



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1392 of 2023
Date of filing:	26.06.2023
Date of first hearing:	27.07.2023
Date of decision:	08.11.2023

Ms. Shivi Maheshwari, D/o Mr. Rakesh Maheshwary,

R/o Flat no E-75, Golden Enclave Apartments,

HAL old airport road,

Bangalore- 560017

.....COMPLAINANT

Versus

M/s Raheja Developers Ltd,

W-4D, 204/5,

Keshav Kunj Cariappa Marg,

Western Avenue, Cariappa Marg,

Sainik Farms, New Delhi-110062

New Delhi -110062

.....RESPONDENT

Rathee

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

**Member
Member**

Present: - Ms. Shivi Maheshwari, Complainant through VC
None for the respondent.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 26.06.2023 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	Krishna Housing Scheme, Sector-14, Sohna
2.	Nature of the Project	Residential
3.	RERA registered/not registered	Registered no. 21 of 2017
4.	Date of application by complainant	28.01.2015
5.	Flat no.	11009, Tower-D2, 11 th floor

Geeta Rathee

6.	Flat area	Total carpet area- 414.37 sq.ft and balcony area 64.58 sq.ft.
7.	Date of builder buyer agreement	16.04.2016
8.	Deemed Date of Possession	As per clause 5.2; 48 months from date of approval of building plans i.e. 12.11.2014 or grant of environment clearance i.e. 09.03.2015, whichever is later. Accordingly, DOP comes to 09.03.2019
9.	Basic sale price	₹ 15,24,022/-
10.	Amount paid by complainant	₹ 13,99,169/-

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

3. Complainant had booked a residential flat in the real estate project developed by the promoter in the year 2015. Said flat was allotted vide allotment letter dated 10.07.2015. Builder Buyers Agreement (hereinafter referred as BBA) was executed between the allottee and respondent-promoter on 16.04.2016, annexed at Page no. 23 of complaint book.



4. According to clause 5.2 of the BBA, respondent committed to complete the construction and offer possession of the allotted unit within 48 months from the date of the receiving of environment clearance or sanction of building plans whichever is later. Building plans were approved on 12.11.2014 and Environment clearance was obtained on 09.03.2015. Accordingly due date of possession comes to 09.03.2019. Total sale price was Rs. 15,24,022/- out of which the complainant had paid Rs. 13,99,169/- on different dates.

5. Complainant further alleged that she has visited the site several times and was shocked to see that there was no development at the site. Respondent company promised that possession will be handed over to her within stipulated period as per the agreement, failing which the respondent company would pay interest which has been admitted by the respondent company in their agreement. The complainant had also sent various emails for not delivering the unit in question and for asking latest status of the project but no response has been received from the respondent/promoter. Though, date of handing over of possession is 09.03.2019 but possession has not been offered 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 of ₹ 13,99,169/- from complainant along with interest @ 12% per annum till realization of the claim amount.
 - ii. Respondent be directed to pay compensation of Rs. 1,50,000/- to complainant as damages on the account of harassment and mental agony.
 - iii. Any other relief which is deemed fit by this Hon'ble Authority.

D. REPLY:

7. As per office record notice to respondent was successfully delivered on 07.07.2023. Thereafter matter was listed for hearing on 27.07.2023, whereby respondent was given opportunity to file reply but respondent neither filed reply nor was represented during course of hearing. Today also, none appeared for respondent, nor any reply has been filed till date. Since the proceedings before this Authority are summary proceedings and sufficient opportunities have been granted to the respondent to file reply but respondent choose not to do so, therefore, defence of the respondent is struck off and matter is proceeded ex-parte.


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E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

8. During oral arguments learned counsel for the complainant submitted that there is no progress at the site and project cannot be completed in near future. Therefore, she 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, none appeared for the respondent-promoter. Authority has decided to proceed with the matter on merits according to documents placed on record.

