



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2365 of 2022
Date of filing.:	07.09.2022
First date of hearing.:	08.02.2023
Date of decision:	17.05.2023

Braham Pal Singh S/o Sh. Shyam Singh
D-35, Shivalik Nagar, Bhel,
Ranipur, Haridwar-249403

....COMPLAINANT

VERSUS

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

..... RESPONDENT

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present: - Mr. Akshat Mittal, learned counsel for the complainant.
Mr. Kamal Dahiya, learned counsel for the respondent.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 07.09.2022 by complainant 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

Geeta Rathee

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.

This complaint had been heard previously with bunch of complaint cases with lead case no. 2300 of 2022 titled as "Ajay Kumar vs Raheja Developers Ltd.", but due to discrete issue involving maintainability of the present complaint, now it is being segregated and heard separately.

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 the project.	Krishna Housing at Sector 14, Sohna Road, Sohna, Haryana
2.	Nature of the project.	Residential Group Housing Colony
4.	RERA Registered/not registered	Registered vide Registration no. 21 of 2017
5.	Details of unit	2005, 2 nd Floor, Tower-D2
6.	Provisional Allotment	10.07.2015
7.	Due date of possession	10.07.2019
8.	Total sale consideration	₹ 15,24,022/-
9.	Amount paid by complainant	₹ 9,72,435/-
10.	Offer of possession.	None

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

3. Complainant had booked a residential flat no. 2005 admeasuring 478.95 sq. ft. in the real estate project of the respondent promoter vide application dated 19.12.2014 by paying amount of Rs. 80,725/- as booking amount. Said flat was provisionally allotted vide allotment letter dated 10.07.2015. Builder Buyers Agreement was never been executed between both parties.
4. Basic sale price was Rs. 15,24,022/- out of which complainant had paid Rs. 9,72,435/- on different dates.
5. Complainant further alleged that he had already made a payment of more than 60% of the sale consideration and there were no signs of construction till the year 2017, and in fact the said project is blatantly underdeveloped till date and the construction has been stopped at the project site. Therefore, the complainant has applied for cancellation of the booking vide letter dated 24.07.2017. Respondent failed to refund amount even after more than 5 years of the cancellation of the booking.
6. Complainant averred that he also filed complaint bearing no. 96 of 2018 on 21.03.2018 in HARERA Gurugram, praying for direction for refund of deposited amount. HARERA Gurugram Authority passed the order directing the respondent to refund the paid amount vide order dated 05.06.2018. However, the respondent had given payment of Rs. 3,00,000/- during

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Execution proceedings before HARERA Gurugram. During the course of Execution proceedings, Authority disposed the execution petition vide order dated 21.10.2021 with the observation that this matter is beyond the territorial jurisdiction of the HARERA Gurugram.

C. RELIEF SOUGHT:

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

- i. To direct the respondents to refund the remaining amount from the entire deposited amount of Rs. 9,72,435/- (Rupees Nine Lakh Seventy-Two Thousand Four hundred and thirty-five only) which has been deposited against the allotted flat to the complainant along with interest as prescribed rate, from the respective dates of deposit till its actual realization / according to Section 18(1) Real Estate (Regulation And Development) Act 2016 read with Rule 15 & 16 of Haryana Real Estate (Regulation & Development) Rules 2017.
- ii. To direct the respondent to pay an adequate compensatory interest on the entire deposited amount of Rs. 9,72,435/- 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 cause to complainant along with interest from the date of filing the present complaints till its realization.

iv. The registration, if any, granted to the Respondent for the project namely, "Krishna Housing", situated in the revenue estates of Sohna, Haryana, under RERA read with relevant Rules may kindly be revoked under Section 7 of the RERA for violating the provisions of The Act.

v. The complainant may be allowed with costs and litigation expenses of Rs. 1, 10,000/-;

vi. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.

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 imposed cost. No reply has been filed by the respondent in the complaint.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:

9. 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."

Learned counsel for the respondent averred that this complaint is not maintainable as this matter was already adjudicated and partly executed by the

HARERA Gurugram. He requested to dismiss this complaint as this will hit the principle of resjudicata.

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. REPRESENTATION BEFORE HON'BLE HARERA GURUGRAM

12. That the complainant had earlier approached Hon'ble HARERA, Gurugram vide complaint no. 96 of 2018 dated 21.03.2018, praying for directions to the respondent company for refund of the paid amounts along with interest.
13. Said complaint was allowed by the Hon'ble Bench, Gurugram vide order 05.06.2018, whereby the respondent was directed to refund the amount deposited by the complainant ie. Rs. 9,72,435/- alongwith prescribed interest of 10.45% p.a. w.e.f. 31.07.2017, and the directions were given to the respondents to the needful within one month. Order dated 05.06.2018 is reproduced below for reference:

"Written arguments as well as details regarding Project in pursuance of the directions issued by the Authority vide order dated 30.5.2018 have been filed by the legal representative appearing on behalf of the respondent. The said legal representative could not explain about the details of the Project.



