

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

Complaint no. : 2771 of 2021
First date of hearing: 04.08.2021
Date of decision : 10.05.2022

1. Mr. Varun Bhasin
2. Ms. Aarti Gadeock

Both RR/o: - H. No. F-4034, Devinder Vihar, AWHO
Complex, Sector- 56, Gurugram- 122001, Haryana

Complainants

Versus

1. M/s Raheja Developers Limited.
Regd. Office at: W4D, 204/5, Keshav Kunj, Western
Avenue, Sainik Farms, New Delhi- 110062
Also, at: - Raheja Mall, 3rd Floor, Sector- 47, Sohna Road,
Gurugram- 122001
2. ICICI Bank Limited
Regd. Office at: - "Landmark" Racecourse Circle,
Vadodara- 390007
Corporate office at: - ICICI bank Towers, Bandra Kurla
complex, Mumbai- 400051

Respondents

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Pankaj Chandola (Advocate)
Sh. Rahul Bhardwaj (Advocate)
Sh. Dharmender Yadav (Advocate)

Complainants
Respondent no. 1
Respondent no. 2

ORDER

1. The present complaint dated 12.07.2021 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's Maheshwara", Sector 11 & 14, Sohna Master Plan Gurugram, Haryana
2.	Project area	9.23 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no. and validity status	25 of 2012 dated 29.03.2012 valid up to 28.03.2018
5.	Name of licensee	Ajit Kumar and 21 others
6.	Date of environment clearances	15.10.2013 [as per information obtained by planning branch]
7.	Date of approval of building plans	29.01.2016 [Page no. 61 of the complaint]
8.	RERA Registered/ not registered	Registered vide no. 20 of 2017 dated 06.07.2017



9.	RERA registration valid up to	5 Years from the date of revised Environment Clearance
10.	Unit no.	C-103, 1 st floor, Tower/block- C (Page no. 61 of the complaint)
11.	Unit area admeasuring	1198.11 sq. ft. (Page no. 61 of the complaint)
12.	Date of execution of agreement to sell - Raheja Revanta	10.08.2016 (Page no. 60 of the complaint)
13.	Date of execution of tripartite agreement	09.07.2016 (Page no. 39 of the complaint)
14.	Allotment letter	10.08.2016 (Page no. 56 of the complaint)
15.	Possession clause	<i>21. The company shall endeavour to complete the construction of the said apartment within Forty-Eight (48) months plus/minus Twelve (12) months grace period of the date of execution of the agreement or environment clearance and forest clearance, whichever is later but subject to force majeure, political disturbances, circumstances cash flow mismatch and reason beyond the control of the company. However, in case the company completes the construction prior to the said period of 48 months plus 12 months grace period the allottee shall not raised any objections in taking the possession after payment of Gross Consideration and other charges stipulated hereunder. The company on obtaining</i>



		<p><i>certificate of occupation and use for the building in which said apartment is situated, by the competent authorities shall hand over the said apartment to the allottee for his occupation and use and subject to the allottee having complied with all the terms and condition of the agreement to sell....."</i></p> <p>(Page 71 of the complaint).</p>
16.	Due date of possession	10.08.2021 [Note: Grace period of 12 months allowed being unconditional and unqualified]
17.	Total sale consideration	Rs.46,78,620/- (Page 21 of the amended CRA dated 04.05.2022)
18.	Amount paid by the complainants	Rs.26,63,206/- (Page 21 of the amended CRA dated 04.05.2022)
19.	Occupation certificate /Completion certificate	Not received
20.	Offer of possession	Not offered
21.	Delay in handing over the possession till date of this order i.e., 10.05.2022	9 months

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -



- I. That in the year 2016, the Real Estate Project "**Raheja's Maheshwara**" at Sector 11 & 14, Sohna, Gurugram, Haryana (hereinafter referred to as "Project") came to knowledge of the complainants through the authorized marketing representatives of the respondent/promoter. The marketing representative approached the complainants, for and on behalf of the respondent/promoter, making tall claims with respect to the project and of the longstanding credentials of the respondent/promoter in the real estate sector. It was represented that the project is one of the finest and that the said unit is free from all kinds of encumbrances. It is pertinent to note that the representatives of the respondent/promoter lured the complainants by making claims of attractive scheme of subvention wherein it was informed that the buyers/allottees/consumers shall be entitled to an interest subvention i.e. the interest during the construction period on the loan amount availed by the complainants from the bank for the purchase of the unit will be borne (paid) by the respondent/promoter directly to the bank till the date of offer of possession of the unit.
- II. That relying on such false and misleading representations, assurances, brochures and meetings, the complainants agreed to purchase one unit bearing no. C103 in tower C admeasuring super area 1198.11 sq. ft. for a total sale consideration of Rs. 46,78,620/-



plus service tax and accordingly paid an amount of Rs. 2,64,068/-, through cheque bearing no. 015135 dated 19.05.2016 and Rs. 1,61,191/- on 19.05.2016 and also paid Rs. 100/- as the booking amount. The respondent/promoter acknowledged the payment vide receipts dated 19.05.2016.

