



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1415 of 2022
Date of filing:	09.06.2022
Date of first hearing:	02.08.2022
Date of decision:	26.07.2023

Shri. Bhagwan S/o Sh. Rati Ram,

R/o Village Lakhnola, District Gurugram- Haryana.

.....COMPLAINANT

Versus

Raheja Developers Pvt. Ltd,

R/o Registered office W4D, 204/5, Keshav Kunj, Carippa Marg,

Western Avenue, Sainik Farms,

New Delhi- 110062.

.....RESPONDENT

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

**Member
Member**

Present: - Sh. Sita Ram Barvaria Advocate, Counsel for the complainant.

Ms. Navneet Advocate, Counsel for the respondent.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed on 09.06.2022 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	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.	Allotment letter dated	25.07.2013

5.	Unit no.	IF 34-03
6.	Unit area and Terrace/Court area	1553.150 sq.ft. and 279.86 sq.ft terrace
7.	Date of builder buyer agreement	25.07.2013
8.	Deemed Date of Possession	36+6 months= 25.01.2017
8.	Total sale price	₹56,67,856/-
9.	Amount paid by complainant	₹53,65,101/-

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

3. Complainant had booked flat in the project of the respondent in the year 2013. Flat bearing no. IF34-03 was allotted to complainant vide allotment letter dated 25.07.2013 and Builder Buyers Agreement was also signed on the same date, i.e., 25.07.2013, annexed as Annexure C-4 (Pg. 84-117 of complaint book)
4. According to clause 4.2 of the BBA, respondent committed to give possession of the allotted unit within 36 months in respect of "SANSARA" Independent floors 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. 56,67,856/- out of which complainant had paid Rs.53,65,101/- in the years from 2012-2016, statement of account/receipts of the same are annexed as Annexure C7 at page no.120-123 of the complaint book.

5. Complainant 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 complainant by 25.01.2017 but respondent, after inordinate delay of almost six years, have failed to handover the possession till date. Therefore, complainant has prayed for relief of refund of the amount paid by complainants till date along with the prescribed rate of interest.

C. RELIEF SOUGHT:

6. The complainants in their complaints have sought following reliefs:
 - i. To direct the respondent to refund the amount paid by complainant of Rs. 53,65,101/- along with the interest @ 18% per annum from the date of payment till its actual realization;



- ii. Compensation for utilizing the complainant's funds in the construction of its projects and thereby preventing the complainant from using their money for better investment.
- iii. Compensation on account of lost of opportunity to invest in some other project.
- iv. Award pendent lite and future interest as per HRERA Rules/ Act in favour of the complainant and against the respondent till recovery of the total due amount.
- v. Award of compensation of ₹5,00,000/- to the complainant on account of mental agony and harassment and ₹ 50,000/- for the litigation charges.
- vi. Legal action as per RERA Act be initiated against the respondents.
- vii. Respondent be directed to deposit the amount received from the complainant in the fixed deposit during the pendency of the present complaint.
- viii. Litigation expenses of Rs. 55,000/- and circumstances.
- ix. Any other relief which is deemed fit by this Hon'ble Authority.

D. REPLY:

7. Respondent has submitted their reply dated 09.03.2023 in the registry.

Wherein it is submitted as follows:-



- i) This Authority does not have jurisdiction to deal with this matter because the complainants have sought relief of “possession of the flats with interest and compensation”, which would be adjudicated by the Adjudicating Officer as appointed under Section 71 of RERA Act, 2016.
- ii) Authority further lacks jurisdiction because the project in question 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-allottees 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) Respondent in his reply has stated that Project “Raheja OMA” consist of low rise and high rise. The construction of low rise was complete in the year 2015, However, collaborators cancelled the GPA which was co-terminus with collaboration agreement and very basis for undertaking the construction. Due to this action of collaborator, respondent lost the engagement of contractor and applying for Occupation Certificate of the project



in question. It is also mentioned that a Civil appeal no. 6853/2018 has been filed before Honble Supreme Court, wherein respondent has been directed to deposit sum of ₹ 6 cores in the registry. The said appeal is now referred to senior mediator vide order dated 11.01.2022. The subject matter involved in the said appeal is against the same respondent against which the instant complaint has been filed by the complainant before the Authority. Therefore, respondent requested to defer the captioned matter qua the Raheja's OMA project till final adjudication of Civil appeal pending before Hon'ble Supreme Court.

- v) Respondent stated that development of the project is in full swing and in progress. However, basic infrastructure has not been provided by the state government Authorities. So due to default by State agencies, the respondent was constrained not to develop the project on time. Further, as per Article 4.2 of agreement to sell, respondent shall be entitled to reasonable extension of time for delivery of possession of said unit when the situation is beyond the control of respondent. Furthermore, complainant made several defaults of payments and even stopped making payment in the year 2016 without any justification. Therefore, complainant's default in



not making timely payments caused delay in completion of the project in question.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

8. During oral arguments learned counsel for the complainant submitted that there is no progress at the site and project cannot be completed in near future. Further, counsel for complainant stated that Authority has granted relief of refund in many other cases against the same 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. On the other hand, learned counsel for the respondent has reiterated arguments as stated in para 7 of this order.

