

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

**Complaint no. :** 1088 of 2021  
**Date of filing of complaint:** 06.03.2021  
**Date of decision** 01.02.2023

1. Mr. Vikas Gandhi  
2. Mrs. Mitka Borthakur  
Both RR/o: - Flat no. 2534, Sector- D2, Vasant Kunj, New  
Delhi- 110070

**Complainants**

**Versus**

1. M/s Raheja Developers Limited.  
2. Sanjana Rana  
3. Mohmmad Yousuf Khan  
4. Navin M Raheja  
**All having office at:** W4D, 204/5, Keshav Kunj, Cariappa  
Marg, Western Avenue, Sainik Farms, New Delhi-  
110062

**Respondents**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Member  
Member**

**APPEARANCE:**

Shri Sukhbir Yadav (Advocate)  
Shri Garvit Gupta (Advocate)

**Complainants  
Respondents**

**ORDER**

1. This complaint has been filed by the complainant/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 provisions 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 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	<b>Registered vide no. 24 of 2017 dated 25.07.2017</b>
7.	RERA registration valid up to	25.01.2023 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 information obtained by planning branch]
9.	Shop no.	037, ground floor (Page no. 49 of the complaint)
10.	Area admeasuring	512.64 sq. ft. (Page no. 49 of the complaint)
11.	Date of execution of agreement to sell - Raheja Trinity	09.10.2015 (Page no. 48 of the complaint)
12.	Allotment letter	09.10.2015 (Page no. 45 of the complaint)
13.	Date of booking application form	Application form annexed but date is not mentioned
14.	Possession clause	<b>4.2 Possession Time and Compensation</b> <i>That the Seller shall sincerely endeavor to give possession of the shop/commercial space to the purchaser <b>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</b> and after providing of necessary infrastructure specially road sewer &amp; water in the sector by the</i>



		<p><i>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 &amp; 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....."</i></p>
15.	Due date of possession	<p>09.10.2018</p> <p>[Calculated on the basis of the date of agreement to sell i.e., 09.10.2015]</p>



16.	Total sale consideration	Rs.61,51,680/- (As per payment plan page no. 82 of complaint)
17.	Amount paid by the complainants	Rs.30,27,747/- (As per demand letter and receipt information page no. 101 to 103 of the complaint)
18.	Payment plan	Installment payment plan (Page no. 82 of the complaint)
19.	Occupation certificate /Completion certificate	Not received
20.	Offer of possession सत्यमेव जयते	Not offered
21.	Legal notice sent by the complainants	02.12.2020 (Page no. 121 of the complaint)
22.	Delay in handing over the possession till date of filing of this complaint i.e., 16.03.2021	2 years 5 months and 7 days

**B. Facts of the complaint**

3. The complainants have made the following submissions: -

- I. That in the 2013, the complainant i.e., Mr. Vikas Gandhi received a marketing call from a real estate agent "White Plot Consultancy", who represented himself as an authorized agent of the respondent and invited him for booking a commercial shop



project being developed by the respondent by the name and style of "**Raheja Trinity**", Sector-84, Gurugram. The complainant visited the office of the respondent and project site along with the real estate agent and met with the marketing staff of the respondent. The marketing staff of the respondent allured the complainant with a colorful brochure and audio-video presentation and assured him that the project will be a landmark commercial in the vicinity.

- II. That on 07.12.2013, the complainants relied on representation & assurance of the respondent booked a commercial shop bearing unit no. 037 sq. ft. on the ground floor and having a super area of 512.64 sq. ft. in the said project for a total sale consideration of Rs.69,74,551/-. On the same day, they paid the booking amount of Rs.6,78,138/- vide cheque no. 067496 drawn on HSBC Bank. The complainants signed a pre-printed application form for booking of the shop. At the time of receiving the application money, the respondent assured the complainants that the possession of the said unit would be delivered within 36 months of signing the apartment buyer's agreement.
- III. That on 21.03.2014 & 02.06.2014, they paid Rs.10,80,070/- and Rs.3,40,000/- vide cheque no. 068023 and 068936 drawn on HSBC Bank respectively to the respondent and the same has been mentioned on page 5 para 3.2 of the "agreement to sell". After a

long follow-up on 09.10.2015, respondent issued an allotment letter in the favour of complainants for shop no.037, admeasuring 512.64 sq. ft.

- IV. That on 09.10.2015, a pre-printed, arbitrary, and ex-facio agreement to sell was executed inter-se the parties. This agreement has a plethora of articles and according to article no. 4.2, the respondent proposes to offer the possession of the unit within a period of 36 months from the date of execution of the agreement to sell. Therefore, the due date of possession was 09.10.2018.
- V. That they have already paid more than 43% amount i.e., Rs.30,27,747/- of the total cost of the shop. All the installments demanded had been paid by the complainants on time.
- VI. That the time of the delivery of the project has already expired in 2018 and the respondent did not adhere to the agreed timeline and now is not legally entitled to arbitrarily extend the same without the concurrence of the complainants.
- VII. That on 31.10.2020, complainants visited the project site to ascertain the progress of the project. They were shocked to see the status of the construction as only a bit of construction has taken place and still a long journey is to go to get the same in the final shape.

VIII. That as per the agreements to sell, the respondent failed to complete the construction of the said shop within 36 months from the date of execution of this agreement. Hence, he is liable to refund the paid amount under section 12, 18 & 19 (4) of the Act.

IX. That on finding the breach of contract and the tardy progress of the project, the complainants served a legal-cum-demand notice dated 02.12.2020 on the respondent, and the same was delivered at the address as per the tracking report of the postal department.

A reply of the same has not been given by the respondent till date.

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

4. The complainants have sought following relief(s).
  - i. Direct the respondent to refund the amount of Rs.30,27,747/- with interest @18%.
5. The respondents/promoter put in appearance through counsel and filed the power of attorney. Despite specific directions, it failed to comply with the orders of the authority. It shows that the respondent is intentionally delaying the procedure of the court by avoiding to file written reply. Therefore, in view of order dated 01.02.2023, the defence of the respondent was struck off.
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 amount of Rs.30,27,747/- with interest @18%.**

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. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with 18% 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., 01.02.2023 is **8.60%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.60%**.
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 4.2 of the agreement to sell executed between the parties on 09.10.2015, 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 from the date of execution of agreement to sell i.e., 09.10.2015 which comes out to be 09.10.2018.
20. Keeping in view the fact that the allottee/complainants wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

21. The due date of possession as per agreement for sale as mentioned in the table above is **09.10.2018** and there is delay of **2 years 5 months and 7 days** on the date of filing of the complaint.
22. 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....."*

23. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022. it was observed

*25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the*

*terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

24. 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 allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or 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.
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., @ 10.60% 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.

**F. Directions of the authority**

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

- i. The respondent/promoters are directed to refund the amount i.e., Rs.30,27,747/- received 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.

27. Complaint stands disposed of.

28. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.02.2023