



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint No.:</b>	<b>1525 of 2022</b>
<b>Date of filing:</b>	<b>08.07.2022</b>
<b>First Date of Hearing:</b>	<b>22.09.2022</b>
<b>Date of Decision:</b>	<b>25.04.2023</b>

Akshi Nayyar

.....COMPLAINANT

**Versus**

M/s Raheja Developers Pvt. Ltd,  
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:-** Mr. Himanshu Raj, learned counsel for the complainant.  
Ms. Navneet, learned counsel for the respondent.

### **ORDER (NADIM AKHTAR- MEMBER)**

1. Present complaint has been filed by complaint 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.

**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 OMA at Sector 2A, Dharuhera, Haryana.
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, cancelled vide order dated 07.07.2021
4.	Details of unit	1211, Tower-T, Raheja Oma.
5.	Allotment Letter	30.09.2013
6.	Date of Builder Buyer Agreement	30.09.2013
7.	Due Date of Possession	30.03.2018
8.	Total Sale Consideration	Rs. 32,53,160/-
9.	Amount Paid by Complainant	Rs, 18,49,104/-
10.	Offer of Possession	No offer

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

3. Complainant had booked a residential flat no. T-1211 admeasuring 835 Sq. Ft. in the real estate project being developed by the respondent promoter in the year 2012. Said flat was allotted vide allotment letter dated 30.09.2013 and builder buyers agreement was executed between the allottee and respondent-promoter on the same date i.e., 30.09.2013. (Pg. 41 of complaint book)
4. 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. 32,53,160/- out of which complainant had paid Rs. 18,49,278/- on different dates.
5. Complainant further alleged that they had visited the site in year 2017 and was shocked to see that there is no development at the site. That upon finding no progress in the project, the complainants had sent various emails to the respondent enquiring about the stage of development, reasons for delay in completing the development works and expected date of delivery of the possession. The complainant had opted for construction linked plan wherein



the payment of installments by the complainant was based on the developer attaining construction milestones as determined and stated by the builder himself .However to the utter dismay of the complaint, the respondent kept on demanding more money from the complainant without working towards completely its own part of obligation as per agreement which had added more suffering to the complainant.

6. Though, date of handing over of possession is 30.03.2018 but possession has not been offered till date. The complainant requested to decide the matter as it has already been decided in complaint no. 529 of 2018 titled as Kapil Jain and Anu Jain v/s Raheja Developers ltd. 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:**

7. The complainants in their complaint has sought following reliefs:
  - i. To direct the respondent to refund the amount paid by complainants of Rs. 18,49,278/- along with prescribed rate of interest from the date of respective deposits till its actual realisation;
  - ii. To direct the respondent to pay 5% of the total estimated cost of the project u/s 61 of RERA Act, 2016.
  - iii. To cancel the registration granted to the project.



- iv. Any other relief which is deemed fit by this Hon'ble Authority.

**D. REPLY:**

Details of service of notice to respondent:

Particulars	Details
Notice sent on 11.07.2022	Successfully delivered on 16.07.2022

8. Short reply dated 25.04.2023 was filed by the respondent/promoter wherein it is stated that construction of low rise was complete in 2015. However the collaborators cancelled the GPA which was co-terminus with collaboration agreement, and very basis for undertaking the construction. Hence with the cancellation of GPA, the respondent lost the authority to engage contractor, take bookings, enter into agreement to sell with the contractors, apply for OC, etc and the project came to standstill after cancellation of GPA as the cash flow also got stopped. As such despite completion of low rise, the respondent could not apply for OC for the same in absence of GPA. It is also important to mention that the Civil Appeal qua the project in question of the instant matter is also pending before the Hon'ble Supreme Court i.e. Civil Appeal no. 6853/2018 titled as "Pawan Kumar through LRs and Anr. Versus M/s Raheja Developers Ltd. wherein the Hon'ble Supreme Court had directed the respondent to deposit a sum of Rs.6 Crores in the Registry before consideration of the cross appeal, that had been duly complied by the respondent that is

credence from the Office Report dated 05.03.2022. The relevant extract of said Office report is adduced here under for kind perusal of this Hon'ble Authority:

*It is submitted that as per order quoted above, an amount of Rs. 6 Crores has been invested for a period of 6 months and next date of maturity is 02.08.2022*

1. *It is pertinent to mention here that the Hon'ble Supreme Court has referred the said matter to a senior mediator vide order dated 11.01.2022 so as to explore the possibility of an overall settlement. The subject matter involved in the said civil appeal is the same as it pertains to same project against which the instant complaint is pending before the Hon'ble Authority. As the matter is subjudice before the Hon'ble Supreme Court, the interest of allottees has been freezed/ceased and can only be adjudged on the resulting outcome of the said Civil Appeal.*
  2. *That the Hon'ble Authority is humbly requested to defer the matters qua the 'Raheja' a Oma' project till the final adjudication of the aforementioned civil appeal pending before the Hon'ble Supreme Court as the fate of the said project is now completely dependent on the final outcome of the said civil appeal.*
  3. *That it is pertinent to mention that the development of the project is in full swing and in progress. It is humbly submitted that the basic infrastructure has not been provided by the State Government.*
9. He further submitted that the complainants had stopped making payments without any justification and never turned to pay single penny despite repeated requests and reminders. It is further submitted that possession was to be given within 48 months but according to Clause 4.2 such stipulated period of delivery of possession shall start only after the necessary infrastructure specially road, sewer & water etc. in the sector is provided by the Government. It is also pleaded that delay in completion of the project has been caused due to non-payment by the complainants and force majeure circumstances.



