



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of decision:	05.09.2023
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Name of Builder	Raheja Developers Ltd.
Project Name	Raheja Oma, Sector 2-A, Dharuhera, Haryana

Sr. No.	Complaint No.	Complainant
1.	3109 of 2022	Puneet Luthra S/o Sh. C R Luthra, R/o 1701, bay View, 17 th floor, House of Hiranandani, Siruseri, Eggtaur, OMR, Chennai, Tamil Nadu- 603103
2.	3110 of 2022	Nikhil Vaid S/o Sh. Om Prakash Vaid, R/o 330, Maya Enclave, New Delhi-110064

Versus

Raheja Developers Pvt. Ltd,

having its registered office at 406, 4th floor, Rectangle One, D-4,

District Centre, Saket, New Delhi-110017

Also at- W4D, 204/5, Keshav Kunj, Carippa Marg,

Western Avenue, Sainik Farms,

New Delhi- 110080.

.....RESPONDENT

**CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar**

**Member
Member**

Present: - Sh. Yagyaang Ajay Advocate, Counsel for the complainants in both the complaints
None for the respondent.

ORDER (NADIM AKHTAR - MEMBER)

1. This order shall dispose of both the captioned complaints filed before this Authority 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.

2. Captioned complaints are taken up together as facts and grievances of both complaints are more or less identical and relate to the same project of the respondent, i.e., "Raheja Oma", situated at, Sector 2-A, Dharuhera, Haryana. The terms and conditions of the builder buyer agreements which had been executed between the parties are also similar. The fulcrum of the issue involved in both cases pertains to failure on part of respondent promoter to deliver timely possession of flats in question.



Therefore, complaint no. 3109 of 2022 titled "Puneet Luthra v/s Raheja Developers Ltd", has been taken as lead case for disposal of both 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	Raheja's OMA, Sector 2-A Dharuhera(Rewari)
2.	Nature of the Project	Residential
3.	RERA registered/not registered	Registered no. 29 of 2017 dated 02.08.2017 and 30 of 2017 dated 02.08.2017

4. Further the details of sale consideration, the amount paid by both the complainants and date of proposed handing over of possession 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 COMPLAINANTS AS PER RECEIPTS (IN RS.)
1.	3109/2022	T-1210 on 12 the floor	24.06.2013	24.12.2017	38,39,994/-	17,72,244/-
2.	3110/2022	T-2605 on 26 th floor	01.08.2013	01.02.2018	62,74,999/-	40,40,374/-

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

5. Complainants had booked flat in the promoter project in the year 2012. Said flat was allotted to complainant vide allotment letter dated 24.06.2013 and Builder Buyers Agreement was also signed on the same date i.e. 24.06.2013, annexed as Annexure C-1,2 (Pg. 16-59 of complaint book)
6. According to clause 4.2 of the BBA, respondent committed to give possession of the allotted unit within 48 months from the date of the execution of the agreement to sell and after providing of necessary infrastructure specially road, sewerage, etc. by the government and 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 months in case the construction is not completed within the time period mentioned above. Total sale price was Rs. 38,39,994/- out of which complainant had paid Rs.17,72,244/- in the years from 2012-2017, receipts of the same are annexed as Annexure 60-76 of the complaint book.
7. Complainants further alleged that there is no development at site and the project cannot be completed in near future. Possession of booked



apartment was to be handed over to complainants by 24.12.2017 but respondent, after inordinate delay of almost six years, have failed to handover the possession till date. Therefore, complainants have prayed for relief of refund of the amount paid by complainants till date along with the prescribed rate of interest.

C. RELIEF SOUGHT:

8. The complainants in their complaints have sought following reliefs:
- i. Respondent be directed to refund to the complainant an amount of ₹ 17,72,244/- at the rate 9.75 % per annum from the date of each instalment till its realization;
 - ii. To compensate the complainant for a sum of ₹ 1,00,000/- as damages on account of mental agony, torture and harassment;
 - iii. To compensate the complainant for a sum of ₹ 1,00,000/- as advocates fees and litigation Cost;
 - iv. Any other relief which is deemed fit by this Hon'ble Authority.

D. REPLY:

9. As per office record notice to respondent was successfully delivered on 09.12.2022. Thereafter matter was listed for hearing on 15.02.2023, 16.05.2023, whereby respondent was given opportunity to file reply but



respondent choose not to file reply. Today also, respondent neither appeared nor filed reply till date. Since the proceedings before this Authority are summary proceedings and sufficient opportunities granted to the respondent to file reply, however, no reply has been filed, therefore, respondent defense is struck off and matter has been heard.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

10. During oral arguments learned counsel for the complainants submitted that there is no progress at the site and project cannot be completed in near future. Further, counsel for respondent stated that Authority has granted relief of refund in many other cases against the respondent wherein same project has been involved. Therefore, he requested to dispose of the matter in same terms of the Complaint no. 529 of 2018 titled as Kapil Jain and Anu Jain Vs Raheja Developers Pvt Ltd. passed by the Authority vide order dated 01.04.2022.

