



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>3023 of 2022</b>
<b>Date of filing:</b>	<b>15.11.2022</b>
<b>Date of first hearing:</b>	<b>01.02.2023</b>
<b>Date of decision:</b>	<b>23.08.2023</b>

Ms. Rekha W/o Sh. Hariom Singh,

R/o House no. 1057, Sector -10-A, Gurugram, Haryana-122001

.....COMPLAINANT

**Versus**

Raheja Developers Ltd,

Registered office at 406, 4<sup>th</sup> floor, Rectangle One D4,

District Centre Saket, New Delhi- 110017

.....RESPONDENT

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

**Member  
Member**

**Present:** - Sh. Tanmoy Gupta Advocate, Counsel for the complainant through VC  
Ms. Navneet Advocate, Counsel for the respondent through VC.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint has been filed on 15.11.2022 by complainant 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 Akshara-II, Sector 14, Sohna, District Mewat
2.	Name of the Promoter	Raheja Developers Ltd
3.	Plot no.	A-165
4.	Plot area	114 sq.yrds.
5.	Date of builder buyer agreement	-NA-



6.	Deemed Date of Possession	05.11.2020
7.	Total sale price	₹21,66,000/-
8.	Amount paid by complainant	₹2,25,000/- in the year 2017

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

3. Complainant had booked a plot bearing no. A-165 in the real estate project namely, "Raheja Akshara" developed by respondent admeasuring 114 Sq.yds for total sale consideration of 21,66,000/- out of which complainant had paid an amount of 2,25,000/- in the year 2017. Said booking was transferred from "Raheja Akshara" to "Raheja Akshara-II" vide letter dated 23.03.2019. Till date no builder buyer agreement has been executed between parties. However, complainant has alleged in his complaint that respondent had promised to handover the possession within 3 years from the date of allotment, i.e, by 05.11.2020, possession should have been handed over to the complainant but respondent has miserably failed to do so 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:**

6. The complainant in her complaint has sought following reliefs:
- i. Respondent be directed to refund entire amount received from complainant along with compound interest at the rate prescribed as per law till its realization.
  - ii. To compensate the complainant for a sum of ₹2,00,000/- for mental harassment and agony and ₹ 55,000/- as litigation Cost;
  - iii. To restrain respondent to cancel the allotment of unit allotted to complainant and also not allot the plot of the complainant to any other party or alienate over the allotted unit, till adjudication of the present complaint.
  - iv. To impose penalty upon the respondent as per the provisions of Section 60 of RE(R&D) Act for wilful default committed by the respondent.
  - v. To impose penalty upon the respondent as per the provisions of Section 61 of RE(R&D) Act for contravention of Section 12,13,14 and 16 of RE(R&D) Act
  - vi. To quash and set-aside any other measures and steps threatened to be taken by the respondent qua the complainant or the property in question.





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

**D. SHORT REPLY:**

7. Respondent has submitted their reply dated 03.05.2023 in the registry.

Wherein it is submitted as follows:-

- i) This Authority does not have jurisdiction to deal with this matter because the complainant has sought relief of "possession of the flats with interest and compensation", which would be adjudicated by the Adjudicating Officer as appointed under Section 71 of RERA Act, 2016.
- ii) Authority further lacks jurisdiction because the project in question has not been registered with the Authority. Authority has jurisdiction to regulate the affairs only of the projects which are registered with Authority.
- iii) Respondents have stated that agreement with the complainant-allottees had not been executed in accordance with the format of the agreement provided in the Rules. Further, agreement with complainant had been executed much prior to coming into force of the RERA Act. For this reason also, the Authority has no jurisdiction and the complaint is not maintainable.
- iv) Respondent in his reply has stated that Project "Raheja OMA" consist of low rise and high rise. The construction of low rise



was complete in the year 2015, However, collaborators cancelled the GPA which was co-terminus with collaboration agreement and very basis for undertaking the construction. Due to this action of collaborator, respondent lost the engagement of contractor and applying for Occupation Certificate of the project in question. It is also mentioned that a Civil appeal no. 6853/2018 has been filed before Honble Supreme Court, wherein respondent has been directed to deposit sum of ₹ 6 cores in the registry. The said appeal is now referred to senior mediator vide order dated 11.01.2022. The subject matter involved in the said appeal is against the same respondent against which the instant complaint has been filed by the complainant before the Authority. Therefore, respondent requested to defer the captioned matter qua the Raheja's Oma project till final adjudication of Civil appeal pending before Hon'ble Supreme Court.

- v) Respondent stated that development of the project is in full swing and in progress. However, basic infrastructure has not been provided by the State Government Authorities. So due to default by State agencies, the respondent was constrained not to develop the project on time. Further, as per Article 4.2 of agreement to sell, respondent shall be entitled to reasonable extension of time for



delivery of possession of said unit when the situation is beyond the control of respondent. Furthermore, complainant made several defaults of payments and even stopped making payment in the year 2016 without any justification. Therefore, complainant's default in not making timely payments caused delay in completion of the project in question.