F. ISSUES FOR ADJUDICATION:

9. Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS OF THE AUTHORITY:

10. From perusal of the record submitted by the complainant and also on the basis of arguments advanced by complainant, it is a matter of fact that the complainant was allotted flat no. 11009, 11th floor, Tower-D2, admeasuring 414.37 sq.ft and balcony area 64.58 sq.ft. in housing project, namely, "Krishna Housing", located at Sector 14, Sohna being developed by respondent-promoter 'Raheja Developers Ltd'. As per the clause 5.2 of BBA dated 16.04.2016, respondent-promoter had committed to handover the possession of the unit within 48 months from the date of the receiving of environment clearance or sanction of



building plans whichever is later. As mentioned in the complaint the date of obtaining environmental clearance was 09.03.2015 which was later from date of approval of building plans. Hence, 09.03.2019 shall be considered as the deemed date of possession.

11. Further, as stated by the complainant construction of the project is yet not complete and no offer of possession has been made till date. The complainant has made payment of Rs. 13,99,169/- (as per ledger annexed at page no. 15 of complaint book) to the respondent out of basic sales consideration of Rs. 15,24,022/- . Despite being granted adequate opportunity, respondent has failed to file/submit any documents in its defence to show that construction of the project is complete and occupation certificate has been received from the competent Authority. In view of the aforesaid facts/ situation complainant is an innocent allottee who had invested his hard earned money in the project with the hope to get a house and who was to get possession of the unit by 09.03.2019 cannot be forced/ compelled to wait endlessly for the unit; specifically when there is no bonafide effort shown on part of the promoter to complete the project.

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.”

In this regard the Hon'ble Supreme Court in above mentioned judgment had settled 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. Further, in consonance to the judgment passed by Hon'ble Supreme in case of *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P & Ors*, this Authority has earlier also passed similar orders in **Complaint No. 183 of 2021 titled as Shrishti Wadhwa and Jolly**



Wadhwa Vs Raheja Developers Pvt. Ltd. decided on 06.05.2022, involving similar/ identical facts. Thus, the Authority decides to dispose of the captioned matter in same terms of the above stated 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%

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of the money received from the allottees has to be invested on the project. The respondent promoters appears to have severely defaulted in respect of legal obligations cast upon them under RERA Act. They have got the project registered and have operated RERA account as per law, but respondents have created lien in favour of of M/s DMI Finance Pvt. Ltd. without even informing the Authority about it. It is a blatant illegality committed by the respondents which in fact amounts to breach of law and trust. The allottees had entrusted their money with the promoter with an expectation that the same will be invested in the project and their booked apartment will be delivered in time. The promoter on the other hand, dealt with the money so deposited by the allottee-complainants like its private money and allowed a lien to be created in favour of 3rd party.

vi) There appears to be a clear mismanagement of funds by the respondent. The project ought to have been completed with the help of Rs.33 crores raised by way of loan and the money contributed by complainant-allottees. Only a detailed forensic audit would reveal whether the money collected by way of loan and 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

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prayed by complainants. Accordingly, Authority orders refund of entire amount paid by complainants along with interest.

14. Hence, Authority hereby allows refund in favour of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed in Rule 15 of HRERA Rules, 2017. 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

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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;"


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15. 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. 05.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
16. Accordingly, respondent will be liable to pay the complainant interest from the date on which amounts were paid by them till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount of ₹ 13,99,169/- 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 on which amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest at the rate of 10.75% till the date of this order and said amount works out to ₹ 24,61,947/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 08.11.2023
1.	₹78,556/-	08.02.2015	₹ 74,198/-
2.	₹3,15,472/-	16.09.2015	₹ 2,76,509/-
3.	₹1,97,409/-	17.08.2016	₹ 1,53,492/-



4.	₹1,90,503/-	17.08.2016	₹ 1,48,123/-
5.	₹1,90,503/-	02.05.2017	₹ 1,33,647/-
6.	₹2,13,363/-	27.07.2017	₹ 1,44,280/-
7.	₹ 2,13,363/-	30.01.2018	₹ 1,32,529/-
Total	₹13,99,169/-		₹ 10,62,778/-
Total payable amount	₹ 24,61,947/-		

17. The complainant is seeking compensation on account of harassment and mental agony under Section 12 of RERA Act, 2016. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is

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advised to approach the Adjudicating Officer for seeking the relief of compensation.

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 amount of ₹ 24,61,947/- to the complainants 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.



.....
NADIM AKHTAR
[MEMBER]



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