



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	61 of 2023
Date of filing:	23.01.2023
First date of hearing:	15.03.2023
Date of decision:	21.09.2023

COMPLAINT NO. 61 OF 2023

Mukesh Tyagi and another

D-88, Mig Flats, Madhubanapts, Swarnimvihar,
Sector-82, Noida-201304, Uttar Pradesh

.....COMPLAINANTS

Versus

Raheja Developers Limited

W4d-204/5, Keshav Kunj, Cariappa Marg,
Western Avenue, Sainik Farms,
New Delhi-110062

.....RESPONDENT

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

**Member
Member**

Date of Hearing: 21.09.2023

Hearing: 3rd

Present: - Mr. Ali Humam, proxy counsel for Aishwarya Dobhal, counsel for the complainants through VC.
None for the respondent.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Complaint has been filed by complainants 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 fulfil 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, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:



S.No.	Particulars	Details Complaint no. 61 of 2023
1.	Name of the project	Krishna Housing Scheme, Sector-14, Sohna, Haryana
2.	Name of the promoter	Raheja Developers Limited
3.	RERA registered/not registered Unit No.	Registered
4.	Unit No. allotted	4012, 4 th floor, Tower D1
5.	Unit area (Carpet area)	414.37 sq.ft Carpet area
6.	Date of allotment	10.07.2015
7.	Date of Builder Buyer Agreement	Not executed
8.	Due date of offer of possession	Not available
9.	Possession clause in BBA	Not available
10.	Total sale consideration	₹15,24,022/-
11.	Amount paid by complainant	₹4,75,195/- (as per complaint)
12.	Offer of possession	Not given

B. FACTS OF THE COMPLAINT

- i. Case of the complainants is that the respondent had launched their project namely "Krishna Housing Scheme" in the year 2013 under a false and misleading campaign that respondent would complete the said project in 3 years from launch. However, respondent breached the initial commitments and also failed to deliver the said project as per commitments made to the complainant.



- ii.** That vide provisional allotment letter dated 10.07.2015, complainants were allotted apartment no. 4012, following a successful draw of lots against total consideration amount of Rs. 15,24,022/-, having an approximate carpet area of 414.37sq ft. in Krishna Housing Scheme at Sector 14, Sohna. Copy of the provisional allotment letter dated 10.07.2015 is annexed as Annexure A.
- iii.** That against aforesaid unit complainants had made a payment of Rs. 81,175/- on 21.12.2014 as booking charges and further, made a payment of Rs.80,725/- on 06.07.2015 and lastly of Rs.3,13,295/- on 24.07.2015 at the time of allotment for the respective unit. Copy of the payment receipts are annexed as Annexure B.
- iv.** That complainants wrote an email dated 31.01.2016 to the respondent to request for cancellation of the allotment due to the financial crunch and refund the paid amount. However, more than 3 years have passed since the respondent promised for the refund of the cancellation charges as under the Affordable Housing Scheme-2013. Respondent had promised to refund the cancellation charges after the deduction of Rs.25,000/- within 60-90 days from receipt of request. However, respondent did not abide by their terms and conditions. Copy of the correspondences between complainant and



respondent along with certificate under Section 65B of Indian Evidence Act, 1872 is annexed as Annexure C.

- v. That, the respondent has indulged in unfair trade practice and there is deficiency in service on part of the respondent by misleading the complainants and thereafter, respondent illegally delayed in refunding the paid consideration amount to the complainants. Respondent has also caused great hardship, mental harassment and huge pecuniary loss to the complainants.
- vi. Therefore, in view of the present complaint, complainants are seeking the refund of the paid consideration along with interest and compensation.
- vii. That the time of delivery has lapsed a long time ago and respondent is not ready to consider the claim of the complainants as stated above and has conveniently ignored the same. That these claims have arisen due to default and deficiencies in service on the part of the respondent.
- viii. It is pertinent to mention that the cause of action has arisen in favour of complainants. The cause of action firstly arose when the complainants made the payment of Rs.81,175/- on 21.12.2014 towards booking charges. The cause of action then arose on 06.07.2015 when the complainants made the payment of Rs.80,725/- at the time of submission of application for allotment.



The cause of action further arose when respondent allotted the unit on 06.07.2015 with the assurance to deliver the possession till 2016. The cause of action arose when the complainants made a payment of Rs.3,13,295/- as allotment charges for the booked unit. The cause of action arose when the respondent sent email dated 02.02.2016 confirming that the refund of the cancellation charges would be processed as per the 'Affordable Housing Scheme-2013' issued by the Govt. of Haryana. The cause of action has arisen on each date the payment has been made by the complainants to the respondent. The cause of action has arisen on each date the complainants requested the respondent through emails to accept his claim. The cause of action is still subsisting and continuous.

- ix. That it is pertinent to mention that the facts & circumstances stated above clearly shows that the respondent acquired the hard-earned savings, i.e.,Rs.4,75,195/- of the complainants through inducement & misrepresentation & having fraudulent or dishonest intention at the time of making the promise thereby caused wrongful loss to the complainants & wrongful gain to himself.

C. RELIEFS SOUGHT

3. Complainants have sought following reliefs :

- (i) Direct the respondent to refund the amount of Rs.4,75,195/- with interest @18% from the date of allotment till its realization;



- (ii) Direct the respondent to pay an amount of Rs.10,00,000/- as compensation on account of physical harassment and mental agony caused to the complainants due to deficiency in services on the part of the respondent.
- (iii) Pass any other/further order or relief which this Hon'ble Court may deem fit and proper in the interest of justice in the light of the abovementioned circumstances.

