



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Order pronounced on: 28.02.2023

Name of Builder	M/s Raheja Developers Pvt. Ltd.
Project Name	Krishna Housing Scheme

Sr. No.	Complaint No.	Complainant
1.	2320 of 2022	Raman Bansal S/o Late Sh. L. D. Gupta r/o C-172, Vivek Vihar, Delhi-110095.
2.	2371 of 2022	Mr. Parveen Kumar Garg S/o Mr. Subhash Chand Garg, r/o E-775 Dabua Colony, NIT, Faridabad
3.	1494 of 2022	Deepti Kapil D/o Sh. Deepak Kumar Kapil r/o G-31, 2nd Floor, SI-2, Sector - 56, Gurugram
4.	1495 of 2022	Rashmi Kapila And Ors. W/o Sh. Deepak Kumar Kapil r/o G-31, 2nd Floor, SI-2, Sector - 56, Gurugram
5.	1721 of 2022	Shagun Bansal W/O Sh. Ankit Aggarwal R/O H no. 530 A Guru Ramdas Nagar, Gali No. 5, Laxmi Nagar

Versus

M/s Raheja Developers Pvt. Ltd, having its registered office at W-4D, 204/5, Keshav Kunj Cariappa Marg, Western Avenue, Sainik Farms New Delhi South Delhi-110062

.....Respondent

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present: - None for the complainant.
(in complaint no. 2320 of 2022)
Sh. Akshat Mittal, learned counsel for the complainant.
(in complaint no. 2371 of 2022)
Sh. Gurpreet Singh, learned counsel for the complainant.
(in complaint no. 1721 of 2022)
Sh. Rajesh Yadav, learned counsel for the complainant.
(in complaint no. 1494, 1495 of 2022)

Ms. Navneet, learned counsel for the respondents in all complaints.

ORDER (NADIM AKHTAR - MEMBER)

1. This order shall dispose of all 5 captioned complaints filed before this Authority under Section 18 and 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.
2. Captioned complaints are taken up together as facts and grievances of all complaints are more or less identical and relate to the same project of the respondent, i.e., "Krishna Housing Scheme", situated at Sohna, Mewat (Nuh). The terms and conditions of the builder buyer's agreements which had been executed between the parties are also similar. However, in complaint no. 1721 of 2021 titled as Shagun Bansal Vs M/s Raheja Builder Pvt Ltd., provisional allotment has been done but BBA has not been executed. The fulcrum of the

issue involved in all these cases pertains to failure on part of respondent promoter to deliver timely possession of flats in question. Therefore, complaint no. 2320 of 2022 titled "Raman Bansal v/s M/s Raheja Developers Pvt. Ltd", has been taken as lead case for disposal of all these matters.

A. UNIT AND PROJECT RELATED DETAILS:

3. The particulars of the project have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	Krishna Housing Scheme
2.	Nature of the Project	Residential
3.	RERA registered/not registered	Registered no. 21 of 2017

4. Further the details of sale consideration, the amount paid by all the complainants, date of proposed handing over of possession, delay period have been portrayed in following table:

Sr. No	COMPLAINT NO.	UNIT No.	DATE OF AGREEMENT/ ALLOTMENT LETTER	DEEMED DATE OF POSSESSION	TOTAL SALES CONSIDERATION (In Rs.)	TOTAL AMOUNT PAID BY THE COMPLAINANT (In Rs.)
1.	2320/2022	8007, 8 th floor, Tower-A	01.03.2017	27.04.2019	22,71,096/-	14,82,135
2.	2371/22	5001, 5 th floor, Tower D-2	27.08.2016	27.04.2019	15,24,022	9,78,492
3.	1494/22	8006, 8 th Floor, Tower-C2	16.09.2016	27.04.2019	15,24,022	9,66,606/-
4.	1495/22	8007, 8 th Floor Tower-C2.	27.02.2017	27.04.2019	15,24,022	9,59,011/-

5.	1721/22	8004, 8 th Floor, Tower D- 1.	07.09.2016	27.04.2019	15,24,022	13,33,520/-
----	---------	---------------------------------------------------	------------	------------	-----------	-------------

