



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

Complaint no. : 2643 of 2020
First date of hearing: 12.11.2020
Date of decision : 10.05.2022

1. Mr. Samir Sethi

2. Mrs. Rubi Sethi

Both RR/o: - House No. M-78, Ground Floor, Blossom-
2, Sector- 51, Gurugram- 122001

Complainants

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. Ashwani Yadav (Advocate)
Sh. Rahul Bhardwaj (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 01.10.2020 has been filed by the complainants/allottees 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 allottees 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 complainants, 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 Trinity", Sector 84, Gurugram,
2.	Project area	2.281 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	26 of 2013 dated 17.05.2013 valid up to 16.05.2019
5.	Name of licensee	Sh. Bhoop Singh and Others
6.	RERA Registered/ not registered	Registered vide no. 24 of 2017 dated 25.07.2017
7.	RERA registration valid up to	For a period commencing from 25.07.2017 to 5 years from the date revised Environment Clearance
8.	Date of environment clearance	17.10.2014 [as per obtained by planning branch]
9.	Shop no.	07, ground floor



		(Page no. 28 of the complaint)
10.	Unit area admeasuring	281.363 sq. ft. (Page no. 28 of the complaint)
11.	Date of booking application form	14.01.2014 [Page no. 22 of amended CRA dated 31.03.2022]
12.	Allotment letter	Not annexed
13.	Date of execution of agreement to sell	Not executed
14.	Possession clause	34. <i>The company shall endeavour to complete the construction of the shop/ Commercial space of the applicant(s)/ intending allottee(s) within 36 months from the date of execution of agreement to sell or sanction of building plans and environment clearances whichever is later but subject to force majeure, circumstances and reasons beyond the control of the company. The company on obtaining certificate for occupation and use by the competent authorities shall hand over the shop/commercial space to the Applicant(s)/intending allottee(s) for his/her occupation and use and subject to the applicant(s)/ intending allottee(s) having complied with all terms and</i>



		<p><i>conditions of the agreement to sell. In the event of his/her failure to take over and /or occupy and use the shop/commercial space provisionally and/or finally allotted within thirty (30) days from the date of intimation in writing by the company, them the same shall lie at his/her risk and cost and the applicant(s)/intending allottee(s) shall be liable to pay compensation @Rs.5/- sq. ft. of the gross salable area per month as holding charges for the entire period of such delay....."</i></p> <p><i>[Possession clause taken from the BBA annexed in complaint no.5690-2019 of the same project being developed by the same promoter]</i></p>
15.	Due date of possession	14.01.2017 [Calculated on the basis of the date of booking application form i.e., 14.01.2014 in the absence of BBA]
16.	Total sale consideration	Rs.32,35,675/- (As per payment plan page no. 28 of complaint)
17.	Amount paid by the complainants	Rs.8,38,913/- (As per receipt information page no. 31 & 32 of the complaint)



18.	Occupation certificate /Completion certificate	Not received
19.	Offer of possession	Not offered
20.	Delay in handing over the possession till date of this order i.e., 10.05.2022	5 years 3 months and 26 days

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That in the year 2014, the complainants received a marketing call from a real estate agent from a real estate firm namely white plot consultancy, who represents himself as an authorized agent of the respondent and marketed the commercial project of the respondent by the name and style "Raheja Trinity" at Sector - 84, Gurugram. The complainants along with the real estate agent visited the project site and the local office of the builder. That they interacted with marketing staff and office bearers of the respondent. The marketing staff of the respondent showed a rosy picture of the project through glitzy advertisements and colourful brochures, proposing to develop and construct an integrated commercial project at the prime location of sector 84, Gurugram, claiming the same to be a new concept of modern architecture and a unique amalgamation of retail, office, and service apartments to the market. Vide a colourful brochure and advertisements, the respondent proposed to construct the project along with modern amenities on 6 acres and launched the project's first phase over

2.28 acres. Undeniably, the respondent vide the said glitzy advertisements and colourful brochures claimed to provide luxurious features including but not limited to the entrance through a marvellously designed atrium, the world-class landscaping, multilevel car parking at the basement, and ample surface parking for the visitors, 100% power back-up, CCTVs at the entry point and lifts, 24 hours manned surveillance and access barriers, etc.

