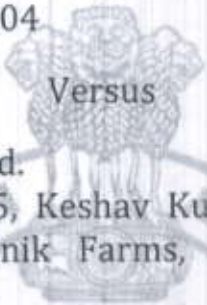


**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 6633 of 2019
First date of hearing: 20.01.2020
Date of decision : 10.05.2022

1. Mr. Rajiv Ajmani
2. Mrs. Anshu Ajmani
Both RR/o: - B2-403, Gurgaon-21, Vatika India Next,
Sector- 83, Gurugram- 122004

Complainants


Versus

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

Also, at: - Raheja Mall, 3rd Floor, Sector- 47, Sohna Road,
Gurugram- 122001

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Rajiv Ajmani & Anshu Ajmani
Sh. Rahul Bhardwaj (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 26.12.2019 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.	151A, first floor, (Page no. 19 of the complaint)



10.	Unit area admeasuring	249 sq. ft. (Page no. 19 of the complaint)
11.	Date of execution of agreement to sell - Raheja Trinity	Not executed
12.	Allotment letter	Not annexed
13.	Date of booking application form	02.06.2016 [Page no. 20 of the complaint]
14.	Possession clause	<p><i>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, them the same shall lie at his/her risk and cost and the</i></p>



		<i>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> <i>(Page no. 26 of the complaint)</i>
15.	Due date of possession	02.06.2019 [Calculated on the basis of the date of booking application form i.e., 02.06.2016 in the absence of BBA]
16.	Total sale consideration	Rs.24,47,670/- (Page 7 of the amended CRA dated 25.03.2022)
17.	Amount paid by the complainants	Rs.5,94,904/- (Page 7 of the amended CRA dated 25.03.2022)
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	2 years 11 months and 8 days

B. Facts of the complaint

3. The complainants have made the following submissions: -

1. That on the basis of advertisement in the Times of India & information provided by the representative of M/s Raheja



Developers Limited, the complainants applied for a shop in the commercial project, of respondent namely "Raheja Trinity" at sector-84, Gurugram (Haryana) in June 2016. Since the home was in proximity of the project, so the complainants found it suitable for them long terms planning post retirement period.

- II. That the complainants made payment of Rs.2,37,962/- on 15.06.2016 & Rs.3,56,942/- on 08.08.2016, against a total sale consideration of Rs.24,47,670/- i.e., 25% of the basic sale price. Even after, one year of making payment, to the respondent, the /promoter did not allot them the subject shop.
- III. That after one and half year of payment the respondent /promoter offered them the shop, tri-angled from one side & therefore, was not acceptable to them. The developer could not offer other shop as per application. There was no construction work in the project since long time & only excavation work was done. There no other construction work even till date.
- IV. Therefore, the complainants requested to refund the advance amount paid by them along-with interest as per the terms of the application form.
- V. That a period of one year has already expired in Jun 2017. Despite various commitments to refund the advance deposit of Rs.5,94,904/-, the respondent/builder, has failed to pay back the said amount.

C. Relief sought by the complainants:



4. The complainants have sought following relief(s).
 - I. The respondent has failed to give possession of the allotted shop wish to withdraw from the project and without pre-judice to any other remedy available seek return of the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate.
 - II. Compensation of Rs.5,00,000/- on account of financial risk, hardship, mental agony, harassment, and mental disturbance caused due to actions/omissions by the respondent.
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. 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.I To direct the respondent to refund the amount with 18% interest in favour of the complainant in respect of the aforesaid commercial project.

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. Further, clause 34 of the booking application form 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 a 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 a 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 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 02.06.2016, 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 02.06.2019. (Calculated on the basis of the date of booking application form i.e., 02.06.2016 in the absence of BBA). It is pertinent to mention over here that even after a passage of more than 2 years and 11 months neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the builder. Further, the authority observes that the respondent company 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 facts, 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(1), 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. Thus, the complainants are entitled to refund the entire amount paid by them to the respondent 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*.

E. II Compensation of Rs.5,00,000/- on account of financial risk, hardship, mental agony, harassment, and mental disturbance caused due to actions/omissions by the respondent.

21. The complainants are also seeking relief w.r.t. litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

F. Directions of the authority



22. 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.5,94,904/-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.

23. Complaint stands disposed of.

24. File be consigned to registry.

V.K.G.
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

(Dr. K.K. Khandelwal)
(Dr. K.K. Khandelwal)
Chairman

Dated: 10.05.2022