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT

5. Complainant had booked a residential flat from the promoter in the year 2015. Said flat were provisionally allotted vide allotment letter dated 10.07.2015. Builder Buyers Agreement was executed between the allottee and respondent-promoter on 01.03.2017 (Pg. 37 of complaint book).
6. According to clause 5.2 of the BBA, respondent committed to complete the construction and offer possession of the allotted unit within 48 months from the date of the receiving of environment clearance or sanction of building plans whichever is later. Basic sale price was Rs. 23,20,901/- out of which complainant had paid Rs. 14,82,135/- on different dates.
7. Complainant further alleged that he has visited the site in year 2017 and was shocked to see that there is no development at the site. On asking upon the respondent, respondent company promised that possession will be handed over to him within stipulated period as per the agreement, failing which the respondent company would pay interest which has been admitted by the respondent company in their agreement. Though, date of handing over of possession is 27.04.2019 but possession has not been offered till date.



Therefore, complainant has prayed for relief of refund of the amount paid by complainant till date along with the prescribed rate of interest.

C. RELIEF SOUGHT:

8. The complainant in his complaint has sought following reliefs:

- i. To direct the respondent to refund the amount paid by complainant of Rs. 14,82,135/- along with the interest @ 10% per annum;
- ii. To direct the respondent to pay ₹50,000/- to the complainant as litigation fee;
- iii. To direct the respondent to pay future interest @10% till realization of the claim amount;
- iv. Any other relief which is deemed fit by this Hon'ble Authority.

D. REPLY:

9. No replies have been filed by the respondent in any of the complaints.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:

10. During oral arguments learned counsel for the complainant submits that there is no progress at the site and project cannot be completed in near future. Therefore, he requested to dispose of the matter in same terms of the Complaint no. 183 of 2021 titled as Shrishti Wadhwa and Jolly Wadhwa Vs Raheja Developers Pvt Ltd.



F. JURISDICTION OF THE AUTHORITY:

11. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

F.1: Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Haryana, Panchkula shall be the rest of Haryana except Gurugram for all purposes with office situated in Panchkula. In the present case the project in question is situated within the planning area Nuh, Mewat. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

F.2: Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

(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:*

34. Functions of Authority.—The functions of the Authority shall include—(f) 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;

In view of the Provisions of the Act of 2016 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 Office, if pursued by the complainants at a later stage.

G. ISSUES FOR ADJUDICATION:

12. Whether the complainant is entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS OF THE AUTHORITY:

13. From perusal of the record and documentary evidence adduced by the complainant and also on the basis of arguments advanced by learned counsel for complainant, the Authority observed that the complainant has made payment of Rs. 14,82,135/- to the respondent and construction at the site of the project is not likely to be completed in near future. Therefore, the present complaint is covered by the decision rendered on 06.05.2022 in complaint no. 183 of 2021 titled as Shrishti Wadhwa and Jolly Wadhwa Vs Raheja Developers Pvt Ltd. Thus, the Authority decided to dispose of the matter in



terms of the above said complaint. Relevant part of which has been reproduced below for reference:

“iii) Next argument of respondents is that the project could not be completed on account of diversion of funds from RERA account by the financier M/s DMI Finance Pvt. Ltd. Here again respondents are severely contradicting themselves. On one hand they are stating that project is not registered, but in the same breath they are saying that M/s DMI Finance Pvt. Ltd. is taking away money from RERA Account of the project. Again respondents have failed to even check facts of the matter.

iv) Regardless of above position, respondent-company has got loan of Rs.55 crores sanctioned, out of which admittedly Rs.33 crores have been disbursed. Nothing at all has been stated where this amount of Rs. 33 crores has been invested, and whether it has been invested in the project or invested somewhere else. They have not even stated what properties have been hypothecated against the loan.

Respondents have failed to submit quarterly progress and have not even submitted any certificate of Chartered Accountant that said loan which has been got sanctioned for the project has been invested on the project itself.