- II. That lured by assurances, promises, and representations made by the respondent, the complainants booked a retail shop, bearing no. 7, on ground floor, admeasuring 281.363 sq. ft. at "Rajeja Trinity", sector -84, Gurugram, under the construction link payment plan at basic sale price (BSP) at the rate Rs.11,500/- per sq. ft. i.e., Rs.32,35,675/- on 14.01.2014 and issued a cheque of Rs.3,35,565/- dated 14.01.2014 as booking amount and issued a post-dated cheque of Rs.5,03,348/- dated 14.03.2014.
- III. That at the time of accepting application money, the respondent has assured about having all requisite approval and sanction plans to develop the project and showed license and sanction plans to the complainants. Moreover, the respondent represented that shop will be handover over on or before 14.01.2018 (within 4 years from the date of booking).
- IV. That on 04.12.2017, the complainants sent an email to the respondent subjecting "**customer ID: FAPRT/00P100/13-14**" and asked for the status of the Project Trinity. The contents of the email are produced below for reference: -



"I have booked one shop in Raheja Trinity Sector 84, Gurgaon on ground floor around 4 years back with above customer ID. I contracted your office Saket office around one year back and I was told that construction will start in Jan-March 17 so I should stay invested. However, I have paid advance of approx. 9 lacs for 4 years but with not result or confirmation from your office when project will be start & completed and when I will get possession of shop.

As per terms you are supposed to pay interest which is also not received till date. Please confirm following:

- 1. Status of Trinity Project*
- 2. When construction will start and complete*
- 3. When I will get payment of Interest on advance deposit till date.*

I will appreciate mail response from your side"

- V. The complainants sent reminder emails on 06.04.2018, 06.07.2018. Thereafter, the complainants sent an email on 12.07.2018 and asked for the confirm date/month for the start of construction and further, a reminder email was sent to the respondent on 07.03.2019.
- VI. That on 13.01.2020, the respondent sent a construction update of the project for December 2019 with project site photographs and claimed that the 1st basement floor level slab was already casted on 14.12.2019. Thereafter on 27.02.2020, the respondent sent a construction update of the project for February 2020 with project site photographs and claimed that ground floor level slab casting was complete.
- VII. That on 30.06.2020, the complainants sent a letter dated 30.06.2020 to them through speed post on 01.07.2020 and asked for either to allotment of shop no. 7 at ground floor or refund the paid money along with interest. The complainants sent an email also with an attachment of a letter to the respondent.



- VIII. That on 09.07.2020, the complainants sent another grievance email to them and asked for a copy of the builder buyer agreement and allotment letter of unit no. 7 at the ground floor.
- IX. That the complainants sent several emails to the respondent on 09.07.2020, 13.07.2020, 16.07.2020, 23.07.2020, 27.07.2020, 30.07.2020, 10.08.2020, 14.08.2020, 18.08.2020, 20.08.2020, and 27.08.2020, to get the allotment letter as well as builder buyer agreement of their booked unit/shop no. 7 at ground floor, but all went in vain. Despite several emails and phone calls of the complainants, the respondent is not willing to allocate the unit nor is refunding the paid money.
- X. That the main grievance of the complainants is that despite the complainants paid more than 25% i.e., Rs. 8,39,004/- of the basic sale price and ready and willing to pay the remaining amount (if any amount becomes due), the respondent party has miserably failed to deliver the possession of shop.
- XI. That the complainants had purchased the shop with the intention that after purchase, they would start own business/possession. That it was promised by the respondent party at the time of receiving payment for the shop that the possession of fully constructed shop along like basement and surface parking, landscaped lawns, etc. as shown in the brochure at the time of sale,

would be handed over to the complainants as soon as construction work is to be complete i.e., by January 2018.

