BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**3796 of 2019**
First date of hearing:		**13.11.2019**
Order reserved on:		**09.08.2022**
Order pronounced on		**17.01.2023**

1. Mr. Jitender Singh Yadav
2. Mrs. Renu Yadav

Both RR/o: - Kamla Medical Hall, Ward No. 1, V.P.O., Kosli, Rewari, Haryana- 123302 **Complainants**

Versus

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

CORAM:
Shri Vijay Kumar Goyal **Member**
Shri Ashok Sangwan **Member**

APPEARANCE:
Shri Jitender Singh Yadav (Complainant in person) Complainants
None Respondent

EX-PARTY ORDER

1. The present complaint dated 04.09.2019 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 thereunder 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 complex
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	25.07.2022 For a period commencing from 25.07.2017 to 5 years from the date of revised Environment Clearance

8.	Date of environment clearance	17.10.2014 [as per information obtained from planning branch of authority]
9.	Shop no.	015, ground floor (Page no. 30 of the complaint)
10.	Unit area admeasuring	512.64 sq. ft. (Page no. 30 of the complaint)
11.	Date of execution of agreement to sell – Raheja Trinity	Annexed but not executed
12.	Allotment letter	N. A
13.	Date of booking application form	N. A
14.	Possession clause	**4.2 Possession Time and Compensation** *That the Seller shall sincerely endeavor to give possession of the shop/commercial space to the purchaser* ***within thirty-six (36) months from the date of the execution of the Agreement to sell or sanction of building plans and environment clearance whichever is later*** *and after providing of necessary infrastructure specially road sewer & water in the sector by*

		the Government, but subject to force majeure circumstances, reasons conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the shop/ commercial space 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 possession and /or occupy and use the shop/commercial space 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……." (Page no. 42 of the complaint)

15.	Due date of possession	17.10.2017 [Note: - 36 months from date of environment clearance i.e., 17.10.2014]
16.	Total sale consideration	Rs.62,04,040/- (As per payment plan page no. 62 of complaint)
17.	Total sale consideration as per applicant ledger dated 30.05.2019 page no. 67 of CRA	Rs.67,11,180/-
18.	Amount paid by the complainants	Rs.22,98,221 /- (As per applicant ledger page no. 67 of theCRA)
19.	Payment plan	Installment linked payment plan [Page no. 61 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., 04.09.2019	1 year 10 months and 18 days

B. Facts of the complaint

3. The complainants have made the following submissions: -

I. That in the year 2013, the complainants booked for a shop in the project of the respondent namely, "Raheja Trinity" located at Sector-84, Gurugram, (Haryana) for a total sale consideration of Rs.67,11,180/- and paid an amount of Rs.22,98,221/- to the respondent/promoter.

II. That the complainants were approached by the respondent company's agents and representatives who made all claims regarding their project, its viability, various amenities it promised. The complainants were lured into by the respondent's representations and decided to apply in the project of the respondent company. The respondent claimed that the "Raheja Trinity" is one of their most prestigious projects where the respondent company promised various facilities and lured them with various features. The prime features as projected by the respondent company were as below: -

- *Huge frontage of 200 metres, strategically located at sector- 84 in close proximity to NH-8 on 60-meter-wide sector road.*
- *Opposite upcoming ISBT Gurugram.*
- *Located amidst a densely populated residential neighbourhood surrounded by more than 20,000 families.*
- *Maximum units are opening towards central courtyard.*

III. That relying on the above-mentioned features of the project and lured with the rosy pictures painted by the respondent, the complainants made the application on 20.11.2013, for booking of

the shop space in the project. On making the application for booking, the respondent company allotted the unit with specifications to the complainants.

IV. That the complainants on 18.11.2013 and 23.01.2014 had made the payment of booking amount to the tune of Rs.10,98,221/- in favour of the respondent company. The payment of the booking amount has been duly acknowledged by them in the agreement at clause 3.2. Further, that the application form was filed in the year 2013 and the booking amounts was also paid in the year 2013. But it took almost 2 years for the respondent company to execute the agreement. It is submitted that the delay in execution of the agreement is best known to it. The respondent company never gave any satisfactory reply to the complainants till date. That after a long gap, the parties entered into the agreement to sell dated 11.06.2015.

V. It is submitted that the respondent company was supposed to deliver the apartment within 36 from the execution of the agreement to sell. The agreement to sell was executed on 11.06.2015. Therefore, the respondent company was under the obligation to complete the construction and deliver the possession by 11.06.2018.

VI. That even on the perusal of the agreement to sell, it can be seen that the same is unilateral one. They had already paid considerable amount to the respondent prior to entering into the agreement to

sell. Therefore, the complainants were not in the position to object to the clauses of the agreement as they did not want to risk their allotment. It is submitted that the agreement provided that in case of delayed payments, the respondent is entitled to impose 18% interest on these payments.

VII. That the said clauses are unilateral as the respondent has only tried to save itself from compensating the complainants in case of a delay in completion of the project and in giving the possession of the unit to them. The respondent has only tried to considerably limit its own liability and impose unfair and arbitrary interest on the complainants in order to grab their hard-earned money. Such clauses also create fear in the minds of the complainants to make the payments as per the whims and arbitrary demands of the promoter. These clauses give arbitrary power to the promoter to exploit its customers and should be dealt with a heavy hand by the authority.

