



**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

**Complaint no. : 572 of 2019**  
**First date of hearing: 13.11.2019**  
**Date of decision : 12.07.2022**

Mrs. Anjana Dureja  
W/o Mr. Rakesh Dureja  
R/o: - 37, Ground Floor, Rajaouri Garden, New Delhi-  
110027

**Complainant**

Versus

M/s Raheja Developers Limited.  
**Regd. Office at:** W4D, 204/5, Keshav Kunj, Western  
Avenue, Sainik Farms, New Delhi- 110062

**Respondent**

**CORAM:**

Shri K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Sh. Rohita Singh (Advocate)  
Sh. Udayan Yadav  
Sh. Yash Sharma A.R

Complainant

Respondent company

**ORDER**

1. The present complaint dated **20.02.2019** has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the



Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Raheja Revanta", Sector 78, Gurugram, Haryana
2.	Project area	18.7213 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP license no. and validity status	49 of 2011 dated 01.06.2011 valid up to 31.05.2021
5.	Name of licensee	Sh. Ram Chander, Ram Sawroop and 4 Others
6.	Date of approval of building plans (revised)	24.04.2017 [As per information obtained by the planning branch]
7.	Date of environment clearances (revised)	31.04.2017 [As per information obtained by the planning branch]
8.	RERA Registered/ not registered	Registered vide no. 32 of 2017 dated 04.08.2017
9.	RERA registration valid up to	31.07.2022 5 Years from the date of revised Environment Clearance
10.	Unit no.	B-182, 18 <sup>th</sup> floor, Tower/block-B (Page no. 10 of the complaint)



11.	Unit area admeasuring	1226.34 sq. ft. (Page no. 10 of the complaint)
12.	Date of execution of agreement to sell	18.10.2012 (Page no. 8 of the complaint)
13.	Possession clause	<b>4.2 Possession Time and Compensation</b> <i>That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser <b>within</b> thirty-six (36) months in respect of 'TAPAS' Independent Floors <b>and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer &amp; 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 this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this</b></i>



		<p><i>application form &amp; 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 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 compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay.....”</i></p> <p>(Page no. 22 of the complaint)</p>
14.	Grace period	<p><b>Allowed</b></p> <p>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by October 2016. As per agreement to sell, the construction of the project is to be completed by October 2016 which is not completed till date. <b>Accordingly, in the present case the grace period of 6 months is allowed.</b></p>
15.	Due date of possession	18.04.2017



		(Note: - 48 months from date of agreement i.e., 18.10.2012 + 6 months grace period)
16.	Basic sale consideration as per BBA at page 43 of complaint	Rs.1,03,81,014/-
17.	Total sale consideration as per applicant ledger dated 15.04.2017 page no. 52 of complaint	Rs.1,08,52,905/-
18.	Amount paid by the complainant as per applicant ledger dated 15.04.2017 page no. 52 of complaint	Rs.88,91,338/-
19.	Payment Plan	Installment payment plan [Page no. 42 of the complaint]
20.	Occupation certificate /Completion certificate	Not received
21.	Offer of possession	Not offered
22.	Delay in handing over the possession till date of filing complaint i.e., 20.02.2019	1 years 10 months and 2 days

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint: -

- I. That on 07.12.2011, the complainant had booked one flat admeasuring 1621.390 sq. ft. super area which includes 1226.34 sq. ft. built up area on 18<sup>th</sup> floor and court/terrace in tower- B on the application dated 07.12.2011, the respondent has allotted the unit bearing no. B-182, on 18<sup>th</sup> floor, in tower- B, situated at "Rajeja

