



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1731 of 2022
Date of filing:	17.08.2022
Date of first hearing:	25.01.2023
Date of decision:	01.08.2023

Sh. Mohan Prakash Gupta, S/o Late Sh. O.P.Gupta,  
R/o Flat no.47, New Pragatisheel Apartments,  
Vasundra Enclave,  
Delhi- 110096.

.....COMPLAINANT

### Versus

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

.....RESPONDENT

CORAM: Dr. Geeta Rathee Singh  
Nadim Akhtar

Member  
Member

**Present:** - Sh. Gurpreet Singh Advocate, Counsel for the complainant through VC  
Sh. Kamal Dhaiya Advocate, Counsel for the respondent.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint has been filed on 17.08.2022 by complainant under Section 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.

**A. UNIT AND PROJECT RELATED DETAILS:**

2. 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.	Date of application by complainant	01.09.2016
5.	Unit no.	1 bhk-, 7005, tower-D
6.	Unite area	414.37 sq.ft.
7.	Date of builder buyer agreement	08.09.2016
8.	Basic sale price	₹15,24,022/-



9.	Amount paid by complainant	₹11,65,877/-
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**B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT**

3. Complainant had booked a residential flat from the promoter in the year 2016. Said flat was provisionally allotted vide allotment letter dated 07.09.2016. Builder Buyers Agreement was executed between the allottee and respondent-promoter on 08.09.2016, which is unsigned by promoter. (Pg. 35 of complaint book).
4. 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. 15,24,022/- out of which complainant had paid Rs. 11,65,877/- on different dates.
5. Complainant further alleged in para 16 of complaint that there is no development at the site till date. 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, possession was to be handed over by the year 2020



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:**

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

- i. To direct the respondent to refund the amount paid by complainant of Rs. 11,65,877/- along with the interest;
- ii. To direct the respondent to pay ₹50,000/- to the complainant as litigation fee;
- iii. To direct the respondent to pay future interest till realization of the claim amount;
- iv. To pay a sum of Rs. 5 lacs as compensation for the pain, agony, harassment and torture caused to the complainants.
- v. To pass directions to freeze the bank accounts of the respondent and attach Flat No. D-1/8004 having carpet area admeasuring 414.37 sq.ft till money complainant is entitled to is refunded to him.
- vi. Any other relief which is deemed fit by this Hon'ble Authority.

**D. REPLY:**

7. Respondent has submitted their reply dated 25.04.2023 in the registry.

Respondent has submitted as follows:-



- i) This Authority does not have jurisdiction to deal with this matter because the complainant has sought relief of “possession of the flats with interest and compensation”.
- ii) Authority further lacks jurisdiction because the project has not been registered with the Authority. Authority has jurisdiction to regulate the affairs only of the projects which are registered with Authority.
- iii) Respondents have stated that agreement with the complainant-allottee had not been executed in accordance with the format of the agreement provided in the Rules. Further, agreement with complainant had been executed much prior to coming into force of the RERA Act. For this reason also, the Authority has no jurisdiction and the complaint is not maintainable.
- iv) The project is in full swing and the delay of the project was on account of non-sanction of necessary approvals by the competent authorities of the State Government and for the reasons of not providing external services like sewer, water etc.
- v) Respondent-company has averred that they had sought funds from M/s DMI Finance Pvt. Ltd. for financing its affordable housing project pursuant to licence No. 115 of 2014. Rs.55 crores were sanctioned out of which Rs. 33 crores have been disbursed and Rs.22 crores remains un-disbursed by the financier. Respondent-company claims in para 11 of their reply that out of the RERA Escrow account Rs.18 crores have been invested in the project and remaining amount has been withdrawn/ self-serviced by the vendor illegally.





Respondent states that M/s DMI Finance Pvt. Ltd. is not releasing the money from RERA account and they are refusing to remove their lien.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:**

8. 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. ISSUES FOR ADJUDICATION:**

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

**G. OBSERVATIONS OF THE AUTHORITY:**

10. 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. 11,65,877/- 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:

*“7. Authority has gone through the submissions of complainants as well as of respondents. It observes and orders as follows:-*

*i) Respondents have submitted a standard photocopied reply in all the cases, in which they have submitted similar arguments. In many cases, respondents have failed to even submit reply. It appears that respondent-company is not even clear about the facts of the matter. In writing i.e. in para 3 of reply as well as orally, learned counsel for the respondents vehemently argued that the project is not registered therefore jurisdiction of the Authority does not extend to the unregistered project.*

*The fact of the matter, however is that this project had been got registered by the respondents vide registration No.21 of 2017 dated 06.07.2017. Authority is in possession of said registration certificate which was communicated to the respondent-company vide memo No. IIRERA (Reg.) 39/2017/122 dated 06.07.2017.*

*Authority observes that respondents are making submissions contrary to the facts. Respondents ought to check the facts of the matter before submitting their reply.*

*ii). This Authority has passed detailed orders in regard to jurisdiction of this Authority over unregistered project in complaint No. 191 of 2020 titled Mrs Rajni And Mr Ranbir Singh V/S Parsvnath Developers Limited, relevant part of which are reproduced below:*

*14. The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get away from discharging*



*their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.*

*15. For the foregoing reasons, Authority rejects the arguments of respondent company. The application filed by respondent promoter is accordingly rejected.*

*Therefore, even if the project was unregistered, the Authority would have unfettered jurisdiction to deal with the complaints of the allottees as per Rule laid down by the Authority in the aforesaid complaint. Accordingly, either ways objections to jurisdiction of Authority raised by respondents holds no ground, and are rejected.*

*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 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 3<sup>rd</sup> 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."*



11. In view of above, Authority finds it a fit case for allowing refund in favour of complainants. As per Section 18 of Act, interest is defined as under:-

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;

Rule 15 of HRERA Rules, 2017 which is reproduced below for ready references:

*“Rule 15: 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 (NCLR) 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”.*

12. 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.

13. 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. 01.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
14. Accordingly, respondent will be liable to pay the complainants interest from the date amounts were paid by them till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount of ₹ 11,65,877/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.75% (8.75% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest at the rate of 10.75% till the date of this order and said amount works out to ₹ 19,52,587/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 01.08.2023
1.	₹76,201/-	01.09.2016	₹ 56,690/-
2.	₹4,95,307/-	04.03.2017	₹ 3,41,646/-
3.	1,90,503/-	31.03.2017	₹ 1,29,888





4.	1,90,503/-	01.07.2017	₹ 1,24,726
5.	2,13,363/-	12.10.2017	₹ 1,33,220/-
Total	₹11,65,877/-		₹ 7,86,170/-
Total payable amount	₹ 19,52,587/-		

15. The complainant is seeking compensation on account of pain, agony, harrasment caused for delay in possession, compensation under Section 12 of RERA Act, 2016 and litigation costs of ₹ 50,000/-. 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 PvL 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.
16. Further, complainant has sought direction for freezing the bank accounts of the respondent company and attachment of Flat no. D-1/8004 having carpet area of





414.37 sq.ft till the money being paid to the complainant. In this regard it is observed that said relief has nowhere been claimed by the complainant in his complaint nor pressed by him during arguments. Hence, complainant prayer for freezing the bank accounts of the respondent company and attachment of Flat no. D-1/8004 is rejected.

**I. DIRECTIONS OF THE AUTHORITY**

17. 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 @ 10.75 % to the complainant as specified in the table provided in para 14 of this order.
- (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.
18. Captioned complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading orders on the website of the Authority.

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

  
.....  
NADIM AKHTAR  
[MEMBER]