VIII. That the delay in the delivery of the possession is solely due to the negligence of the respondent. It is submitted that the respondent has never informed the complainants about any force majeure circumstances which have lead to the halt in the construction. It is submitted that there is enough information in the public domain which suggest that the respondent has deliberately not completed the project and has hoodwinked the money paid by the complainants in developing other projects.

IX. That this is a case when the respondent has misused its dominant position resulting in the mental, physical and financial harassment to the complainants. The instances of misuse include:

- *Not updating the complainants about the stage of development in spite of receiving several requests of the complainants.*
- *No possession of unit granted despite of receiving huge amount of money from the complainants.*
- *Not initiating the refund of the money received from the complainants.*

X. That, the complainants have been constrained to file the present complaint for granting them the refund along with interest. They have diligently made the payments to the respondent as per the demands raised and made a total payment of Rs. 22,98,221/-

XI. That the complainants have lost faith in the competency of the respondent in completing the project in the near future as the project is stand still and is under construction and there has been no updates from the side of the respondent.

XII. That the respondent did not adhere to the demand for the refund of the complainants and did not address their concerns and, rather, threatened them with forfeiture of the earnest money in case the complainants cancelled the agreement and sought refund, which in the present case was due to the delay in the delivery by the respondent.

XIII. That, the respondent company had illegally and malafide withheld the compensation to the complainants. It is submitted

that due to the illegal and non-cooperative attitude of the respondent, the complainants have been constrained to file the present complaint. It is submitted that the respondent cannot expect the complainants to wait endlessly for the possession of their unit.

XIV. The complainants had already invested huge sum of money in the project of the respondent but till date neither the possession has been offered nor refund has been made. Hence, being aggrieved, the complainants had approached this authority for the desired relief.

C. Relief sought by the complainants:

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

i. Direct the respondent to refund the entire paid amount to the complainants till date i.e., Rs.22,98,221/- along with prescribed rate of interest from the date of payment till realization of the amount.

ii. Direct the respondent to pay a lump sum of Rs.1,00,000/- as compensation for mental agony and harassment caused to the complainants.

iii. Direct the respondent to pay a sum of Rs.50,000/- as litigation expenses to the complainants.

5. Notice for hearing to the respondent/promoter was served through E-mail address (compliance@raheja.com and customercare@raheja.com) was sent and the delivery of same is shown as "delivery complete". The

respondent/promoter put in appearance through company's A.R & Advocate, and marked attendance on 18.12.2019, 18.02.2020, 04.10.2022 and 14.12.2022. Despite of the fact that, Sh. Seema Sundd and Saurabh Seth Advocates filed vakalatnama vide application dated 11.02.2021, and multiple opportunities being granted to the respondent no reply has been filed till date and the case is pending since 2019. Accordingly, the defence of the respondent stands struck off. Further, on 09.08.2022, the case was called out, but no one appeared on behalf of respondent and the respondent was proceeded against ex-parte.

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 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 cases 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. Direct the respondent to refund the money paid by the complainants till date i.e., Rs.22,98,221/- along with prescribed rate of interest from the date of payment till realization of the amount.

13. 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. 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. Clause 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 shop/commercial space to the purchaser **within thirty-six (36) months from the date of the execution of the Agreement to sell or sanction of building plans and environment clearance whichever is later** and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure circumstances, reasons conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the shop/ commercial space 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 possession and /or occupy and use the shop/commercial space 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 him 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. 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. In the present case the complainants have stated that the agreement to sell was entered into 11.06.2015. However, as per the copy of the agreement placed on record by the complainants, it is evident that the agreement to sell does not bear any date nor it has been signed by the respondent/promoter. In such an eventuality, the said agreement to sell cannot be treated as executed. However, had this agreement was executed by both the parties, the respondent was liable to handover the possession of the subject unit within the time period stipulated in clause 4.2 of the said agreement. By virtue of clause 4.2 of the agreement to sell (copy annexed but not executed), 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 or sanction of building plans and environment clearance whichever is later. Therefore, the due date of handing over possession is calculated by the receipt of environment clearance dated 17.10.2014 which comes out to be 17.10.2017.

17. The due date of possession as per agreement for sale as mentioned in the table above is **17.10.2017** and there is delay of 1 year 10 months and 18 days till the date of filing of the present complaint. Also, the complainants had stated at bar during the proceeding dated 09.08.2022, that the project is abandoned at site.

18. The authority has further, observes that even after a passage of more than 5.2 years till date neither the construction is complete nor the offer

of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. It is also pertinent to mention that complainants have paid almost 27% of total consideration till 2015. Further, the authority observes 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 the right to do the same in view of section 18(1) of the Act, 2016.

19. Moreover, 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 he 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....."

20. 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. reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others (Supra)***, 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."*

21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as they wish to withdraw from the project, without prejudice to any other remedy

available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

22. **Admissibility of refund along with prescribed rate of interest:** 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.*

23. 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.

24. 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., 17.01.2023 is **8.60%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.60%.**

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 complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 8.60% 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 Direct the respondent to pay a lump sum compensation of Rs.1,00,000/- as compensation for mental agony and harassment caused to the complainants.

E.III Direct the respondent to pay a sum of Rs.50,000/- as litigation expenses to the complainants.

26. The complainants are seeking above mentioned relief w.r.t. compensation. 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 compensation.

F. Directions of the authority

27. 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.22,98,221/- received by it from the complainants along with interest at the rate of 10.60% 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.

28. Complaint stands disposed of.

29. File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 17.01.2023