On the other hand admittedly however, money collected from complainants has not been invested on the project. Nothing at all has been stated as to how much money was collected from complainants and how much money has been invested. RERA Act mandates that at least 70% money collected from allottees is to be invested on development of the project.

v) As per provisions of RERA Act and Rules no lien could have been created on the RERA account. 70% of the money received from the allottees has to be invested on the project. The respondent promoters appears to have severely defaulted in respect of legal obligations cast upon them under RERA Act. They have got the project registered and have operated RERA account as per law, but respondents have created lien in favour of M/s DMI Finance Pvt. Ltd. without even informing the Authority about it. It is a blatant illegality committed by the respondents which in fact amounts to breach of law and trust. The allottees had entrusted their money with the promoter with an expectation that the same will be invested in the project and their booked apartment will be delivered in time. The promoter on the other hand,

dealt with the money so deposited by the allottee-complainants like its private money and allowed a lien to be created in favour of 3rd party.

vi) There appears to be a clear mismanagement of funds by the respondent. The project ought to have been completed with the help of Rs.33 crores raised by way of loan and the money contributed by complainant-allottees. Only a detailed forensic audit would reveal whether the money collected by way of loan and instalments paid by the complainants have been invested in the project or the said money has been diverted towards other purposes.

Authority decides to send a copy of this order to the Project Section to initiate inquiry in the matter.

8) Respondents-promoters have not submitted any time-line as to when project is likely to be completed. They are only hiding behind bald technicalities like jurisdiction of the Authority to justify their utter failure in completing the project. Photographs of the projects presented by complainants clearly show that the project is at very preliminary stages. It is not possible to be completed in foreseeable future. Since nothing substantial is happening on the ground, the promoters are going to find it difficult to arrange more money either from the allottees or from financiers. In any case, respondent is in serious disputes with both of them.

9) In such circumstances, when there is no hope of completion of project in foreseeable future, Authority is duty bound to allow relief of refund as prayed by complainants. Accordingly, Authority orders refund of entire amount paid by complainants along with interest."

14. Therefore, Authority finds it a fit case for allowing refund in favour of complainants. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: Interest payable by promoter and Allottee. [Section 19] - An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes

to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (I) of Section 18 or the promoter fails to give possession of the apartment/plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:

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."

15. The legislature in its wisdom in the subordinate legislation under the provisions 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.
16. 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. 28.02.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.
17. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.



Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

18. Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.70% till the date of this order in all the captioned complaints. However, in complaint no. 2320/2022, the complainant claims that he has paid Rs. 14,82,135/- to respondent but receipts annexed with the complaint shows that Rs. 14,85,205/- has been paid. Therefore, 14,85,205/- is taken into consideration for calculating interest thereof, in complaint no. 1721/2022, complainant claims that he has paid Rs. 13, 33,520/- to respondent but receipts annexed with the complaint shows that Rs.11,58,257/- has been paid. Therefore, Rs.11, 58,257/- is taken into consideration for calculating interest thereof. Also, in complaint no. 2371 of 2022, the complainant has claimed an amount of Rs. 9,78,492 /- in his relief but the ledger of the respondent/promoter (Annexure C-2) of the complaint book, the amount mentioned as Rs.9,99,113/-. Therefore, Rs. 9, 99,113/ - is taken into consideration for calculating interest thereof. Accordingly, the details of total amount to be refunded in each case are given in the table below –



Sr. No.	Complaint No.	Principal Amount (in Rs.)	Interest @10.70% till 28.02.2023 (in Rs.)	Total amount to be refunded (in Rs.)
1.	2320/2022	Rs. 1485205 /-	Rs. 1137022 /-	Rs. 26,22,227/-
2.	1494/22	Rs. 9,66,606/-	Rs. 6,50,099 /-	Rs. 16,16,705/-
3.	1495/22	Rs. 9,59,011/-	Rs. 6,49,886/-	Rs. 16,08,897/-
4.	1721/22	Rs. 1158257 /-	Rs. 760911/-	Rs. 1919168/-
5.	2371/22	Rs. 999113/-	Rs. 735625/-	Rs. 17,34,738/-

19. The complainants are seeking compensation on account of mental harassment caused for delay in possession, compensation under Section 12 of RERA Act, 2016 and litigation costs. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & 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 learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned 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 litigation expenses.


I. DIRECTIONS OF THE AUTHORITY

20. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire amounts along with interest of @ 10.70 % to the complainants are specified in the table provided on page 12 .

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

21. These complaints are, accordingly, **disposed of**. Files be consigned to the record room after uploading orders on the website of the Authority.


.....
DR. GEETA RATHEE SINGH
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]