



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of decision:

17.05.2023

Name of Builder	Raheja Developers Ltd.
Project Name	Krishna Housing Scheme

Sr. No.	Complaint No.	Complainant
1.	2383 of 2022	Sanjay Arora S/o Sh. Om Prakash Arora, G-61A, Kalkaji, New Delhi v/s Raheja Developers Ltd. W4D,204/5, Keshav Kunj, Wester Avenue, Cariappa Marg, Sainik Farms, New Delhi-110062.
2.	2300 of 2022	Ajay Kumar S/o Late Ram Lakhan Pandit, A-6/225 Sheetla Colony, Near Happy Model School, Gurgaon, Haryana
3.	2341 of 2022	Preeti Pahuja and Another W/o Mr. Anil Kumar, H.No. 3A-WH, dav College, NIIT-3, Faridabad, Haryana-121001 India.
4.	2370 of 2022	Dibyendu Bhattacharya and Anr D/o Sh. S.C. Bhattacharya, H.No. 1586, Ground Floor, Sector 7 Extension, Gurugram-122001.
5.	2374 of 2022	Randhir Singh Pathania, H.No. F 303, Harbhajan Vihar AWHO Sector 114, Mohali.
6.	2990 of 2022	Dinesh Kumar Gaur S/O Sh. Jai Kishan R/O SK-24 Upper ground floor, Right side portion, Plot no. 6, Sindhora Kalan, Chowki No. 2, Delhi, Ashok Vihar, North Delhi.
7.	2353 of 2022	Mr. Sanjeev Katarya S/o Y.C Katayra and Mrs. Yogita Katarya W/o Mr. Sanjeev Katarya R/o House no. 1853, Sector-4, Gurugram, Haryana-122001.

Rattree

Versus

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

.....Respondent

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

**Member
Member**

Present:- Sh. Aakash Gupta, learned counsel for the complainant through Video conferencing.

(in complaint no. 2300 of 2022)

Sh. Akshat Mittal, learned counsel for the complainant.

(in complaint no. 2341, 2370, 2383 of 2022)

Sh. Ashish Budhiraja, learned counsel for the complainant through Video conferencing.

(in complaint no. 2353 of 2022)

Sh. Ekashra Mandar, learned counsel for the complainant through Video conferencing.

(in complaint no. 2374 of 2022)

Sh. Nadeem Arman, learned counsel for the complainant through Video conferencing.

(in complaint no. 2990 of 2022)

Mr. Kamaljeet Dahiya, learned counsel for the respondents in all complaints.

ORDER (DR. GEETA RATHEE SINGH- MEMBER)

1. This order shall dispose of all 7 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 all complaints are more or less identical and relate to the same project of the respondent, i.e., "Krishna Housing Scheme", situated at, Sector 14, Sohna, Haryana. The terms and conditions of the builder buyer agreements which had been executed between the parties are also similar. However, in complaint no. 2383 of 2022 titled as Sanjay Arora V/s Raheja Developers Ltd., provisional allotment was issued on 01.07.2016 and allotment letter on 01.08.2016. The BBA for the said unit has been executed on 29.06.2016 (Stamp date). The fulcrum of the issue involved in all these cases pertains to failure on part of respondent promoter to deliver timely possession of flats in question. Therefore, complaint no. 2383 of 2022 titled "Sanjay Arora v/s Raheja Developers Pvt. Ltd", has been taken as lead case for disposal of all these matters.

A. UNIT AND PROJECT RELATED DETAILS:

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

S. No.	Particulars	Details
1.	Name of project	Krishna Housing Scheme
2.	Nature of the Project	Residential

3.	RERA registered/not registered	Registered no. 21 of 2017
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4. Further the details of sale consideration, the amount paid by all 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 COMPLAINANT (In Rs.)
1.	2383/2022	9007, 9 th floor, Tower-E2.	29.09.2016	27.04.2019	16,57,258/-	₹ 14,99,816/-
2.	2300/22	2002, 2 nd floor, Tower-A.	09.10.2015	27.04.2019	23,20,901/-	₹ 17,96,691/-
3.	2341/22	5001, 5 th Floor, Tower D2	27.08.2016	27.04.2019	15,24,022	₹ 11,65,877/-
4.	2370/22	5001, 5 th Floor, Tower D1	03.11.2015	27.04.2019	15,71,114/-	₹ 9,72,737/-
5.	2374/22	13008,13 th Floor, Tower E-1	10.07.2015 (Allotment Letter)	27.04.2019	16,57,258/-	₹ 15,21,801/-
6.	2990/22	4003, 4 th Floor, Tower E-4	04.01.2016	27.04.2019	16,57,258/-	₹ 15,27,558/-
7.	2353/22	7007, 7 th floor, Tower-C1	10.07.2015 (Allotment Letter)	27.04.2019	15,24,022/-	₹ 5,91,429/-

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

5. Complainant had booked a residential flat from the promoter in year 2016. Said flat was provisionally allotted vide allotment letter dated 01.07.2016. Builder

Buyers Agreement was executed between the allottee and respondent-promoter on 29.09.2016(Pg. 38 of complaint book).