- III. That on 09.07.2016 a tri-partite agreement (*hereinafter referred to as "TPA"*) was executed between the complainants, the respondent/promoter, and the respondent/financial institution. That the said TPA was executed with the sole intention of laying down terms of understanding between the parties regarding the finance/home loan sought by the complainants, the terms of repayment and so on. That as per the understanding between the parties, the obligation of paying pre-EMIs till the offer of possession shall rest with the respondent/promoter and that the complainant's liability of paying EMIs shall commence after the offer of possession. It is pertinent to note that the respondent/promoter did not abide by the said understanding between the parties and paid the pre-EMIs for a continuous period of 3 years, after the said period the respondent/promoter arbitrarily stopped making the said payments and the entire liability was casted upon the complainants. That it is also brought to the attention of the adjudicating officer that despite the objections raised by the complainants regarding the absence of a specific clause for subvention, the complainants were made to sign

the said agreement. Further under the TPA, and according to standard operating procedures prevalent in the cases of home loans it was the obligation of the respondent/financial institution to disburse the payments sought by respondent/promoter in a diligent manner in coherence with the payment plan agreed by the complainants which was construction linked. That the financial institutions disbursed the payments for advanced stages of construction without any clarification or consent from the complainants. That till date respondent/financial institution has disbursed a total amount of Rs.22,37,847/- which is not just outrageous and illegal but against the terms of the TPA dated 09.07.2016.

- IV. That the complainants received an allotment letter dated 10.08.2016, whereby the complainants were allotted flat no. C103, 1st floor, tower C, admeasuring super area of 1198.11 sq. ft. Thereafter, on 10.08.2016, an agreement to sell (hereinafter referred to as "the Agreement") was executed between the complainants and the respondent/promoter, whereby the parties entered into an understanding regarding the allotted unit bearing no. C103, the said agreement spelled out the terms and conditions regarding the said allotment, the payment schedule and the due date of delivery.

- V. That as per the clause 21 of the agreement, the respondent /promoter was under the obligation to handover the possession of the unit within 48 months along with grace period of 12 months from the date of execution of the said agreement. That there has been no event of unforeseen circumstances or force majeure which may have delayed delivery of possession. Therefore, the date of handing over of the possession was 10.08.2020.
- VI. That, no possession was delivered on the agreed date as mentioned in the agreement and now the project has been abandoned by the respondent/promoter. It is pertinent to note that it is more than 5 years of booking but till date construction is nowhere near completion. That till date only the foundation of the said project has been laid, in all likelihood the said project has been abandoned, and the respondent/promoter has no intentions of completing the same. Further, it is pertinent to note that despite the fact that the complainant is a serving member of the Indian Army, he has been made to part with his hard-earned money and has been put through extreme financial hardships by the respondents in collusion.
- VII. That the terms of understanding between the parties were such that the pre-EMIs will be taken care of by the respondent/promoter till the offer of possession. But the respondent/promoter is not adhering to the said obligation and a major portion of money in the form of EMIs amounting to Rs.35,000/- approx. is deducted from the



bank account of the complainant every month without any tenable progress at the construction site. That in such a scenario continuing in the said project is only causing more mental agony and financial distress to the complainants as they are in complete trust deficit regarding the commitments and hollow promises of the respondents.

- VIII. That a perusal of the clauses of the agreement shows the stark incongruities on the remedy available to the complainants and the promoter. On the one hand, the clause 16 of the agreement entitled the promoter to charge 12% of interest in case of delay in making payments by the complainants whereas on the other hand, clause 21 of the agreement provides that the promoter shall pay to allottee compensatory lease rental per month (or part thereof) at the rate determined by an international IPC. The respondent/promoter being in dominant position has compelled the complainants to execute the agreement having arbitrary clauses. The clauses of the agreement are arbitrary and one sided, thus, on the same parity, complainants shall be entitled for interest @12% p.a. on the payment received by the opposite party with regard to the unit, the possession of which has not been handed over.
- IX. That the complainants initially paid an amount of Rs.4,25,359/- as booking amount, further the complainant is bearing the



responsibility of EMIs of Rs.35,000/- per month due to the arbitrary disbursal of loan amounts 26.09.2016 to 24.11.2017 by the respondent No. 2 i.e., financial institute to the tune of Rs.22,37,847/- against the total consideration as per the demands raised by the respondent/promoter and the schedule of payment. That the despite investing such huge amount complainant continues to live in complete trust deficit regarding the said project, further his ambitions of owing the said house remain in serious uncertainty. Further, the respondent no. 2 voluntarily on its own volition has made a total payment of Rs.22,37,847/- to the promoter with respect to the unit of the complainants as and when demanded by the respondent/promoter without adhering the terms and conditions of the tripartite agreement, or the due process and the guidelines, rules, regulations laid down under National Housing Bank Act, 1987 as well as by RBI.

