

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

Complaint no. : 5620 of 2019
First date of hearing: 18.12.2019
Date of decision: 24.02.2023

Mr. Sameer Kumar Suneja
R/o: - Plot no. 1/3 and 4, Sahipur Backside, NDPL Colony,
Shalimar Bagh, New Delhi- 110088

Complainant

Versus

M/s Raheja Developers Limited.
Regd. Office at: W4D- 204/5, Keshav Kunj, Western
Avenue, Sanik Farms, New Delhi- 110062
Also, at: - Sector- 11 and 14 Sohna Road, Gurugram,
Haryana

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Sagar Chawla (Advocate)
Sh. Garvit Gupta (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 04.12.2019 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 allottee 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. F- 138 (As per mentioned in payment receipt issued by the respondent at page no. 65 of the complaint)
10.	Unit area admeasuring	204.47 sq. yds. (As alleged by the complainant at page no. 23 of the complaint)





11.	Allotment letter	N. A
12.	Date of execution of agreement to sell	Not executed
13.	Date of execution of booking application form	Annexed but not executed
14.	Possession clause	That the company shall sincerely endeavour to give possession of the Plot to the intending Applicant within 36 months from the date of the execution of the Agreement to Sell and after providing of necessary infrastructure specially road, sewer and 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 Company.
15.	Due date of possession	24.04.2015 (Note: - 36 months from date of first payment i.e., 24.04.2012)
16.	Basic sale consideration as alleged by the complainant at page no. 25 of the complaint	Rs.64,87,688/-
17.	Amount paid by the complainants	Rs.19,10,807/- (As alleged by the complainant at page no. 23 of the complaint)
18.	Occupation certificate /Completion certificate	Not received



19.	Offer of possession	Not offered
20.	Delay in handing over the possession till date of filing of complaint i.e., 04.12.2019	4 years 7 months and 10 days

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That in the year 2012, respondent launched a residential plotted township under the name of Raheja's Aranya City at sector 11 and 14, Sohna Gurugram Haryana. The representatives of the respondent had approached the complainant showing brochures and other advertisements luring the complainant to purchase a property in the project. The respondent widely publicized their project on the website www.raheja.com and also through various other advertisement channels claiming that "Aranya City is Haryana's first integrated township planned in accordance with India's vision of creating smart cities with features like solar power generation, rainwater harvesting, solar street lighting, waste management systems, water recycling systems designed for zero discharge, wi-fi hotspot etc." The respondent further promised to construct a shopping complex, food courts, sports complex, amphitheatre, mini theatre, arts centres, hospital, state-of-the-art club house among other facilities as amenities of the township forming a part of the project.

- II. That the complainant booked a residential plot of land measuring 204.47 sq. yards in the project, at basic sale price of Rs.26,472/- per sq. yd. That the respondent charged external development charges at the rate of Rs.3,850/- per sq. yd. and interest free maintenance security at the rate of Rs.500/- per sq. yard. The respondent further charged a one-time payment of Rs.2,00,000/- under the garb of club membership towards the imaginary club which has not been constructed till date just like the project.
- III. That the complainant accordingly paid the booking advance of Rs.13,50,072/- as per demand of the respondent which were duly received and acknowledged by it under application no. FAPPRAC /00146/12-13. Besides the booking amount, the respondent also charged a sum of Rs.56,400/- from the complainant being the commission of their agents against which no formal receipt was ever issued by the respondent. He has further paid a sum of Rs.5,04,335/- as per the Respondent's demand and is acknowledged by it.
- IV. That the respondent at the time of booking the residential plot in the said project had assured the complainant that they have procured all the necessary permissions, licenses and approvals, and further committed that under all circumstances, they would be delivering the possession of the residential plot within four months from April 2012. The respondent further assured that the maximum work of basic infrastructure has also been completed in the said project.



- V. That the representatives of the respondent, at the time of promoting the project, had assured the complainant that unlike other builders, the respondent took their timelines seriously. Considering the strong commitment shown by it and getting enticed by the amenities being provided along with the residential plot by the respondent, he was compelled to purchase the residential plot. Thus, the respondent succeeded in luring the complainant to part with his hard-earned money by adopting their false marketing strategies.
- VI. That the total cost of the residential plot which has been purchased by the complainant is Rs.64,87,688/-, inclusive of (i) basic sale price, (ii) preferential location charges (PLC), (iii) external development charges (EDC), (iv) club membership charges, (v) interest free maintenance security (IFMS).
- VII. That the complainant with the sole objective to construct his own house at the plot remained in touch with the respondent and the officials of the respondent kept delaying the matter on one pretext or the other. The representatives of the respondent also informed the complainant that the project is awaiting certain approvals from the Government, thereby, causing delay in delivery of possession of the plot. The respondent has failed to even allot the plot to the complainant.
- VIII. At the time of booking of the said plot, he was assured that, the respondent will share the agreement to sell within 30 days of the date





of booking the plot wherein the ownership of undivided share of land will be transferred. Further, he was also made to believe that the agreement to sell being executed for the undivided share of land will ensure their rights in the land of the project and hence their rights will be secured. Based on these representations, the complainant sought regular updates and answers from the representatives of the respondent via calls and personal meetings, however, the complainant never received a positive response.