D. REPLY ON BEHALF OF RESPONDENT

4. Notice was served to the respondent on 31.01.2023 which got successfully delivered on 01.02.2023. Despite availing two opportunities respondent failed to file reply on time. Therefore, authority deems fit to struck off the defence and decide it ex-parte.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

5. Proxy counsel for complainants reiterated the facts of the complaint and stated that on last date of hearing respondent was directed to file reply, however no reply has been filed by the respondent.

F. ISSUE FOR ADJUDICATION

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



G. OBSERVATIONS AND DECISION OF AUTHORITY

7. The Authority has gone through the facts of complaint as submitted by the complainant. In light of the background of the matter, Authority observes as follows:

- i. It is admitted fact that by draw of lots held on 06.07.2015, complainants were allotted one bedroom flat bearing no. 4012 at fourth floor in tower D1 in project "Krishna Housing Scheme" on 10.07.2015 of respondent in sector-14, Sohna, Haryana; having carpet area as 414.37 sq.ft, chargeable @3600 sq. st; balcony area as 64.58 sq.ft and total sale consideration of flat is Rs.15,24,022/- Copy of provisional allotment letter is annexed as Annexure A. It is contended by the complainant that despite paying an amount of Rs.4,75,195/- against the total consideration of flat, respondent failed to hand over possession to the complainants. On perusal of receipts attached by the complainants, it is observed that complainants had paid an amount of ₹78,556/- on 06.07.2015, ₹3,13,295/- on 24.07.2015 and ₹2169/- on 27.07.2015 Thus total amount paid by complainants is ₹3,94,020/-. Alleged booking charges paid by the complainant, i.e., ₹81,725/- could not be ascertained as no receipt is attached to prove the same. Hence, till 24.07.2015 complainants had paid an amount of Rs.3,94,020/-. Thereafter in year 2016, complainants requested the respondent



for cancellation of allotment due to uncertainty in giving allotment to complainants and requested for refund of paid amount. Email sent by complainant on 31.01.2016 is attached on page no.26. Accordingly, respondent promised to refund the amount after deducting Rs.25,000/- as per Affordable Housing Scheme-2013 through an email dated 02.02.2016. The complainants sent consent for deduction as per policy vide an email dated 23.02.2016 and later on respondent agreed to refund the balance amount vide an email dated 24.02.2016. However, respondent failed to fulfill his promise to refund the paid amount. On considering the facts, it is clear that complainants had fulfilled their liability of paying amount on time, however, respondent did not adhere to his terms and conditions of provisional allotment letter and failed to hand over possession to the complainants. As in allotment letter, there is no specific time mentioned for deemed date of possession and also in absence of builder buyer agreement executed between the parties, law has already been settled by the Hon'ble Apex Court in **2018 STPL 4215 SC** titled as **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr** wherein it is observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, complainants were allotted flat on 10.07.2015 as per



provisional allotment letter. Taking a period of 3 years from the date of allotment, i.e, 10.07.2015, as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 10.07.2018. However, before the deemed date of possession complainants choose to cancel the allotment of flat because of some personal reasons and uncertainty in handing over of possession of flat and requested for refund in the year 2016. Regarding cancellation and refund also, respondent assured/promised the complainant w.r.t paid amount after deducting the requisite amount as per policy. This assurance by the respondent can be ascertained by communications exchanged through email between the complainants and respondent. Therefore, the conclusion can be drawn that the respondent defaulted or failed to fulfill his obligations, firstly regarding construction and development of the project on time; and secondly, regarding the refund of the paid amount when the complainants chooses to cancel the allotment of the flat. Thus, complainants are at liberty to exercise his right to withdraw from the project on account of default on the part of respondent to offer legally valid possession and seek refund of the paid amount along with interest as per section 18 of RERD Act.



ii. Further, Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others* " in Civil Appeal no. 6745-6749 of 2021 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 judgement 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. The complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainant.

iii. The definition of term ‘interest’ is defined under Section 2(za) of the Act which is as under:

(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;

- iv. 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 (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”.

- v. 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., 21.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.
- vi. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainants are entitled for refund of deposited amount along with interest. Thus, respondent will be liable to pay the complainants interest from the date the amounts



were paid till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of ₹ 3,94,020/- 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. Authority has got calculated the total amount along with interest calculated at the rate of 10.75% till the date of this order and total amount works out to ₹7,40,487/- as per detail given in the table below:

Sr.no	Principal amount	Date of payment	Interest accrued till 21.09.2023
1.	78,556/-	06.07.2015	69,409/-
2.	2169/-	27.07.2015	1903/-
3.	3,13,295/-	24.07.2015	2,75,155/-
	Total=₹3,94,020/-		₹3,46,467/-
Total amount to be refunded by respondent to complainant= ₹3,94,020/-+₹3,46,467/-= ₹7,40,487/-			



vii. Further, the complainant is seeking compensation on account of mental agony and physical harassment caused to the complainants. 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 complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

8. 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 amount of ₹7,40,487/- to the complainants. Further, respondent is



directed to pay cost of ₹5000/- payable to the Authority imposed vide order dated 31.05.2023.

- (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.

9. Disposed of. File be consigned to record room after uploading of the order on the website of the Authority.



.....
NADIM AKHTAR
[MEMBER]



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