



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

Complaint no. : 4625 of 2022
Date of complaint : 28.06.2022
Date of order : 10.01.2024

Pulkit Durgvanshi,
R/o: - B-38/8-25, Raghunath Nagar,
Mahmoor Ganj, Chhitupur, Mahmoorganj,
Varanasi, Uttar Pradesh-221010.

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:
Ashok Sangwan

Member

APPEARANCE:
Stephen Nelsan (Advocate)
Garvit Gupta (Advocate)

**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 Vanya", Sector 99A, Gurugram, Haryana
2.	Project area	2.28 acres
3.	Nature of the project	Group Housing Project
4.	DTCP license no. and validity status	64 of 2013 dated 20.07.2013 valid upto 19.07.2017 72 of 2014 dated 01.08.2014 valid upto 31.07.2019
5.	Name of licensee	Ajit Kaur D/o Pritpal singh
6.	RERA Registered/Not Registered	7(a) of 2018 dated 01.02.2018 Valid upto 31.12.2022
7.	Unit no.	C-057, tower- C in 5 th floor (Page no. 28 of the complaint)
8.	Unit area admeasuring	1510.71 sq. ft. (Page no. 28 of the complaint)
9.	Date of execution of agreement to sell	26.06.2018 (Page no. 32 of the complaint)
10.	Date of execution of tripartite agreement	25.10.2018 (Page no. 89 of the complaint)
11.	Date of provisional allotment letter	08.06.2018 (Page no. 28 of the complaint)
12.	Possession clause	7. POSSESSION OF THE SAID APARTMENT FOR RESIDENTIAL USAGE 7.1 Schedule for possession of the said apartment for residential usage: - "The Promoter agrees and understands that timely delivery of possession of the said Apartment for residential usage is the essence of the Agreement. The Promoter, based on the approved plans and specifications, assures to hand over possession of the said Apartment in a period of 48 Months plus/minus 12 Months variable grace period ("Commitment Period")

		<i>from the date of execution of this Agreement for sale... "</i> <i>[emphasis supplied]</i> (Page no. 52 of the complaint).
13.	Due date of possession	26.06.2023 [48 months from the agreement to sell i.e., 26.06.2018 + 12 months grace period allowed being unqualified]
14.	Total sale consideration	Rs.73,31,284/- (As per BBA on page no. 40 of the complaint)
15.	Amount paid by the complainants	Rs.36,78,185/- (As per customer ledger page no. 99 of the complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Cancellation/refund request made by the allottees	29.10.2021 [Page 100 of the complaint]

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant was allotted a unit bearing no. C-057, Fifth Floor, tentatively having 1510.71 sq.ft. super area in the project of the respondent named "RAHEJA's VANYA" at Sector-99A, Gurugram vide allotment letter dated 08.06.2018. Thereafter an agreement to sell was executed between the parties on 26.06.2018 for a total sale consideration of Rs.73,31,284/- and the complainant has paid an amount of Rs.36,78,185/- against the same.
- II. That the respondent has manipulated the complainant to obtain a loan from L&T so that there must be no default on complainant's account. Accordingly, a tripartite agreement was executed between the complainant, the respondent and L&T housing finance limited on



25.10.2018 and a housing loan of Rs.54,62,900/- was sanctioned to the complainant.

- III. That the complainant had requested the officials of the respondent multiple times to disclose the exact status of the completion of the construction of the said project. However, the officials of the respondent kept on evading the queries raised by the complainant on one pretext or the other.
- IV. That the complainant has sent a legal notice dated 29.10.2021 to the respondent and its officials and in the said legal notice he has requested for cancellation of the booking and return of the amount paid by him.
- V. That as per clause 7.1 of the agreement, the respondent has agreed and promised to complete the said project by 26.06.2022. However, after visiting the project site he was shocked to find that the construction of the unit is far away from completion. Therefore, the complainant no longer wishes to keep his unit in the project of the respondent company and hence prays for a refund of the above-mentioned amount.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - I. Direct the respondent to refund the paid-up amount alongwith prescribed rate of interest.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
6. The respondent/promoter put in appearance through its Advocate and marked attendance on 25.08.2022, 16.11.2022 and 16.11.2022



respectively. 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 filing of written reply. Therefore, in view of above, vide order dated 19.07.2023, the defence of the respondent was struck off.

7. 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 parties.

D. Jurisdiction of the authority

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

D.I Territorial jurisdiction

9. 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

10. 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.

11. 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 complainants at a later stage.
12. 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."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case 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 paid-up amount alongwith interest.

14. The complainant was allotted a unit in the project of respondent "Raheja Vanya" situated in sector- 99A, Gurugram vide provisional allotment letter dated 08.06.2018. Thereafter, an agreement to sale dated 26.06.2018 was executed between the parties for a total sale consideration of Rs.73,31,284/- and the complainant has paid an amount of Rs.36,78,185/- against the same as and when demanded by the respondent. Thereafter, the complainant decided to withdraw from the project and made a request for refund of the amount paid alongwith interest.
15. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him 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)

16. Clause 7.1 of the agreement to sell dated 26.06.2018 provides for handing over of possession and is reproduced below:

7.1 Schedule for possession of the said apartment for residential usage: -

"The Promoter agrees and understands that timely delivery of possession of the said Apartment for residential usage is the essence of the Agreement. The Promoter, based on the approved plans and specifications, assures to hand over possession of the said Apartment in a period of 48 Months plus/minus 12 Months variable grace period ("Commitment Period") from the date of execution of this Agreement for sale...."

17. 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 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.

18. As per clause 7.1 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus 12 months of grace period. Given the fact that the grace period was unqualified, the due date of possession comes out to be 26.06.2023. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. However, the complainant has already withdrawn from the project by sending a legal notice dated 29.10.2021 and sought refund of the paid-up amount with interest before the due date of possession i.e., 26.06.2023. So, in such a situation, the complainant withdrew from the project even prior to the due date. So, he is not entitled to refund of the complete amount but only after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides as under: -

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where



the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer”

19. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.36,78,185/- after deducting 10% of the sale consideration of Rs.73,31,284/- being earnest money along with an interest @10.85% 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 on the refundable amount, from the date of surrender i.e., 29.10.2021 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

F. Directions of the Authority:

20. 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):
- i. The respondent/builder is directed to refund the paid-up amount of Rs.36,78,185/- after deducting 10% of the sale consideration of Rs.73,31,284/- being earnest money along with an interest @10.85% p.a. on the refundable amount, from the date of surrender i.e., 29.10.2021 till its realization.
 - ii. Out of total amount so assessed, the amount paid by the bank /payee be refunded in the account of bank and the balance amount along with interest will be refunded to the complainant.

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HARERA
GURUGRAM

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iii. 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.

21. Complaint stands disposed of.
22. File be consigned to registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.01.2024



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