- X. That the complainants were regularly approaching the respondent/promoter and was also paying visits to the office for asking about the status of the project and date for handing over of possession, but no heed was paid to the concerns raised by the complainants. Despite the repeated requests made by the complainants, the respondent/promoter failed to redress the grievances of the complainants and continued to raise demands without completing the requisite development work of the project to the respondent no.

2 who kept on disbursing payments without the consent of the complainant. As on date, no one at the office of the respondent /promoter is addressing the concerns of the complainants and the project has been completely abandoned and the promoter has siphoned off the money paid by the complainants for its own purposes.

- XI. That due to the dishonest and illegal acts of the respondents and the failure of promoter to handover the possession as per the terms of the agreement the complainants are entitled for refund of the amounts paid along with interest from the respective dates of payment.
- XII. That the respondents, whose plans since the very beginning were to deceive the complainants, cheat and defraud them by misappropriating their money, by not providing all the amenities as promised at the time of booking the unit and as mentioned under the agreement to sell. That the respondent/promoter with a mala fide intention got the complainants to make a booking in the said project by making a false promise of providing subvention till the offer of possession. Later, the respondents colluded in extracting payments from the complainants on false and vexatious ground. The complainants have already faced a lot of financial distress due to the *malafide* acts of the respondents.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

I. To direct the respondents to refund the entire amount paid by the complainant along with interest @18 p.a. from the date from respective deposits till its actual realization;

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. 2021-2022 (1) RCR (Civil), 357*** 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 To direct the respondents to refund the entire amount paid by the complainant along with interest @18 p.a. from the date from respective deposits till its actual realization.**
13. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by him in respect of subject apartment along with interest at the prescribed rate as provided under section 18(1) of the Act. Section 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 article 21 of the agreement to sell provides for handing over of possession and is reproduced below:

21. ".....*The company shall endeavour to complete the construction of the said apartment within Forty-Eight (48) months plus/minus Twelve (12) months grace period of the date of execution of the agreement or environment clearance and forest clearance, whichever is later but subject to force majeure, political disturbances, circumstances cash flow mismatch and reason beyond the control of the company. However, in case the company completes the construction prior to the said period of 48 months plus 12 months grace period the allottee shall not raised any objections in taking the possession after payment of Gross Consideration and other charges stipulated hereunder. The company on obtaining certificate of occupation and use for the building in which said apartment is situated, by the competent authorities shall hand over the said apartment to the allottee for his occupation and use and subject to the allottee having complied with all the terms and condition of the agreement to sell....."*

15. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to but



subject to force majeure, political disturbances, circumstances cash flow mismatch and reason beyond the control of the company. 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 him at the rate of 18% p.a. However, allottee intends to withdraw from the project and is seeking refund of the amount paid by him 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 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 21 of the agreement to sell executed between the parties on 10.08.2016, the possession of the subject apartment was to be delivered within a period of 48 months from the date of agreement to sell, and the grace period of 12 months allowed being unconditional and unqualified. Therefore, the due date of handing over of possession is 10.08.2021. It is pertinent to mention over here that even after a passage of more than 9 months neither the construction is completed nor the offer of possession of the allotted unit has been made to the



allottee by the builder. Further the authority observed that there is no document place 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 allottee intends to withdraw from the project and is well within his 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. As such, the complainants are entitled to refund the entire amount paid by him 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 entire amount of Rs.26,63,206/- paid by the complainants along with prescribed rate of interest @ 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. The amount of Pre-Emi's paid by the respondent/promoter in the account of complainants, if any, would be deducted while calculating the total amount due towards him.

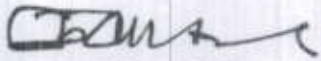


- iii. The loan amount received by the complainants against the allotted unit and paid by the respondent/promoter would be charge payable to the financial institution and the same would be paid to it prior to paying the deposited amount to him.
- iv. The respondent/promoter is further debarred from creating 3rd party rights with regard to unit in question without paying the amount detailed above.
- v. 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

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.05.2022


(Dr. K.K. Khandelwal)
Chairman