



**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 1650 of 2023
Date of filing complaint: 18.04.2023
First date of hearing: 21.07.2023
Date of decision: 06.10.2023

Ms. Sujata Sood
R/o: - 502, DDA SFS Flats, Pocket 2, Dwarka,
Sector-9, South West Delhi-110077

Complainant

Versus

M/s Raheja Developers Limited.
Regd. Office at: W4D- 204/5, Keshav Kunj, Western
Avenue Cariappa Marg, Sainik Farms, New Delhi -
110062

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Gaurav Rawat

None

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules



and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Raheja's Maheshwara", township Known as "Raheja Aranya City" Sectors 11&14, Sohna Gurugram
2.	Project area	9.23 acres
3.	Nature of the project	Residential Plotted Colony
4.	DTCP license no. and validity status	25 of 2012 dated 29.03.2012 valid up to 28.03.2018
5.	Name of licensee	Ajit Kumar and 21 others
6.	RERA Registered/ not registered	Registered vide no. 20 of 2017 dated 06.07.2017
7.	RERA registration valid up to	5 Years form the date of revised environment clearance
8.	Area registered	3.752 acres
9.	Unit no.	A-303, 3 rd floor, tower/block- A (Page no. 36 of the complaint)
10.	Unit area admeasuring	1630.33 sq. ft.



		(Page no. 36 of the complaint)
12.	Date of execution of agreement to sell	14.06.2016 (Page no. 32 of the complaint)
13.	Possession clause	<p>21. <i>The Company shall endeavour to complete the construction of the said Apartment within Forty-Eight (48) months plus/minus Twelve (12) months grace period from the date of the execution of the Agreement or Environment Clearance and Forest Clearance, whichever is later but subject to force majeure, political disturbances, circumstances cash flow mismatch and reasons beyond the control of the Company. However, in case the Company completes the construction prior to the said period of 48 months plus 12 months grace period the Allottee shall not raise any objection in taking the possession after payment of Gross Consideration and other charges stipulated hereunder. The Company on obtaining certificate for occupation and use for the building in which said Apartment is situated, by the Competent Authorities shall hand over the said Apartment to the Allottee for his occupation and use and subject to the Allottee having complied with all the terms and conditions of the Agreement to Sell. In the event of</i></p>



		<p><i>failure of Allottee to take over and/ or occupy and use the said Apartment provisionally and/ or finally allotted within thirty (30) days from the date of intimation in writing by the Company, then the same shall lie at his risk and cost and Allottee shall be liable to pay compensation @ Rs.8/- per Sq. Ft. of the tentative Gross Area per month plus applicable taxes, if any, as holding charges for the entire period of such delay.....</i></p> <p>(Page no. 44 of the complaint).</p>
14.	Grace period	<p>As per clause 21 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus/minus 12 months <i>grace period of the date of execution of the agreement or environment clearance and forest clearance, whichever is later.</i> Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 12 months to the promoter at this stage.</p>
15.	Due date of possession	14.06.2021



		(Note: - 48 months from date of agreement i.e., 14.06.2016 + 12 months grace period)
17.	Total sale consideration as per applicant ledger dated 31.05.2019 at page no. 70 of the complaint	Rs.58,60,111/-
18.	Amount paid by the complainants	Rs. 32,08,117/- (as alleged by complainant)
20.	Occupation certificate /Completion certificate	Not received
21.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -
4. That in 2014, the respondent company issued an advertisement announcing a group housing project "raheja maheshwara" was launched by respondent and thereby invited applications from prospective buyers for the purchase of unit in the said project.
5. That relying on various representations and assurances given by the respondent and on belief of such assurances, complainant booked a unit in the project by paying an amount of Rs.4,94,417/-vide cheque dated 08.03.2016, towards the booking of the said unit bearing no. A-303, 3rd floor, having super area measuring 1630.33 sq. ft. to the respondent dated 08.03.2016.



6. That the respondent sent welcome letter dated 14.03.2016 to the complainant providing the details of the project, confirming the booking of the unit dated 08.03.2016, allotting a unit no. A-303, 3rd Floor, having super area measuring 1630.33 sq. ft. in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs. 57,43,028/-.
7. That an agreement to sell was executed between the allottee and the respondent on 14.06.2016. As per the annexure of the buyer's agreement the total sale consideration of the unit i.e. Rs. 57,43,028/-, it includes EDC/IDC, PLC, Power back-up installation cost, club membership and other facilities.
8. That as per clause 21, that the subject to the terms hereof and to the buyer having complied with all the terms and conditions of this agreement, the company proposes to hand over possession of the apartment within a period of 48 months from the date of execution of the agreement.
9. That an agreement was executed on 14.06.2016. Therefore, the due date of possession is calculated from the date of agreement i.e. 14.06.2016. Hence, the due date of possession comes out to be 14.06.2020.
10. That as per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit timely paid a total sum of Rs. 32,08,117/- towards the said unit against total sale consideration of Rs. 57,43,028/-.
11. That complainant visited the office of the respondent regarding completion of project, money refund for the said unit. The complainant was never informed about the delay in construction of said unit. Since the complainant already paid 70% of the amount, and the delay is a

sheer distress for them demands refund of the entire amount paid by them.

