean that the present floor was booked for commercial purpose. The other preliminary objection relates to arbitration clause of the agreement. The Arbitration and Conciliation Act, 1996 does not exclude the jurisdiction of Consumer Forum. It is well settled that when two remedies are available, then the complainant can choose any one of them.

9. Relying upon Section 14 (1) (d) of Consumer Protection Act, 1986 as well as judgments in **Consumer Utility & Trust Society Jaipur vs. Chairman & Managing Director, Bank of Baroda, Calcutta and Anr. (1995) 2 SCC 150; Branch Manager Indigo Airlines vs. Kalpana Rani- MANU/SC/0095/2020; Ishwar Rawat vs. HUDA- MANU/CF/0142/2008; BB Patel vs. DLF Universal Limited- SC Civil Appeal No.1106 of 2009 dated 25.01.2002; Jagad Bandhu Chatterjee vs. Nilima Rani- SC- MANU/SC/0490/1969 and Raheja Developers Limited vs. State of Haryana by Punjab & Haryana High Court dated 12.01.2023**, the counsel for the opposite party submitted that the opposite party has not committed any negligence, therefore, opposite party is not liable to

pay any compensation. The argument of the counsel for the opposite party is not liable to be accepted. The opposite party advertised the project as most iconic project and induced the home buyers to purchase a house in it. The project was advertised in the year 2011 and for about 12 years the opposite party did not even provide the basic amenities which are necessary for habitation. It is only in the year 2023 the opposite party has filed a writ for issue of mandamus directing the government authorities to develop the basic infrastructure. By that time, the opposite party has collected more than 95% of consideration from the buyers. This is not only negligence but a gross negligence. In view of the fact that till today the opposite party has not been able to complete the project nor obtained occupation certificate nor there has been any basic amenities for habitation, the relief is liable to be moulded and relief of refund as prayed during argument is liable to be granted. Supreme Court in **Experion Developers Pvt. Ltd. vs. Sushma Ashok Shiroom (2002) SCC Online SC 416** held that in case of refund, interest @9% per annum is a just compensation.

ORDER

In view of aforesaid discussions, the complaint is partly allowed. The opposite party is directed to refund entire amount deposited by the complainant with interest @ 9% per annum from date of respective deposit till the date of refund, within a period of two months from the date of this judgement.

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RAM SURAT RAM MAUR
PRESIDING MEMB

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DR. INDER JIT SINGH
MEMBER