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

8. During oral arguments learned counsel for the complainant submits that there is no progress at the site and project cannot be completed in near future. Therefore, he requested to dispose of the matter in same terms of the **Complaint no. 183 of 2021 titled as Shrishti Wadhwa and Jolly Wadhwa Vs Raheja Developers Pvt Ltd.** On the other hand, respondent has reiterated his arguments as mentioned in para.7 of this order.

**F. ISSUES FOR ADJUDICATION:**

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

**G. OBSERVATIONS OF THE AUTHORITY:**

10. Authority has gone through the submissions of complainant as well as of respondent. It observes and orders as follows:-





- i) Respondent has challenged the jurisdiction of the Authority on the grounds that firstly, complainant has sought relief of possession along with interest and compensation which would not be adjudicated by Authority as same would be adjudged by the Adjudicating Officer under Section 71 of RERA Act.

While going through the facts of the case, it is has come to the knowledge of the Authority that complainant has prayed for relief of refund as clearly mentioned at page no. 20 of the complaint book. However, respondent has challenged the jurisdiction of Authority for seeking possession which is factually incorrect as explained above. Further, even if it is considered that respondent wished to state that complainant had sought main relief of possession along with compensation, then his contention with regard to relief of compensation has already been adjudicated upon in many cases by the Authority, as per principle laid down by 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), wherein the Hon'ble Apex Court 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.

- ii) Secondly, respondent has stated that jurisdiction of the Authority only extends to the registered projects

With regard status of project in question being registered is already clarified in number of earlier decided cases by the Authority wherein, it is clearly stated that project of respondent namely, "Raheja OMA" had been got registered by the respondents vide registration No.29 and 30 of 2017 dated 02.08.2017. However, respondent in this case, is making contrary submissions to the facts that project is not registered. Learned counsel for respondent was advised many times to check the facts of the matter before submitting their reply. Therefore, respondent contention with regard to jurisdiction over unregistered project is rejected as same is factually incorrect and project is also registered.

- iii) In present case, respondent has alleged that agreement to sell was executed in the year 2013. However, copy of the same has not been place on record till date. Even if for the sake of arguments it is contented by respondent that provisions of the RERA Act of 2016 will



not apply on the agreements executed prior to coming into force of RERA Act, 2016 as RERA Act cannot have retrospective effect and relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of RERA Act.

In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not supposed to be re-written. The Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd. Relevant part of the order is being reproduced below:

*“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in*



*accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller.”*

11. From perusal of the record and on the basis of arguments advanced by both the parties, the Authority observed that complainant had made booking by paying an amount of 2,25,000/- on 06.11.2017 in respondent project namely, “ Raheja Akshara”. Thereafter, booking was shifted in other project of respondent namely, “Raheja Akshara-II” on 23.03.2019. However, no builder buyer agreement has been executed between parties till date. Respondent had nowhere in reply has challenged the payment made by complainant rather has submitted the same in reply filed in other complaints with regard to same project of the respondent. Further, despite being granted adequate opportunity, respondent has failed to file/submit any documents in its defense to show that construction of the project is complete and occupation certificate has been received from the competent Authority. The innocent allottee who had invested his hard earned money in the project in the year 2017 with the hope to get a house cannot be forced/compelled to wait endlessly for the unit, and specifically when there is no bonafide effort shown on part of the promoter to complete the project. 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 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 3<sup>rd</sup> 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*

*had*

*of entire amount paid by complainants along with interest.*

12. 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.





13. 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. Section 18 is reproduced below for reference:

*18. Return of amount and compensation.—(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.*

*(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.*

*(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.*



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”.*

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;”*

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. 23.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.

15. 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 10.75% (8.75% + 2.00%) from the date amounts were paid till the actual realization of the amount.

16. Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.75% from the date of payment till the date of this order according to the receipts/statement of accounts provided by the complainants and said amount works out to ₹ 3,65,288/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 23.08.2023
1.	₹2,25,000/-	06.11.2017	₹ 1,40,288/-
Total	3,65,288/-		



Payable	
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17. Further, with regard to relief no. 4,5,6,7 mentioned at page no 15 and 16 of complaint book, it is observed that said relief has nowhere been claimed by the complainant in his complaint nor pressed during arguments. Hence, complainant's prayer mentioned at serial no.4,5,6,7 at page no. 15 and 16 of complaint book are rejected.

#### **H. DIRECTIONS OF THE AUTHORITY**

18. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire amounts along with interest of @ 10.75 % to the complainant as specified in the table provided in para 16 of this order.
- (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. Captioned complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading orders on the website of the Authority.



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



.....  
NADIM AKHTAR  
[MEMBER]