12. That complainant requested for the inspection of the unit as per the agreement. Further complainant sent several reminders to the respondent but they were never able to give any satisfactory response regarding the aforesaid issues raised by the complainant.
13. That the respondent has completely failed to honour their promises and has not provided the services as promised and agreed through the brochure, agreement and the different advertisements released from time to time. Further, such acts of the respondent is also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.
14. That the complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit. They have not only been deprived of the timely possession of the said unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the agreement.
15. That the respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The complainant has suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.

C. Relief sought by the complainant:

16. The complainant has sought following relief(s).

- i. Direct the respondent to refund the amount paid by the complainant along with prescribed rate of interest per annum from the date of payment till realization.

17. The present complaint was filed on 18.04.2023. On hearing dated 21.07.2023 counsel for the respondent appeared and was directed to file reply in the authority with a period of two week. Despite specific directions, it failed to comply with the orders of the authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding to file written reply. Further on the proceedings dated 08.09.2023 and 06.10.2023 none on behalf of respondent appeared. Therefore, the authority assumes/ observes that the respondent has nothing to say in the present matter and accordingly the authority proceeds with the case exparte.

18. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainant.

D. Jurisdiction of the authority

19. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

20. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire



Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

D.II Subject-matter jurisdiction

21. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

22. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
23. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters*



and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

24. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

E. Findings on the relief sought by the complainant.

E.I Direct the respondent to refund the amount paid by the complainant along with prescribed rate of interest per annum from the date of payment till realization.

25. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest at the prescribed rate as provided under



section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building,-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

26. As per clause 21 of the agreement to sell provides for handing over of possession and is reproduced below:

*21. The company shall endeavour to complete the construction of the said apartment within **Forty-Eight (48) months plus/minus Twelve (12) months grace period of the date of execution of the agreement or environment clearance and forest clearance, whichever is later but subject to force majeure, political disturbances, circumstances cash flow mismatch and reason beyond the control of the company. However, in case the company completes the construction prior to the said period of 48 months plus 12 months grace period the allottee shall not raised any objections in taking the possession after payment of Gross Consideration and other charges stipulated hereunder. The company on obtaining certificate of occupation and use for the building in which said apartment is situated, by the competent authorities shall hand over the said apartment to the allottee for his occupation and use and subject***



to the allottee having complied with all the terms and condition of the agreement to sell....."

27. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such a clause in the agreement to sell by the promoter is just to evade the liability towards the timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such a mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
28. **Due date of handing over possession and admissibility of grace period:** As per clause 21 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus/minus 12 months *grace period of the date of execution of the agreement or environment clearance and forest clearance, whichever is later*. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in



the possession clause. Accordingly, the authority allows this grace period of 12 months to the promoter at this stage.

29. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by her at the prescribed rate of interest. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by her in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced 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 (MCLR) 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.

30. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
31. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 06.10.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
32. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule **28(1)**, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 21 of



the agreement to sell executed between the parties on 14.06.2016, the possession of the subject unit was to be delivered within a period of 48 months from the date of execution of buyer's agreement which comes out to be 14.06.2020. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession is 14.06.2021.

33. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the plot in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
34. The due date of possession as per agreement for sale as mentioned in the table above is **14.06.2021** and there is inordinate delay. Till date neither the construction is complete nor has the offer of possession of the allotted unit been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to it and for which they have paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottees intend to withdraw from the project and is well within the right to do the same in view of section 18(1) of the Act, 2016.



35. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

"... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....".

36. The judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. it was observed

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."



37. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as she wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
38. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund an amount of Rs. 32,08,117/- paid by her at the prescribed rate of interest i.e., @ 10.75% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F Directions of the authority

39. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

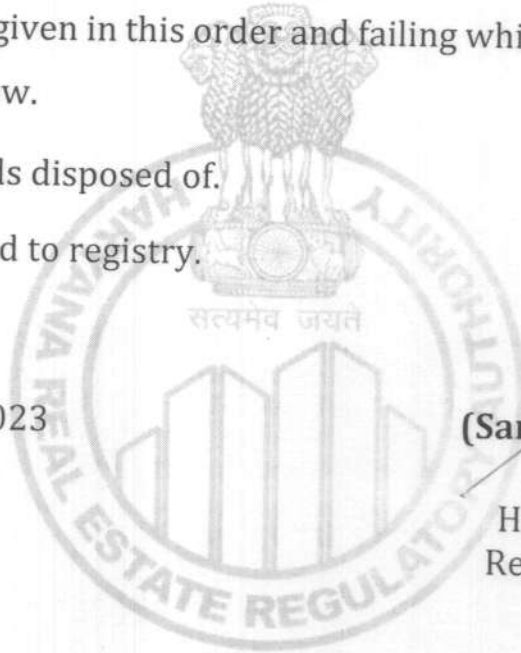


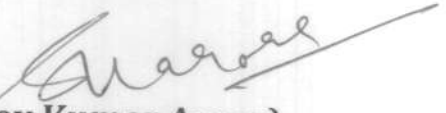
HARERA
GURUGRAM

Complaint No. 1650 of 2023

- i. The respondent/promoter is directed to refund the amount i.e., Rs. 32,08,117/- received by it from the complainant along with interest at the rate of 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
40. Complaint stands disposed of.
41. File be consigned to registry.

Dated: 06.10.2023




(Sanjeev Kumar Arora)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

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