

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

Complaint no. : 4188 of 2021
Ordre reserved on: 14.12.2022
Order pronounced on: 07.03.2023

Mr. Mohit Bansal

R/o: - M-502, JMD, Gardens, Main Sohna Road, Near
Subhash Chowk, Gurugram- 122018

Complainant

Versus

M/s Raheja Developers Limited.

Regd. Office at: W4D- 204/5, Keshav Kunj, Western
Avenue, Sanik Farms, New Delhi- 110062

Respondent

CORAM:

Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

**Member
Member**

APPEARANCE:

Ms. Sakshi Mehley (Advocate)
Sh. Garvit Gupta (Advocate)

Complainant
Respondent

ORDER

1. This complain has been filed by the complainant/allottee 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 complainant, 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 Aranya City", Sectors 11&14, Sohna Gurugram
2.	Project area	107.85 acres
3.	Nature of the project	Residential Plotted Colony
4.	DTCP license no. and validity status	19 of 2014 dated 11.06.2014 valid up to 10.06.2018
5.	Name of licensee	Standard Farms Pvt. Ltd and 9 others
6.	Date of approval of building plans	29.01.2016
7.	RERA Registered/ not registered	Registered vide no. 93 of 2017 dated 28.08.2017
8.	RERA registration valid up to	27.08.2022
9.	Unit no.	Plot no. E- 151 (Page no. 29 of the complaint)
10.	Unit area admeasuring	243.370 sq. yds. (Page no. 29 of the complaint)
11.	Allotment letter	30.06.2014 (Page no. 55 of the complaint)



12.	Date of execution of agreement to sell	30.06.2014 (Page no. 26 of the complaint)
13.	Possession clause	4.2 Possession Time and Compensation <i>That the Seller shall sincerely endeavor to give possession of the plot to the purchaser within thirty-six (36) months from the date of the execution of the Agreement to sell and after providing of 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 reasons beyond the control of the Seller. However, the seller shall be entitled for compensation free grace period of six (6) months in case the development is not completed within the time period mentioned above. In the event of his failure to take over possession of the plot, 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 lie at his/her risk and cost the purchaser shall be liable to pay @ Rs.50/- per sq. Yds. of the plot area per month as cost and the purchaser shall be liable to</i>



		<p><i>pay @ Rs.50/- per sq. Yards. Of the plot area per month as holding charges for the entire period of such delay....."</i></p> <p>(Page no. 34 of the complaint).</p>
14.	Grace period	<p>Allowed</p> <p>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by June 2017. As per agreement to sell, the construction of the project is to be completed by June 2017 which is not completed till date. Accordingly, in the present case the grace period of 6 months is allowed.</p>
15.	Due date of possession	<p>30.12.2017</p> <p>(Note: - 36 months from date of agreement i.e., 30.06.2014 + six months grace period)</p>
16.	Basic sale consideration as per payment plan at page no. 44 of the complaint	<p>Rs.77,26,218/-</p>



17.	Total sale consideration as per applicant ledger dated 08.04.2020 at page no. 56 of the complaint	Rs.77,56,218/-
18.	Amount paid by the complainants	Rs.73,11,158/- [As per applicant ledger dated 08.04.2020 at page no. 56 of the complaint]
20.	Payment Plan	Installment Link Payment Plan (As per payment plan at page 44 of complaint)
21.	Occupation certificate /Completion certificate	Not received
22.	Offer of possession	Not offered
23.	Legal notice sent by the complainant	30.01.2021 (Page no. 63 of the complaint)
24.	Delay in handing over the possession till date of filing complaint i.e., 22.10.2021	3 years 9 months and 22 days

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant relied heavily on the brand value and goodwill of the respondent in the market and thereby invested all his life savings in the property bearing, plot no. F-151 admeasuring 243.47 sq. yards approximately being developed by the

respondent as 'Raheja Aranya City Phase-2' at Sector 11 & 14, Sohna, (Gurugram) Haryana.

- II. That the complainant met on several occasions in the year 2011-2012 the sales team and other HR representatives of the respondent for discussions in order to reach a conclusion of proceeding to book the above-mentioned subject property. He was assured repeatedly to invest in the said subject property owing to its viability in the market. The project was registered vide licence no.19 of 2014 dated 12th June 2014 with the Directorate of Town & Country Planning, Haryana and under this authority vide regd. no. 93 of 2017 dated 28.08.2017.
- III. That the complainant relied on the aforementioned representations of the sales team of the respondent along with its goodwill enjoyed in the market, booked the subject property having a total value of Rs.77,56,218/-.
- IV. That agreement to sell in "Raheja's Aranya City" was executed between the parties on 30.06.2014 with regard to the subject property. As per Article 4.2 of the agreement, it was the legal obligation of the respondent to give the possession of the subject property to the complainant within 36 months from the date of the execution of the agreement between the parties hereto. The said article further provided a grace period of 6 months in case the development was not completed. Thus, as per the terms of the agreement, even after taking into consideration the grace period,



the possession of the subject property should have been handed over to the complainant latest by 31-12-2017 (inclusive of the 6 months' grace period as mentioned in the agreement, dated 30.06.2014). It is needless to mention that till date the subject property has not been completed and handed over to him. There is an inordinate delay on account of the respondent of more than 4 years.