6. According to clause 5.2 of the BBA, respondent committed to complete the construction and offer possession of the allotted unit within 48 months from the date of the receiving of environment clearance or sanction of building plans whichever is later. Total sale price was Rs.16,57,258/-out of which complainant had paid Rs.14,99,816/- on different dates.
7. Complainant further alleged that he has visited the site several times and was shocked to see that there is no development at the site. 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. The complainant had also sent various emails for not delivering the unit in question and for asking latest status of the project but no response has been received from the respondent/promoter. Though, date of handing over of possession was 27.04.2019 but possession has not been offered till date. Therefore, complainant has prayed for relief of refund of the amount paid by complainant till date along with the prescribed rate of interest.

C. RELIEF SOUGHT:

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

- i. To direct the respondent to refund the amount paid by complainant of Rs.14,99,816/- along with the interest @ 15% per annum;
- ii. To direct the respondent to pay an adequate compensatory interest on the entire deposited amount of Rs.14,99,816/- for delayed offer of possession, as deemed fit by the Authority.
- iii. To direct the respondents to pay a sum of Rs.10,00,000/-on account of grievance and frustration caused to the complainant by the miserable attitude of the respondents and deficiency in service and for causing mental agony caused to complainant along with interest from the date of filing of present complaints till its realisation.
- iv. The registration if any, granted to the respondent for the project namely, "Krishna Housing", situated in revenue estate of Sohna, Haryana, under RERA r/w relevant rules may kindly be revoked u/s 7 of the RERA for violating the provision of the act.
- v. The complainant may be allowed with costs and litigation expenses of Rs.1,50,000/-.
- vi. Any other relief which is deemed fit by this Hon'ble Authority.

D. REPLY:

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

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:

10. During oral arguments learned counsel for the complainant submitted 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.

G. ISSUES FOR ADJUDICATION:

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

H. OBSERVATIONS OF THE AUTHORITY:

13. From perusal of the record and documentary evidence adduced by the complainant and also on the basis of arguments advanced by learned counsel for complainant, the Authority observed that the complainant has made payment of Rs.14,99,816/- 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 in Complaint No. 183 of 2021 titled as Shrishti Wadhwa and Jolly Wadhwa Vs Raheja Developers Pvt. Ltd. decided on 06.05.2022 .Thus, the Authority decided to dispose of the matter in

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

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

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

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

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

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

will be delivered in time. The promoter on the other hand, dealt with the money so deposited by the allottee-complainants like its private money and allowed a lien to be created in favour of 3rd party.

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

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

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

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

14. 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 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.

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;"

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. 17.05.2023 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 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

10.70% (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 according to the ledger provided by the complainants in all the captioned complaints; details are given in the table below –

Sr. No.	Complaint No.	Principal Amount (in Rs.)	Interest @10.70% till 17.05.2023 (in Rs.)	Total amount to be refunded (in Rs.)
1.	2383/22	₹ 14,99,816/-	₹ 10,06,713/-	₹ 25,06,529/-
2.	2300/22	₹ 17,96,691/-	₹ 13,28,772/-	₹ 31,25,463/-
3.	2341/22	₹ 11,65,877/-	₹ 7,88,567/-	₹ 19,54,444/-
4.	2370/22	₹ 9,72,737/-	₹ 7,55,714/-	₹ 17,28,451/-
5.	2374/22	₹ 15,21,801/-	₹ 10,98,909/-	₹ 26,20,710/-
6.	2990/22	₹ 15,27,558/-	₹ 10,55,684/-	₹ 25,83,242/-
7.	2353/2022	₹ 5,91,429/-	₹ 4,88,447/-	₹ 10,79,876/-

Note: In Complaint no. 2374 of 2022, Complainant has annexed receipt of payments vide which amount of ₹ 15,21,801/- revealed to has been paid to respondent against the total claimed to have paid to respondent that is ₹ 15,21,351/-. Therefore, on the basis of documents/proofs placed on record by complainant the amount of ₹ 15,21,801/- is taken as final amount for calculation of interest.

In Complaint no. 2353 of 2022, Complainants claims to have paid an amount of Rs. 7,83,329/-. Perusal of file reveals the receipts annexed at page no. 27 for Rs. 80,725/- dated 29.12.2014, page no. 31 for Rs. 1,50,000/- dated 27.07.2015 and page no. 32 for Rs. 1,63,295/- dated 27.07.2015. Further a demand letter dated 29.12.2015 for Rs. 1,97,409/- has been placed on record at page no. 41 following which reminder dated 27.01.2015 was sent to complainants and for proof of payments of said amount, copy of bank passbook has been placed on record at page no. 39. Therefore, total proof of amount of Rs. 5,91,429/- only has been placed on record against claimed amount of Rs. 7,83,329/-. Amount of Rs. 5,91,429/- is taken as final amount for calculation of interest.

17. The complainants are seeking compensation on account of mental harassment caused for delay in possession, compensation under Section 12 of RERA Act, 2016 and litigation costs. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.



Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

I. DIRECTIONS OF THE AUTHORITY

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 amounts along with interest of @ 10.70 % to the complainants are specified in the table provided above in para no. 16.
- (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. These complaints are, accordingly, **disposed of**. Files be consigned to the record room after uploading orders in each case on the website of the Authority.



.....
NADIM AKHTAR
[MEMBER]



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