- Revanta" Sector- 78, Gurugram. Both the parties executed the agreement to sell on 18.12.2012, for a basic sale consideration of Rs.91,44,640/- and the Rs.1,03,81,014/- (including tax) as per agreed payment plan.
- II. That against the said sale consideration, the complainant has already paid an amount of Rs.88,91,338/- on 15.04.2017.
  - III. That the possession of the said unit was to be delivered within 48 months from the date of execution of the agreement to sell. The said period of possession could have been extended further for another six months. Due date of possession was fixed as 18.10.2016 with additional grace period of six months. The said unit was delivered on 18.04.2017. That till today, the said unit has not been delivered. The respondent has delayed the project for more than 2 years and had failed to give possession as per agreement to sell. Till date, there is no construction going on the said project.
  - IV. That time to time, the complainant had exchanged various communications with the officers of the respondent company regarding possession of the said project. The respondent on one pretext or another refused to provide the actual possession date. That the respondent had no intention to neither to complete the said project nor refund any amount already paid.
  - V. That the complainant is filing the recent photographs of the said project which shows that the intention of the respondent is very



clear that it does not want to proceed with the project and handover the possession of the units to the buyer.

- VI. That the cause of action to file the present complaint has occurred within the jurisdiction of the authority as the property which is the subject matter of this complaint is situated in Sector- 78, Gurugram which is within the jurisdiction of this authority.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s).
- I. That the respondent had failed to complete and unable to give possession of the allotted unit in accordance with the terms and condition of the agreement to sell dated 18.12.2012, may be directed to refund an amount of Rs.88,91,338/- along with an interest at the rate 18% from 18.12.2016.
5. Despite due service and putting in appearance through AR, the respondent company failed to file any written reply and giving several opportunities. So, the same led to striking off its defence.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainant.

**D. Jurisdiction of the authority**

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D.I Territorial jurisdiction**



8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

#### **D.II Subject-matter jurisdiction**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

#### **Section 11**

.....

*(4) The promoter shall-*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

#### **Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.





11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

#### **E. Findings on the relief sought by the complainants**

- E. I That the respondent had failed to complete and unable to give possession of the allotted unit in accordance with the terms and condition of the agreement to sell dated 18.12.2012, may be**



**directed to refund an amount of Rs.88,91,338/- along with an interest at the rate 18% from 18.12.2016.**

13. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject apartment along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building,-*

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*  
*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

*(Emphasis supplied)*

14. Article 4.2 of the agreement to sell provides for handing over of possession and is reproduced below:

**4.2 Possession Time and Compensation**

*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 the execution of the Agreement to sell** and after providing of necessary infrastructure specially road sewer & 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 this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & 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 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 compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."*

15. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

16. **Due date of handing over possession and admissibility of grace period:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by October 2016. However, the fact cannot be ignored that there were circumstances beyond the control of the respondent which led to delay in completion of the project. Accordingly, in the present case the grace period of 6 months is allowed.

17. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by her at the rate of 18% p.a. However, allottee intends to withdraw from the project and is seeking refund of the amount paid by her in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

(1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

18. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is



reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

19. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.07.2022 is **7.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **9.70%**.
20. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule **28(1)**, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 4.2 of the agreement to sell executed between the parties on 18.10.2012, the possession of the subject apartment was to be delivered within a period of 48 months from the date of agreement to sell, which come out i.e., by 18.10.2016. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession is 18.04.2017. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and is well within her right to do the same in view of section 18(1) of the Act, 2016.



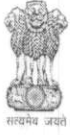
21. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the plot in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016.

22. The due date of possession as per agreement for sale as mentioned in the table above is 18.04.2017 and there is delay of 1 year 10 months 2 days on the date of filing of the complaint.

23. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which she has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021**

*"... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

24. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)** reiterated in case of **M/s Sana**



**Realtors Private Limited & other Vs Union of India & others SLP**

**(Civil) No. 13005 of 2020** decided on 12.05.2022. it was observed:

*25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*


25. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund the entire amount paid by her at the prescribed rate of interest i.e., @ 9.70% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

**F. Directions of the authority**

26. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the entire amount of Rs.88,91,338/- paid by the complainant along with prescribed rate of interest @ 9.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
  - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
27. Complaint stands disposed of.
28. File be consigned to registry.

v.1-3  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate Regulatory Authority, Gurugram

  
**(Dr. K.K. Khandelwal)**  
Chairman  
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.07.2022

**HARERA**  
**GURUGRAM**