The complainant submitted that the respondent is knowingly adopting delaying tactics and requested to refund his deposited amount alongwith interest. The request is allowed. The legal representative appearing on behalf of the respondent is directed to refund the amount alongwith interest w.e.f. 31.7.2017 at the rate of marginal cost of lending of State Bank of Indian which is currently prevailing plus 2% per annum within a month. The complainant shall have a liberty to file a separate complaint if the respondent did not comply with the order of the Authority within the stipulated period. The order is pronounced. File be consigned to the Registry."

14. That, the said directions were not complied with by respondent promoter, and the complainant was constrained to file Execution before the Hon'ble HARERA, Gurugram, wherein the respondent had made the payment of Rs. 3,00,000/- through cheque, and no further payment has been tendered to the complainant since then.
15. It is relevant to mention that during the course of the hearing of execution petition before the Authority Gurugram, it transpired that the project in question would not fall under the territorial jurisdiction of the HARERA Gurugram, and the Authority disposed the said execution petition vide order dated 29.10.2021 making the following observations:

"As per notification no. 1/92/2017 ITCP dated 14.12.2017 issued by the Department of Town and Country Planning, Government of Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be the entire revenue estate of Gurugram District for all the purpose with offices situated in Gurugram.

As per information downloaded from the website of the DICP, Haryana in respect of license no. 115 of 2014, this project is located in the revenue estate of village Raisika, District Mewat

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which is not within the territorial jurisdiction of HRERA Gurugram and as such, this authority has no territorial jurisdiction to adjudicate the present matter.

This fact of jurisdiction was not brought to the notice of the Authority by either of the party during proceedings in the relevant complaint.

So, the decree was passed in this case is non est in the eyes of law being without jurisdiction of this authority. The counsel for the JD submitted that we are issuing cheque for refund as per provisions of section 18 (1) of the Act, 2016. A cheque of Rs.3 Lakhs was handed over to the decree holder by the counsel for the JD during proceedings and assured him that balance payment will be made in installments within 2 months."

H. OBSERVATIONS OF THE AUTHORITY:

16. On perusal of the order dated 29.10.2021 passed by the HARERA Gurugram, Authority observes that the project in respect of which refund is being sought, is situated at Sohna which is in jurisdiction of HRERA, Panchkula. Once a decree has been passed without having territorial jurisdiction, then, it is non-est in the eyes of law and as such, would have no bearing on the merits of the present matter. Accordingly, the argument of the ld. counsel for the respondent with regards to maintainability of the present complaint before this Authority doesn't carry any weight and hence the same is turned down.
- From perusal of the record and also on the basis of arguments advanced by learned counsel for complainant, the Authority observes that the complainant had made payment of Rs. 9,72,435/- out of the total sale price of Rs. 15,24,022/- to the respondent till 2017. However, construction at project site which should have been completed by 10.07.2019 i.e. due date of possession is

not likely to be completed in near future. Therefore, facts of the present complaint are covered by the decision rendered by the Authority on 06.05.2022 in complaint no. 183 of 2021 titled as "Shrishti Wadhwa and Jolly Wadhwa Vs Raheja Developers Pvt Ltd." 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 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 instalments 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."

17. 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-

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(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".

18. 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%.
19. 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 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 complainant; details 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.	19.12.2014	₹80,725/-	₹72,698/-
2.	25.07.2015	₹3,13,295/-	₹2,62,119/-
3.	14.01.2016	₹1,97,409/-	₹1,55,151/-
4.	21.07.2016	₹1,90,503/-	1,39,168/-
5.	25.02.2017	₹1,90,503/-	1,26,938/-
Total		₹ 9,72,435/-	₹ 7,56,074/-
Amount to be paid - ₹9,72,435/- + ₹7,56,074 /- = ₹ 17,28,509/- ₹ 17,28,509/- - ₹ 3,00,000/- = ₹14,28,509/-			

Note: As stated above from the order dated 29.10.2021 passed by the Hon'ble HARERA Gurugram in para no. 14, respondent already paid an amount of Rs. 3,00,000/- to the complainant during execution before Hon'ble HARERA Gurugram. Therefore, the said amount has been deducted from the total

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amount to be paid to the complainant by the respondent and now Rs. 14,28,509/- is payable to the complainant.

20. The complainant is also 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.
21. The complainant at its relief in sub clause no. (iv) has prayed that if registration has been granted to the respondent for the project namely "Krishna Housing", same may be revoked for violating the provisions of the Act. In this regard, Authority observes the complainant in its complaint pleadings not provided the details with respect to grounds for revoking the registration, neither his relief was pressed during the hearing proceeding. Therefore, same is not allowed at this stage. However, the complainant relief clause has drawn the attention of

the Authority to the fact that there is hardly any development on the site since registration. Therefore, the project section of the Authority is directed to scrutinize the QPR(s) and submit a report before the Authority.

I. DIRECTIONS OF THE AUTHORITY

22. 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 remaining amounts of ₹14,28,509/- 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.
23. This complaint is, accordingly, **disposed of**. Files be consigned to the record room after uploading orders on the website of the Authority.


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NADIM AKHTAR
[MEMBER]


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