

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

Complaint no. :	957 of 2022
Date of filing complaint:	08.03.2022
First date of hearing:	12.07.2022
Date of decision :	21.09.2023

Sh. Sumit Chitkara  
**R/o:** House No.-1468/14, Faridabad,  
Haryana-121007

**Complainant**

Versus

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

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Aditya Ramani (Advocate)

Complainant

None

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 29 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"Raheja's Aranya City", Sector 11 & 14, Sohna, Gurugram
2.	Nature of the project	Residential Plotted Colony
3.	Project area	107.85 acres
4.	DTCP license no.	i. 19 of 2014 dated 11.06.2014 valid up to 10.06.2018 ii. 25 of 2012 dated 29.03.2012 valid up to 28.03.2018
5.	Name of licensee	Standard Farms Pvt. Ltd. and 9 others
6.	RERA Registered/ not registered	Registered vide no. 93 of 2017 dated 28.18.2017 valid upto 27.08.2022
7.	Unit no.	Plot No. D-153 (As per page no. 28 of complaint)
8.	Unit area admeasuring	388.180 sq. yds. (As per page no. 28 of complaint)
9.	Allotment letter	12.06.2014 (As per page no. 24 of complaint)
10.	Date of execution of agreement to sell	Agreement annexed but not executed
11.	Possession clause	<b>4.2 Possession Time and Compensation</b> <i>That the seller shall sincerely endeavor to give possession of the plot to the purchaser within thirty-six (36) months from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer &amp; water in the sector by the Government, but subject to</i>

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		<p><i>force majeure conditions or nay Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the seller. <b>However, the seller shall be entitled for compensation free grace period of six (6) months in case the development is not within the time period mentioned above. In the event of his failure to take over possession of the plot provisionally and/ or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the purchaser shall be liable to pay @ Rs. 50/- per sq. yds. of the plot area per month as holding charges for the entire period of such delay...."</b></i></p> <p>(As per page no. 33 of complaint)</p>
12.	Grace period	<p><b>Allowed</b></p> <p>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the part completion certificate by June 2015. As per agreement to sell, the construction and development work of the project is to be completed by June 2015 which is not completed till date. <b>Accordingly, in the present case the grace period of 6 months is allowed.</b></p>

*Handwritten signature/initials*

13.	Date of booking application	11.08.2012 (As per page no. 20 of the complaint)
14.	Booking application Form	<i>It is understood the application is subject to approval by the screening committee and if due to overbooking or allotment criteria/constraints <b>the company is not in a position to finally allot a residential plot applied for within a period of one year from the date of this application, the company shall refund the amount deposited by me/us with simple interest at the rate of 10% per annum</b> calculated for the period for which such amounts have been lying with the company(interest to be calculated after 3 months; it being the processing period for the application) in complete discharge of its obligation.</i>
15.	Due date of possession	11.12.2015 <b>(Note: 36 months from the date of first payment i.e., 11.06.2012 + six months grace period)</b>
16.	Basic sale consideration	Rs. 96,27,536/- (As per booking application form at page no. 22 of complaint)
17.	Total sale consideration	Rs. 1,13,46,295/- (As per booking application form at page no. 22 of complaint)
18.	Amount paid by the complainant	Rs. 24,06,867/- (As confirmed by both the counsel for the parties during proceedings)
19.	Occupation Certificate/ completion certificate	Not received
20.	Offer of possession	Not offered

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21.	Surrender/ withdrawal request made by the complainant	30.06.2014 (As per page no. 54 of the complainant)
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**B. Facts of the complaint:**

3. That the complainant in the year 2012 was looking to purchase a residential property, and the complainant was approached by the respondent for purchasing a unit in the residential colony/project being developed by the respondent named 'Raheja's Aranya City' situated at Sector 11 & 14, Sohna, Gurugram-122001. Based on the various representations made by the respondent, the complainant booked a unit in the project of the respondent by paying an amount of Rs. 24,06,867/- as booking amount as on 11.08.2012. After collecting the said amount towards booking the unit, the respondent provided the booking application form to the complainant which was duly signed by the complainant and sent to the respondent in August 2012.
4. That as per the booking application form, the complainant was to be allotted a unit admeasuring 349.14 sq. yards for a total consideration of Rs. 1,13,46,295/-. It was further assured by the respondent vide the booking application form that a unit would be allotted within a period of one year from the date of booking failing which the respondent would be obligated to refund the amount collected from the complainant along with interest @ 10% per annum till the payment is realized.
5. That the complainant continuously followed up with the respondent through telephonic calls and office visits, for execution of the agreement to sell. However, the respondent delayed the execution of the agreement to sell under one pretext or the other. After a delay of two years from the date of booking, the respondent allotted the unit bearing no. D153, admeasuring

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388.180 sq. yds. and further sent a copy of the agreement to sell vide letter dated 12.06.2014.

