



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No.:	2445 of 2022
Date of filing:	15.09.2022
First Date of Hearing:	08.02.2023
Date of Decision:	17.05.2023

Sulur Govindaranjan Shyam Sunder
F-73, 1st Floor, Suncity, Sector-54,
Gurugram-122001

....COMPLAINANT

VERSUS

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

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Present: Mr. Ravinder Singh, Id. Counsel for the complainant through video conferencing.

Ms. Kamaljeet Dahiya, Id. Counsel for the respondent.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 15.09.2022 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	509, Tower-T, Raheja Oma Admeasuring 835 sq. ft.
5.	Allotment Letter	12.06.2013
6.	Date of Builder Buyer Agreement	12.06.2013
7.	Deemed Date of Possession	48 months+6months grace period i.e. 12.12.2017
8.	Total Sale Consideration	Rs. 35,69,625/-

9.	Amount Paid by Complainant	Rs. 19,79,064/-
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-509, admeasuring 835 Sq. Ft. in the real estate project namely "Raheja OMA" being developed by the respondent promoter in the year 2013. Said flat was allotted vide allotment letter dated 12.06.2013 and builder buyers agreement was executed between the allottee and respondent-promoter on the same date i.e., 12.06.2013. (Pg. 12 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. 35,69,625/- out of which complainant had paid Rs. 19,79,064/- on different dates.

5. Complainant further alleged that upon finding no progress in the project, the complainant 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 complainant, 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 12.12.2017 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:

7. The complainant in their complaint has sought following relief:
- i. The respondent may kindly be directed to refund principal amount of Rs. 19,79,064/- along with interest.

D. REPLY:

8. As per last order dated 14.03.2023 passed by the Authority, defense of respondent will be struck off if reply filed without the payment of earlier imposed cost. No reply has been filed by the respondent in the complaint.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:

9. Ld. Counsel for the complainant reiterated the submissions made in the complaint. Ld. Counsel for the respondent stated that the respondent is ready and willing to settle the matter amicably with the complainant. However, Ld. Counsel for complainant stated that now there is no scope of any settlement talks and his client i.e., the complainant only keen to get the matter adjudicated by the Authority.

F. ISSUES FOR ADJUDICATION:

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

11. The aforesaid factual position mentioned by the complainant goes unrebutted and unchallenged as no reply despite opportunities has been filed by the respondent.

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 the complainant has made payment of ₹ 19,76,651/- to the respondent out of the total sale consideration i.e. more than 50% of the sale consideration, however 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 "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 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."

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.

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(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".

14. 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. 15.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.

15. 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 ₹ 19,76,651/- along with interest at the rate prescribed in Rule 15 of Haryana Real

Rattree

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% 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 17.05.2023 (in Rs.)
1.	04.04.2013	₹ 2,00,000 /-	₹ 2,16,697/-
2.	10.04.2013	₹ 1,67,990/-	₹ 1,81,719/-
3.	23.05.2013	₹ 3,40,000/-	₹ 3,63,501/-
4.	10.06.2013	₹ 2,15,000/-	₹ 2,28,726/-
5.	04.07.2013	₹ 2,75,473/-	₹ 2,91,122/-
6.	17.09.2013	₹ 2,77,934/-	₹ 2,87,612/-
7.	12.12.2013	₹ 2,48,428/-	₹ 2,50,816/-
8.	02.11.2016	₹ 2,51,826/-	₹ 1,76,289/-
Total		₹ 19,76,651/-	₹ 19,96,482/-
Amount to be paid - ₹ 19,76,651/- + ₹ 19,96,482/- = ₹ 39,73,133/-			

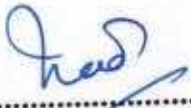
Complainant has annexed accounts ledger vide which amount of ₹ 19,76,651/- revealed to has been paid to respondent against the total claimed to have paid to respondent that is ₹ 19,79,604/- as principal amount paid by complainant have not been disputed by the ld. counsel of respondent. Therefore, on the basis of documents/proofs placed on record by complainant, the amount of ₹ 19,76,651/- is taken as final amount for calculation of interest.

H. DIRECTIONS OF THE AUTHORITY

16. 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 ₹ 39,73,133/- 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.

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


.....
NADIM AKHTAR
[MEMBER]


.....
Dr. GEETA RATHEE SINGH
[MEMBER]

