

<b>PROCEEDINGS OF THE DAY</b>	
Day and Date	Tuesday and 18.02.2020
Complaint No.	CR/725/2019 Case titled as Devender Lal Pahwa Vs Raheja Developers Limited
Complainant	Devender Lal Pahwa
Represented through	Shri Sushil Yadav, Advocate
Respondent	Raheja Developers Limited
Respondent Represented through	Shri Tarun Sharma, AR with Shri Garvit Gupta, Advocate
Last date of hearing	18.12.2019
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

### Proceedings

Arguments heard.

The counsel for the complainant has stated that as per clause 4.2 of the BBA dated 3.9.2012, the possession of the unit in respect of "TAPAS" independent floor was to be delivered within a period of 36 months + 6 months from the date of execution of the agreement subject to the condition that the possession will be delivered after providing necessary infrastructure especially road, sewer and water in the sector by the Government. Shri Tarun Sharma representative of the company has submitted that required infrastructure facilities were to be provided in the sector by the Government, therefore, the respondent has not offered the unit to the complainant so far.

On examination of clause 4.2 of the agreement which is re-produced as below:-

*"Possession Time and Compensation:*



**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

*That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser within thirty six (36) months in respect of "TAPAS" independent floors and forty-eight (48) months in respect of "SURYA TOWER" from the date of execution of the Agreement to sell and after providing of necessary infrastructure specially road, sewer and water in the sector by the Government, but subject to force majeure conditions or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above. The Seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the purchaser for his occupation and use and subject to the purchaser having complied with all the terms and conditions of the Application Form and Agreement to Sell. In the event of his failure to take over and/or occupy and use the Unit provisionally and/or finally allotted within thirty (30) days from the date of intimation in writing by the Seller, then the same shall lie at his/her risk and cost and the purchaser shall be liable to pay compensation @ Rs.7/- sq. ft of the super area per month as holding charges for the entire period of such delay. If the seller fails to complete the construction of the said building/unit within Thirty Six (36) /Forty Eight (48) months plus aforesaid grace period of six (6) months from the date of execution of the Agreement to Sell and after providing of necessary infrastructure in the sector by the Government or for any reason other than the reason stated above, then the Seller shall be liable to pay to the purchaser compensation @ Rs.7/- sq. ft of the super area per month for the entire period of such delay which is proportionate to the rental income for the similar property in the area of average rental of equivalent sized unit in the vicinity, whichever is higher".*

It has been transpired that, in fact, this clause is basically in two parts, one part i.e. completion of tower/building in all respects and provision of internal development works within licenced area was to be complied with by the promoter and the second part of this condition i.e. provisions of necessary

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016  
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण  
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

infrastructure especially road, sewer and water in the sector by the Government was to be complied with by HSVP/HUDA where the promoter has deposited external development charges as per directions of DTCP Haryana. Since so far the promoter has not been able to obtain occupation certificate from the competent authority in respect of tower/building where the unit has been allotted to the complainant, therefore, the complainant is entitled for delayed possession charges under section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 at the prescribed rate of interest i.e. 10.20% per annum on the amount deposited by the complainant with the respondent from the due date of possession till the offer of physical possession of the allotted unit. As such the respondent cannot rely upon the condition that the government has not provided necessary infrastructure in the area. Moreover, at the time of issuance of licence by the competent authority, the promoter has also executed bilateral agreement stating therein that till such time, government services are made available in this area, they will manage the services at their own level.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar  
(Member)  
18.02.2020

Subhash Chander Kush  
(Member)