- IX. That the respondent has raised various demands from the complainant, as mentioned herein before, on their own whims and fancies and not in accordance with the time linked plan mentioned in the application.
- X. That upon non-completion of the project on time, he made numerous requests to it with respect to the procurement of various approvals /documents/licenses of the said project. He never received a clear answer from the respondent and all the responses received from the respondent were vague and deflective in nature. He has an apprehension that when the project was announced, the respondent did not even possess the required approval/sanction/licenses. This authority may direct the respondent to provide all documentation/licenses/approvals and applications so as to determine whether the respondent was even authorized to sell and advertise for the project as early as they have. Due to the acts of the

Handwritten signature

- respondent, the complainant has been reduced to be at the mercy of the respondent, wherein the complainant questions are unanswered.
- XI. That at the time of executing the application/booking of the plot, he had objected towards the highly tilted and one-sided clauses of the application, however, the respondent turned down the concerns of the complainant and curtly informed that the terms and conditions in the application are standard clauses and thus, no changes can be made. A bare perusal of the application unravels that the terms and conditions imposed on the complainant was totally biased in so far as the disparity between the bargaining power and status of the parties, tilted the scale in the favour of the respondent.
- XII. That the complainant was bound by terms and conditions of the application since they had already paid the booking amount with respect to the plot way back in April 2014. Furthermore, since the respondent was in a dominant position, they fabricated the application according to their whims and fancies. Few of the clauses of the construction agreement, discussed hereinafter, would show the totally unfair and abusive terms imposed on the buyers.
- XIII. That the said acts of the respondent amount to criminal misappropriation of money, wherein they sought to accumulate as much money as possible from the innocent and gullible purchasers. The complainant reserves the right to take appropriate legal recourse in the future. The complainant, on multiple occasions, have enquired



about the probable date of delivery of possession of the plot; however, the same has never garnered any response from the respondent, who have adopted delaying tactics so as to avoid giving answers to the complainant.

- XIV. That the respondent has been brushing aside all requisite norms and stipulations and has accumulated huge amount of hard-earned money of various investor/buyer in the project including the complainant and are unconcerned about the delivery of the possession of the plot within the time frame stipulated in the application form. As narrated hereinabove, the respondent has indulged in both "restrictive trade practice" and "unfair trade practice" by its various acts and omissions.
- XV. That the respondent, in utter disregard of their responsibilities, have left the complainant in lurch and he has been forced to chase the respondent for seeking allotment and possession of the plot. Thus, the complainant has no other option but to seek justice from this authority and hence the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- Direct the respondent to refund the entire amount of Rs. 19,10,807/- along with interest @ 18% per annum compounded monthly from 24.04.2012 till actual realization of the amount along with *pendent lite* interest and future compensation.



- ii. Direct the respondent to pay a sum of Rs.6,00,000/- to the complainant towards mental agony, mental harassment caused to the complainant due to negligence of the respondent and the cost of litigation along with *pendent lite* interest and future compensation.
5. The respondent/promoter put in appearance through company's A.R & Advocate and marked attendance on 12.07.2022, 04.10.2022, 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. Therefore, in view of order dated 24.02.2023, 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 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 amount paid by the complainant i.e., Rs.34,81,568/- along with interest @24% per annum from the date of payment till realization

13. 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. 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 clause 20 of the booking application form provides for handing over of possession and is reproduced below:

20 *That the company shall sincerely endeavour to give possession of the Plot to the intending Applicant within **36 months from the date of the execution of the Agreement to Sell** and after providing of necessary infrastructure specially road, sewer and 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 Company"*

15. At the outset, it is relevant to comment on the preset possession clause of the booking form 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 booking application form 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 complainant has stated that the booking application form was entered in the year 2012. However, as per the copy of the booking application form placed on record by the complainant, it is evident that the application form does not bear any date, nor it has been signed by the respondent /promoter. In such an eventuality, the said booking application form cannot be treated as executed. However, had this application form 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 20 of the said application form. The due date of possession as per agreement for sale as mentioned in the table above is **24.04.2015** and



there is delay of 4 years 7 months and 10 days till the date of filing of the present complaint.

17. The authority has further, observes that even after a passage of more than 4.7 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 complainant has paid almost 29% of total consideration till 2016. 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.

18. 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....."

19. 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."*

20. 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 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.

21. Admissibility of refund along with prescribed rate of interest: 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.

22. 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.

23. 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., 24.02.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.



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 them at the prescribed rate of interest i.e., @ 8.70% 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 pay a sum of Rs.6,00,000/- to the complainant towards mental agony, mental harassment caused to the complainant due to negligence of the respondent and the cost of litigation along with *pendent lite* interest and future compensation.

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.

H. 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.19,10,807/- 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.

27. Complaint stands disposed of.

28. File be consigned to registry.

Dated: 24.02.2023


(Sanjeev Kumar Arora)

Member
Haryana Real Estate
Regulatory Authority,
Gurugram