F. ISSUES FOR ADJUDICATION:

9. Whether the complainant is 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:

10. Authority has gone through the submissions of complainant as well as of respondent. It observes and orders as follows:-
- i) Respondent has challenged the jurisdiction of the Authority on the grounds that firstly, complainant has sought relief of possession along with interest and compensation which would not be adjudicated by



Authority as same would be adjudged by the Adjudicating Officer under Section 71 of RERA Act.

While going through the facts of the case, it is has come to the knowledge of the Authority that complainant has prayed for relief of refund as clearly mentioned at page no. 20 of the complaint book. However, respondent has challenged the jurisdiction of Authority for seeking possession which is factually incorrect as explained above. Further, even if it is considered that respondent wished to state that complainant had sought main relief of possession along with compensation, then his contention with regard to relief of compensation has already been adjudicated upon in many cases by the Authority, as per principle laid down by 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), wherein the Hon'ble Apex Court 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 complainant is



advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

- ii) Secondly, respondent has stated that jurisdiction of the Authority only extends to the registered projects

With regard status of project in question being registered is already clarified in number of earlier decided cases by the Authority wherein, it is clearly stated that project of respondent namely, "Raheja OMA" had been got registered by the respondents vide registration No.29 and 30 of 2017 dated 02.08.2017. However, respondent in this case, is making contrary submissions to the facts that project is not registered. Learned counsel for respondent was advised many times to check the facts of the matter before submitting their reply. Therefore, respondent contention with regard to jurisdiction over unregistered project is rejected as same is factually incorrect and project is also registered.

- iii) Lastly, respondent has raised contention that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. In present case agreement to sell was executed in the year 2013. Accordingly, respondent has argued that RERA Act cannot have retrospective effect and relationship of builder and buyer in this case will be regulated by the agreement previously



executed between them and same cannot be examined under the provisions of RERA Act.

In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not supposed to be re-written. The Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd. Relevant part of the order is being reproduced below:

“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the

provisions of the agreements made between the buyers and seller."

10. After perusing the record and on the basis of arguments advanced by counsels for both the parties, the Authority observed that as per the clause 4.2 of BBA, respondent-promoter had committed to handover the possession of the unit within 36 months plus 6 month grace period from the date of the signing of builder buyer agreement, i.e., 25.07.2013. Accordingly, deemed date of possession comes to 25.01.2017. The complainant has made payment of Rs.53,65,101/- to the respondent out of total sales consideration of Rs. 56,67,856/- . 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 25.01.2017 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.

11. 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.

12. 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(z) of the Act which is as under:

"2(z) "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;"

13. 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%.
14. 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.

15. 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 ₹ 1,07,13,076 /- as per detail given in the table below:

Principal Amount	From Date	End Date	Interest Rate	Interest Amount
519255	2012-10-17	2023-07-26	10.75	601785
778883	2012-12-16	2023-07-26	10.75	888914
190472	2013-07-23	2023-07-26	10.75	205094
259628	2013-07-23	2023-07-26	10.75	279559
563492	2013-09-13	2023-07-26	10.75	598120
135909	2013-10-14	2023-07-26	10.75	143020
337000	2014-03-15	2023-07-26	10.75	339546
5737	2014-03-28	2023-07-26	10.75	5758
4501	2014-03-28	2023-07-26	10.75	4518
3241	2014-03-28	2023-07-26	10.75	3253
6166	2014-05-20	2023-07-26	10.75	6093
2959	2014-06-25	2023-07-26	10.75	2892
3241	2014-07-16	2023-07-26	10.75	3148
335059	2014-06-25	2023-07-26	10.75	327525
321165	2014-08-09	2023-07-26	10.75	309687
171	2014-08-11	2023-07-26	10.75	165
3241	2014-08-28	2023-07-26	10.75	3107
24	2014-08-30	2023-07-26	10.75	23
500000	2015-03-13	2023-07-26	10.75	450322
77850	2015-03-13	2023-07-26	10.75	70115
5837	2015-03-23	2023-07-26	10.75	5240
258054	2015-06-19	2023-07-26	10.75	224967
2607	2015-09-16	2023-07-26	10.75	2204
186	2016-02-15	2023-07-26	10.75	149
2607	2015-07-17	2023-07-26	10.75	2251
6514	2015-07-18	2023-07-26	10.75	5623
258054	2015-08-12	2023-07-26	10.75	220862
258055	2015-10-06	2023-07-26	10.75	216683

258366	2015-12-15	2023-07-26	10.75	211618
2607	2015-12-19	2023-07-26	10.75	2132
2610	2016-01-06	2023-07-26	10.75	2121
259000	2016-01-20	2023-07-26	10.75	209391
2610	2016-02-15	2023-07-26	10.75	2090
5365101				5347975
Total payable amount	₹ 1,07,13,076/-			

16. Further, complainant has sought various relief's for passing directions to the respondent-promoter mentioned at page 20 of the complaint book from Clause (b), (c), (f), (g),(h), (i). In this regard it is observed that said reliefs have nowhere been claimed by the complainant in their complaint nor pressed by them during arguments. Hence, complainant prayer mentioned at Clause (b), (c), (f), (g),(h), (i) at page no. 20 of complaint book are rejected.

H. DIRECTIONS OF THE AUTHORITY

17. 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 as specified in the table provided in para 15 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.


.....
NADIM AKHTAR
[MEMBER]


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