- XII. That it is more than 6 years from the date of booking and even the construction of the tower is yet not complete, it clearly shows the negligence towards the builder. It is highly pertinent to mention here that the respondent has delayed the project unreasonably and utilized the hard-earned money of the complainants.
- XIII. That there is an apprehension in the mind of the complainants that the respondent has been playing fraud and there is something fishy which respondent is not disclosing to them just to embezzle their hard-earned money and other co-owners. It is highly pertinent to mention here that now a day's many builders are being prosecuted by a court of law for siphoning off the funds and scraping the project mischievously. A probe needs to be initiated to find out the financial and structural status of the project.
- XIV. That as per section 18 of the Act, 2016, the promoter is liable to return of amount and to pay compensation to the allottees of an apartment, building, or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.
- XV. That the complainants are entitled to get a refund (whole paid amount) i.e., Rs.8,39,004/- along with interest at the prescribed rate from the date of making payment till final realization of payment as per section 12, 18 and 19(4) of the Act, 2016. The

complainants are also entitled to any other relief which they are found entitled by this authority.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).

I. Pass an appropriate award directing the respondent party to refund (whole paid amount) i.e., Rs.8,39,004/- along with interest at the prescribed rate from the date of booking till final realization of payment as per section 18 and 19(4) of the Act 2016.

II. Respondent may kindly be directed to refrain from giving effect to the unfair clauses unilaterally incorporated in the flat buyer agreement.

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 complainants.

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 complainants 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.*" and followed in case of *Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021* 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.1 Pass an appropriate award directing the respondent party to refund (whole paid amount) i.e., Rs.8,39,004/- along with interest at the prescribed rate from the date of booking till final realization of payment as per section 18 and 19(4) of the Act 2016.

13. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit 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. As per clause 34 of the booking application form (*Possession clause taken from the BBA/application form annexed in complaint no.5690-2019 of the same project being developed by the same promoter*) provides for handing over of possession and is reproduced below:

34. The company shall endeavour to complete the construction of the shop/ Commercial space of the applicant(s)/ intending allottee(s) within 36 months from the date of execution of agreement to sell or

sanction of building plans and environment clearances whichever is later but subject to force majeure, circumstances, and reasons beyond the control of the company. The company on obtaining certificate for occupation and use by the competent authorities shall hand over the shop/commercial space to the Applicant(s)/intending allottee(s) for his/her occupation and use and subject to the applicant(s)/intending allottee(s) having complied with all terms and conditions of the agreement to sell. In the event of his/her failure to take over and/or occupy and use the shop/commercial space provisionally and/or finally allotted within thirty (30) days from the date of intimation in writing by the company, then the same shall lie at his/her risk and cost and the applicant(s)/intending allottee(s) shall be liable to pay compensation @Rs.5/- sq. ft. of the gross salable 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. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest. However, the allottees intend to withdraw from the project and are seeking refund of the amount paid by them 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.

17. 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.
18. 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., 10.05.2022 is **7.40%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **9.40%**.

19. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions 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 34 of the booking application form executed between the parties on 14.01.2016, the possession of the subject unit was to be delivered within a period of 36 months from the date of execution of buyer's agreement which comes out to be 23.10.2016. (Calculated on the basis of the date of booking application form i.e., 14.01.2014 in the absence of BBA). It is pertinent to mention over here that even after a passage of more than 5.3 years neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the builder. Further in the instant matter, the authority observes that the respondent failed to issue allotment letter and execute the buyer's agreement. 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 fact, the allottees intend to withdraw from the project and are well within their right to do the same in view of section 18(1) of the Act, 2016. Further, the authority has no hitch in proceeding further and to grant a relief in the present matter in view of the recent judgement of the Hon'ble Supreme Court of India in the case of *Newtech Promoters and*



Developers Private Limited Vs State of U.P. and Ors. 2021-2022(I), RCR (civil),357 and followed by the Hon'ble High Court of Punjab & Haryana in case **Ramprashtha Promoters and Developers Pvt Ltd Vs Union of India and Ors. in CWP No.6688 of 2021** decided on 04.03.2022, it was observed as under:

"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."

20. 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 complainants are entitled to refund the entire amount paid by them at the prescribed rate of interest i.e., @ 9.40% 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

21. 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 amount i.e., Rs.8,38,913/-received by it from the complainants along with interest at the rate of 9.40% 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.
22. Complaint stands disposed of.
23. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.05.2022