10. Furthermore, the complainant had made request for refund of entire paid amount at such a belated stage when the respondent has invested huge amount on the project. Such arbitrary demand of refund of the complainants were themselves at fault, harasses the respondent both mentally and financially and ultimately proved detrimental to completion of the project.

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

11. 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. 529 of 2018 titled as as Kapil Jain and Anu Jain v/s Raheja Developers Ltd.

**F. 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?

**G. 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 ₹ 18,49,104/- to the respondent out of the total sale consideration i.e. more than 50% of the sale consideration 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 in Complaint no. 529 of 2018 titled as as Kapil Jain and Anu Jain v/s Raheja Developers Ltd. on 01.04.2022.

Relevant part of order dated 01.04.2022 passed in complaint no. 529 of 2018 reproduced below for reference:

*“Authority in its projects jurisdiction has passed an order dated 07.07.2021 vide which registration certificate granted to the project of the respondent-company was cancelled. The said order is reproduced below:-*

*1. This Authority had registered two real estate projects namely 'Sansara Residencies' and 'Akasha Tower' residential towers to be developed in a group housing colony on land measuring 8.531 acres in sector-2A, Dharuhera, Rewari registered vide registration nos. 29 of 2017 dated 02.08.2017 and 30 of 2017 dated 02.08.017 respectively.*

*2. While adjudicating upon the bunch of complaints with lead complaint case no. 332 of 2018 titled as Shashank UppalVs Raheja Developers Ltd., the Authority has observed as follows:*

*"5. The arguments put forth by the learned counsels for the complainants are as follows: -*

*(i) That the respondent No.1 has deliberately stopped the construction work for the reasons best known to him. There is no bar on them from any court of law or any other authority against starting the construction activities. The arguments of the respondent No.1 is that respondent No.2 is using strong arm tactics and is denying them access to the project land are nothing but lame excuses only to justify the inaction on their part.*

*(ii) Regarding the civil suit pending between both the respondents in the civil court relating to the alleged sale deed, there is no stay order granted by the court against any of the parties. The pendency of civil suit is no bar against the Respondent No.1 in commencing the construction of the project.*

*(iii) The orders passed by Hon'ble NCDRC is also not a hindrance in any manner against the Respondent No. 1. It merely re-defines the relationship between both the respondents. Both the respondents had entered into a collaboration agreement which is the basic document defining the*



*relationships between the two. The allottees have nothing to do with their internal dispute if any. Complainants have entered into builder-buyer agreement with the Respondent No.1 who is now failing to discharge his responsibilities by putting forth such lame excuse and is unnecessarily trying to shift the blame of Respondent No.2. Even if there is a legitimate dispute, the Respondent No.1 and 2 should settle it at the earliest. Their internal dispute cannot adversely affect legitimate rights of the allottees.*

*(iv) Learned counsels for the complainants alleges serious diversion of the funds of the project collected from the allottees as well as from the various financial institutions. They allege that the Respondent No.1 had mortgaged the project with IFCI Ltd. and have raised Rs.75 crores loan against it. Another loan has of Rs.55 crore been raised from the Punjab National Bank. Shri Himanshu Raj, Ld. counsel for the complainant stated that the entire money amounting to Rs. 130 crores has been disbursed in favour of the Respondent No.1 but the same has not been invested on the project. Instead, the respondent No.1 has diverted the same against the interests of the allottees.*

*(v) Learned counsels for complainants allege that mala fide intention of Respondent No.1 are further proved from the fact that Respondent No.1 had made a collaboration agreement with a Japanese Firm, one of the terms of which was that the license of the land shall be transferred in favor of Respondent No.1. An application in this regard was filed in the Town & Country Planning Department but the same was not approved on account of some dispute having arisen between both the respondents. The mala fide intention of Respondent No.2 are also exhibited from the fact that he had issued a no objection certificate in favor of the Respondent No.1 for transfer of the license for collaboration with a Japanese Firm.*

*(vi) Nearly 50% of apartments in the project, both in high rise as well as well as in low rise buildings have been allotted and huge sum of money has been collected from the allottees. Neither the money collected from the allottees nor raised by way of loan/mortgage has been invested in the project. This*



is a clear indication that Respondent No.1 has diverted the funds for their own personal gains to the detriment of the allottees.