F. ISSUES FOR ADJUDICATION:

11. Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS OF THE AUTHORITY:

12. 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 as per the clause 4.2 of BBA, respondent-promoter had committed to handover the



possession of the unit within 48 months plus 6 month grace period from the date of the signing of builder buyer agreement, i.e, 24.06.2013. Accordingly, deemed date of possession comes to 24.12.2017. The complainant has made payment of Rs. 17,72,244/- to the respondent out of total sales consideration of Rs. 38,39,994/-. However, construction at project site is not likely to be completed in near future. Further, despite being granted adequate opportunity, respondent has failed to file/submit any documents in its defence to show that construction of the project is complete and occupation certificate has been received from the competent Authority. The innocent allottee who had invested his hard earned money in the project with the hope to get a house and who was to get possession of the unit by 24.12.2017 cannot be forced/ compelled to wait endlessly for the unit, and specifically when there is no bonafide effort shown on part of the promoter to complete the project. Therefore, the present complaint is covered by the decision rendered in complaint no. 529 of 2018 titled as Kapil Jain and Anu Jain Vs Raheja Developers Pvt Ltd. Thus, the Authority decided to dispose of the matter in terms of the above said complaint. Relevant part of order dated 01.04.2022 passed in Complaint No. 529 of 2018 is reproduced below for reference:

“From the foregoing discussions the Authority is of prima-facie view that respondent No.1 is not deliberately completing the project. He has gathered huge amount of money by sale of nearly 50% of the project and have also



raised an amount of 130 crores by way of loan/mortgage. Against such a massive collection, much less amount appears to have been invested on the project which points to the fact that respondent no.1 has siphoned away funds of the project. Now the respondent No.1 & 2 are indulging into fruitless litigation and are leveling baseless allegations and counter allegations against each other in order to buy time and to justify their inaction for non-completion of the project. They have sold nearly 50% of the high rise building in respect of which even construction work has not begun."

3. Taking cognizance of aforesaid facts received against the promoters for violating terms and conditions of the registration and provisions of the RERA Act, 2016; and also upon observing that the promoter appears to have been indulged in siphoning off the funds of the project; and there are ongoing disputes in respect of ownership of the project land between the developer and land owners, the Authority decided to issue a show cause notice to the respondent/promoter as to why their registration bearing nos. 29 of 2017 and 30 of 2017 be not cancelled.

4. Several detailed orders have been passed by the Authority in this matter. Basic reasons of non-completion of the project have been recorded in the orders dated 17.09.2019, 22.10.2019 and 22.12.2020.

5. Today, the Authority observes that since the promoter has failed to complete the project for more than a decade and no construction is taking place for the past 3-4 years due to dispute between the promoter & landowners which has put a question mark on the future of the project. The allottees of the projects are waiting for their homes even after paying their hard-earned money. It is also observed that there are several other ongoing disputes between respondent/promoter & landowners in respect of the ownership of the project land which may take time to resolve. Despite granting repeated opportunities to the promoters to resolve their disputes, no satisfactory outcome has been arrived towards completion of the project. The promoters have again failed to satisfy the Authority of their capabilities to complete the projects within stipulated time and will hand over the possession of the units to the prospective allottees.

6. Taking serious view of the above circumstances, the Authority decides to suspend the aforesaid registration



nos. 29 of 2017 and 30 of 2017 till further orders and the promoters of the projects are prohibited from making any further sale of any unit or alienate any asset of the projects in question. The fact of suspension of the registration and prohibition of further sale of the project should be hosted on the website of the Authority.

6. As is clearly made out from the above reproduced orders that project of the respondent is badly stuck. No construction activity is going on. Due date of delivery of possession of apartments to various complainants was 2017. Registration certificate of the project has been cancelled and legal disputes are still going on in regard to the land. As such, there is no hope for its completion in foreseeable future. Accordingly, complainants are entitled to the relief claimed by them i.e. refund of money paid by them along with interest on the date of making such payments upto the date of passing this order.

Authority accordingly hereby orders refund of the amount paid by the complainants along with interest in accordance with Rule 15 of the RERA Rules, 2017”

13. Further, Hon’ble Supreme Court in Civil Appeal No. 6745-6749 of 2021 titled as “*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P & Ors.*” has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgment is reproduced below:

“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.”

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

14. Therefore, Authority observes it is 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 in Rule 15 of HRERA Rules, 2017. Section 18 is reproduced below for reference:

18. Return of amount and compensation.—(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.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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 (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”.

The definition of term ‘interest’ is defined under Section 2(za) of the Act which is as under:



"2(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;"

15. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 5.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
16. Accordingly, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants the paid amount 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.



17. Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.75% from the date of payment till the date of this order according to the receipts/statement of accounts provided by the complainants in both the captioned complaints; details are given in the table below –

Sr. No.	Complaint no.	Principal Amount as per receipts/customer ledger/statement of account (in Rs.)	Interest @ 10.75% till 05.09.2023 (in Rs.)	Total amount to be refunded (in Rs.)
1.	3109-2022	17,72,244/-	18,28,406/-	36,00,650/-
2.	3110-2022	40,40,374/-	41,75,508/-	82,15,882/-

18. The complainants are seeking compensation on account of mental harassment caused due to 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.

H. DIRECTIONS OF THE AUTHORITY

19. 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 complainants i.e. ₹ 36,00,652/- in complaint no. 3109/2022 and ₹ 82,15,882/- in complaint no. 3110/2022 as specified in the table provided in para 17 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.

20. Captioned complaints are, 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]