- V. That the complainant made the initial payment for the subject property in February of 2012 but was handed over the allotment letter only on 30.06.2014. Thus, from the very start, there has been delay on part of it. The complainant as per the ledger dated 08.04.2020 has till date made a total payment of Rs.73,11,449/- by 31.05.2017 as per the terms of payment specified in the agreement but has still not been handed over the possession of the subject property, who has also not accorded any reason for the delay.
- VI. That the respondent had no intention whatsoever to hand over the possession of the subject property to the complainant or any other allottees. The respondent on account of misrepresentations made to the complainant has extorted the investment and hard-earned savings of the complainant. He humbly submits in the instant complaint to place the onus of delay beyond reasonable limits on the respondent and relieve him the risk of further being cheated and duped by it. Without prejudice that from the email correspondences between both the parties, there is a clear



admission on part of the respondent of delay in handing over of the possession of the subject property.

- VII. That complainant was constrained to issue a formal demand notice under section 18 of the Act, 2016 to the respondent on 30.01.2021.
- VIII. That it is well established principle of law laid by the Hon'ble Supreme Court that "while quantifying the damages, forums /authorities are required to make an attempt to serve ends of justice, so as to compensation is awarded in an established case which not only serves the purpose of compensating the individual but which also at the same time aims to bring about a qualitative change in the attitude of the service provider." The complainant urges vide the instant complaint that the respondent be held liable for misrepresentation, negligence, playing fraud and cheating him in as much as the case at hand is a glaring example as to how the developers exploit the innocent buyers.
- IX. That the complainant harbors no intention anymore to seek the possession of the subject property. The complainant humbly states before this authority that he wishes to withdraw from the subject property without prejudice to any other remedy available and further prays to this authority that the respondent be directed to return the booking amount of Rs. 73,11,449/- along with interest @ 9% p.a. from 09.04.2012 till the date of payment/compensation.

C. Relief sought by the complainant:

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



- i. Direct the respondent to refund the principal amount of Rs.73,11,449/- along with interest @ 9% per annum from 09.04.2012 till the date of refund of the amount paid by the complainant.
 - ii. Direct the respondent to compensate the complainant to the tune of Rs.10,00,000/- for the mental harassment caused to him.
 - iii. Direct the respondent to pay the litigation cost to the tune of Rs.50,000/- to the complainant.
5. The respondent/promoter put in appearance through company's A.R & Advocate and marked attendance on 13.09.2022 and 14.12.2022. 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. Hence, it's defence was ordered to be struck off for not filing reply despite multiple and adequate opportunities.
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 complainant.

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 complainant 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 complainant.

- E.I Direct the respondent to refund the principal amount of Rs.73,11,449/- along with interest @ 9% per annum from 09.04.2012 till the date of refund of the amount paid by the complainant.**



13. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him 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. Article 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 plot to the purchaser **within thirty-six (36) months from the date of the execution of the Agreement to sell** and after providing of 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 reasons beyond the control of the Seller. **However, the seller shall be entitled for compensation free grace period of six (6) months in case the development is not completed within the time period mentioned above.** In the event of his failure to take over possession of the plot, 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 lie at his/her risk and cost the purchaser shall be liable to pay @ Rs.50/- per sq. Yds. of the plot area per month as cost and the purchaser shall be liable to pay @ Rs.50/- per sq. Yards. Of the plot 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 the 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. **Due date of handing over possession and admissibility of grace period:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe



of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by June 2017. However, the fact cannot be ignored that there were circumstances beyond the control of the respondent which led to delay in completion of the project. Accordingly, in the present case, the grace period of 6 months is allowed.

17. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund of the amount paid by him at the rate of 9%. However, the 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.

18. 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.



19. 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., 07.03.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
20. 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 30.06.2014, 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 30.06.2017. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession is 30.12.2017. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the 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.
21. 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....."

22. 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."

23. 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). 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 allottee, as he wishes 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.

24. 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 complainant is entitled to refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 10.70% 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 compensate the complainant to the tune of Rs.10,00,000/- for the mental harassment.

E. III Direct the respondent to pay the litigation cost to the tune of Rs.50,000/- to the complainant.

25. The complainant is 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 complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

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/promoter is directed to refund the amount i.e., Rs.73,11,158/- received by it from the complainant along with interest at the rate of 10.70% 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.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up



amount along with interest thereon to the complainant. Even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee/complainant.


27. Complaint stands disposed of.

28. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Ashok Sangwan)

Member

Dated: 07.03.2023