(vii) Arguing for the complainant in Complaint No.529 of 2018. Shri Himanshu Raj stated that admittedly the construction of high rise building has not even commenced beyond some basic excavation work at the basement. Accordingly, there is no likelihood of its completion in foreseeable future, especially in view of the facts and circumstances narrated above. He requested that in respect of his client, the orders for refund of the money paid along with interest and compensation should be passed.

6. In view of the aforesaid submissions of the both the parties the Authority observes as follows:

(i) Admittedly, Respondent No.2 is the landowner licensee of the project. License No.27 of 2011 was granted in his favour. Prior to the grant of license a collaboration agreement had been made between them by virtue of which almost entire capital investment was to be made by respondent No.1 and in lieu of the construction of land, the respondent No.2 was to get 23% of the total saleable area.

The Authority observes that when under the collaboration agreement rights and responsibilities of both the parties were clearly defined, it is not clear why was a sale deed executed by the respondent No.2 in favour of respondent No.1, and that also without citing any sale consideration in their favour.

(ii) In so far as the orders of Hon'ble NCDRC is concerned, it only redefines/clarifies the relationship between both the respondents which has no impact on the rights of the allottees. The respondent No.1 has been directed to fulfill their obligation by certain prescribed dates. It is not understood how is respondent No.1 taking shelter behind this order of the Hon'ble NCDRC to justify non-resumption of construction activities.

(iii) It has been argued that an appeal has been filed by respondent No.1 in the Hon'ble Supreme Court Copy of the said appeal was not submitted to enable the Authority to understand its exact nature. On the next date a copy of it shall be submitted by respondent No.1.

(iv) Respondent No.1 alleges that Respondent No.2 is obstructing access to the project land by using strong arm tactics. Allegedly, this is being done for last couple of years. On a question being posed by the Authority whether any FIR in this regard has been lodged or assistance of the police has been sought, Shri Dahiya could not come forward with any satisfactory reply. Accordingly, it appears that this also is a lame excuse.

(v) No reply was given by the learned counsel for respondent No.1 regarding utilization of funds raised from the allottees and from the financial institutions. They will have to explain how much funds have been raised from various sources where they have been deployed.

(vi) It appears that both the respondents are in collusion with each other. Both the parties appear to be collaborating with each other right from the beginning. They have facilitated collaboration with the Japanese firm. They have also collaborating for transfer of license in favor of respondent No.1. There is no stay order from the civil court and there is no bar in commencing the construction activities. The argument of the respondents appears to be only a ploy to continue to deny legitimate rights of the allottees.

7. 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.*

*7. 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."*

14. 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.

Therefore, Authority observes it is a fit case for allowing refund in favour of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed in Rule 15 of HRERA Rules, 2017.



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;"*

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".*

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. 25.04.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.



16. Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount ₹ 18,49,104/- 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 10.70% (8.70% + 2.00%) from the date amounts were paid till the actual realization of the amount.

Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.70% from the date of payment till the date of this order, the details of which are given in the table below-

Sr. No.	Date of Amount Paid	Principal Amount (in Rs.)	Interest @10.70% till 25.04.2023 (in Rs.)
1.	10.12.2012	₹ 3,35,325 /-	₹ 3,72,462/-
2.	25.01.2013	₹ 5,02,988/-	₹ 5,51,910/-
3.	22.06.2013	₹ 2,61,600/-	₹ 2,75,694/-
4.	20.09.2013	₹ 2,61,753/-	₹ 2,68,949/-
5.	20.12.2013	₹ 2,32,117/-	₹ 2,32,307/-
6.	02.01.2014	₹ 1,488/-	₹ 1,484/-
7.	21.10.2016	₹ 49,900/-	₹ 34,786/-



8.	21.10.2016	₹ 100/-	₹ 70/-
9.	24.10.2016	₹ 50,000/-	₹ 34,812/-
10.	24.10.2016	₹ 1,37,098/-	₹ 95,452/-
11.	08.11.2016	₹ 16,735/-	₹ 11,578/-
Total		₹ 18,49,104/-	₹ 18,79,504/-
Amount to be paid - ₹ 18,49,104/- + ₹ 18,79,504/- = ₹ 37,28,608/-			

**Note:** Complainant has annexed receipt of payments vide which amount of ₹ 18,49,104/- revealed to has been paid to respondent against the total claimed to have paid to respondent that is ₹ 18,49,278/-. Therefore, on the basis of documents/proofs placed on record by complainant the amount of ₹ 18,49,104/- is taken as final amount for calculation of interest.

17. The complainant 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.

**H. DIRECTIONS OF THE AUTHORITY**

18. 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 amount of ₹ 37,28,608/- to the complainant..

(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.

19. The complaint is, accordingly, **disposed of**. Files be consigned to the record room after uploading orders in case on the website of the Authority.

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

  
.....  
**NADIM AKHTAR**  
**[MEMBER]**