6. That on perusal of the terms and conditions of the agreement, the complainant was shocked to find that the terms were different from what was agreed at the time of booking the unit. For instance, the complainant had booked a unit admeasuring 349.14 sq. yds. for a total consideration of Rs. 1,13,46,295/-. However, the respondent has allotted a unit admeasuring 388.180 sq. yds. and unilaterally increased the total consideration of the unit to Rs. 1,25,92,647/-. That the complainant had booked a unit in phase-I of the project however, the respondent had allotted a unit in phase-2 of the project. Furthermore, the agreement contained various arbitrary and one-sided terms and conditions. For instance, as per clause 3.6 of the agreement, on any delay in making payments, the complainant was liable to pay interest on delayed payments @ 18% per annum however, as per clause 4.2 of the agreement, on delay in providing possession of the unit, the respondent is only obligated to pay delay compensation merely @ Rs. 50/- per sq. yard.
7. That on being aggrieved by the delay in allotment of the unit coupled with the difference in the allotted unit and the one-sided terms and conditions of the agreement, the complainant refused to sign the agreement and sought refund of his hard-earned money vide email dated 30.06.2014. However, despite acknowledging the delay, the respondent refused to refund the amount collected from the complainant vide email dated 02.07.2014. That on following up with the respondent with respect to the request of refund, the respondent replied vide email dated 16.07.2014, categorically stating that since a unit admeasuring 349.14 sq. yds. was not available, the complainant was allotted the unit bearing No. D153, admeasuring 388.180 sq. yds. The respondent vide the said email dated 16.07.2014 has further categorically

admitted to the delay in allotment of the unit. Thus, as per the terms & conditions of the booking application, the complainant was well within his right to seek refund of the amount collected by the respondent however, the respondent blatantly refused to refund the hard-earned money of the complainant despite several requests vide emails, telephonic calls and office visits.

8. That the complainant has paid an amount of Rs. 24,06,867/- at the time of booking the unit and till date. In view of the delay of about 2 years from the date of booking the unit for allotment of the unit coupled with the discrepancies in the agreement as mentioned hereinabove, the complainant refused to make further payment to the respondent and sought refund of his hard-earned money as per the terms of the booking application. However, despite more than 7 years from the date the complainant sought refund of his hard-earned money as per the booking application, the respondent has utterly failed to refund the amount collected from the complainant. That the respondent has treated the amount collected from the complainant as an interest free loan and despite several requests to refund the amount collected, the respondent has failed to refund the amount collected from the complainant till date.
9. That the complainants are bona fide buyers and have made the booking based on the representations and assurances given by the respondent of providing timely possession of the unit. However, the respondent has failed to allot the unit as per the terms agreed at the time of booking the unit. The respondent has allotted the unit after a delay of about 2 years from the date of booking. That as per the booking application form, the complainant is well within his right to seek refund of the booking amount should the opposite party fail to allot the unit within one year from the date of booking. It is well established

through a plethora of judgments of the Hon'ble Supreme Court that the allottees cannot be compelled to sign a one-sided agreement. Thus, the complainant herein is seeking refund of his hard-earned money.

**C. Relief sought by the complainant:**

10. The complainant has sought following relief(s):

i. Direct the respondent company to refund the entire amount of Rs. 24,06,867/- paid by the complainant along with interest @18% p.a. on the paid amount from the date of payment till actualisation.

11. The authority issued a notice dated 30.03.2022 of the complaint to the respondents by speed post and also on the given email address at [info@psplegal.org](mailto:info@psplegal.org) and [COMPLIANCES@raheja.in](mailto:COMPLIANCES@raheja.in). The delivery reports have been placed in the file. The counsel for the respondents put in appearance on 12.07.2022, 04.10.2022, 01.02.2023 and 06.07.2023 but did not file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to struck off the defence of the respondent and decide the complaint on the basis of merits.

**D. Jurisdiction of the authority:**

12. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D. I Territorial jurisdiction**

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

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

##### ***Section 11(4)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

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.

13. 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.*** SCC Online SC 1044 decided on 11.11.2021 and followed in ***M/s Sana Realtors Private Limited & others***

**V/s 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."*

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)**, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

**E. Entitlement of the complainant for refund:**

**E.I Direct to the respondent to refund an amount of Rs. 24,06,867/- along with interest.**

15. The complainant was allotted a unit in the project of respondent "Raheja's Aranya City", in Sector 11 & 14, Gurugram vide allotment letter dated 12.06.2014 for a total sum of Rs. 1,13,46,295/-. Though no buyer's agreement was executed between the parties, but the complainant started paying the amount due against the allotted unit and paid a total sum of Rs. 24,06,867/-.

16. The due date of possession as per the possession clause of the buyer's agreement annexed in the file as mentioned in the table above is 11.12.2015. There is delay of 6 years 2 months 28 days on the date of filing of the complaint i.e., 08.03.2022. The occupation certificate of the project where the unit is situated has still not been obtained by the respondent-promoter.
17. It is evident from the above mentions facts that the respondent vide the booking application form that a unit would be allotted within a period of one year from the date of booking failing which the respondent would be obligated to refund the amount collected from the complainant along with interest @ 10% per annum till the payment is realized.
18. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have 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 allottee 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....."*

19. Further in 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 observed as under:

*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.*

20. 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 unable to give possession of the unit in accordance with the terms of application form or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottees wish 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.
21. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/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. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in*



*operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

22. The prescribed rate of interest as per Rule 15 of Rules, 2017 payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent.
23. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 24,06,867/- with interest at the rate of 10.75% (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*.
24. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra* held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the 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.

**F. Directions of the Authority:**





- i) The respondent /promoter is directed to refund the amount i.e., **Rs. 24,06,867/-** received by him from the complainants 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 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.
- iii) The cost of Rs. 10,000/- imposed on respondent vide order dated 06.07.2023 shall be included in the decretal amount.

25. Complaint stands disposed of.

26. File be consigned to the registry.

v./ -   
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 21.09.2023**

**HARERA**  
**GURUGRAM**